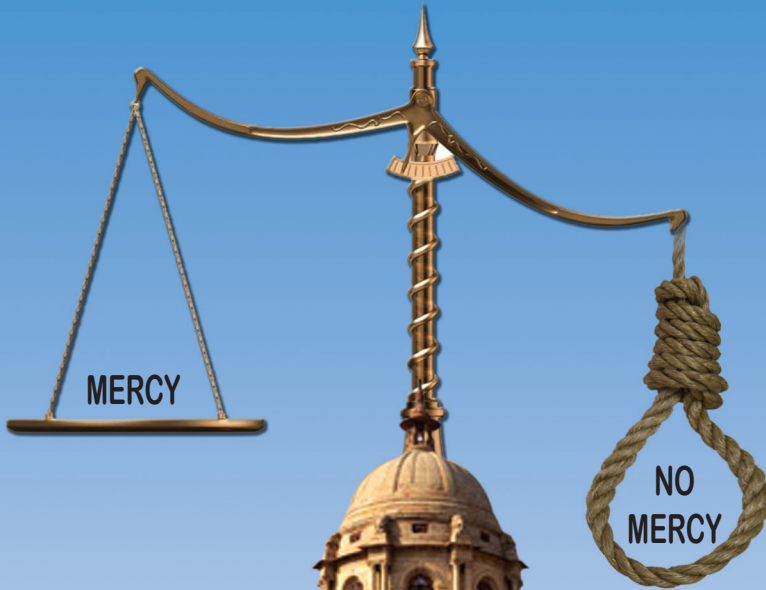


# THE STATUS OF MERCY PETITIONS IN INDIA



ASIAN CENTRE FOR HUMAN RIGHTS



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## **The Status of Mercy Petitions in India**

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**Abbreviations:**

ACHR:	Asian Centre for Human Rights
CBI:	Central Bureau of Investigation
CrPC:	Criminal Procedure Code
ECHR:	European Convention on Human Rights
FIR:	First Information Report
ICCPR:	International Covenant on Civil and Political Rights
IPC:	Indian Penal Code
MHA:	Ministry of Home Affairs
MWCD:	Ministry of Women and Child Development
NHRC:	National Human Rights Commission
POTA:	Prevention of Terrorism Act
SLP:	Special Leave Petition
SUA:	Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002
TADA:	Terrorist and Disruptive Activities (Prevention) Act
TIP:	Test Identification Parade
UN:	United Nations

# 1. EXECUTIVE SUMMARY

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The Law Commission of India in its “*Report No.262: The Death Penalty*” of 31.08.2015 recommended that “*the death penalty be abolished for all crimes other than terrorism related offences and waging war*”.<sup>1</sup> Even if the recommendations of the Law Commission of India were to be implemented in toto, death penalty shall still remain in the statute books in India for offences related to terrorism and waging war, and hence granting mercy to death row convicts will continue to haunt the President of India.

The President exercises his/her powers with the aid and advice of the Council of Ministers as per Article 53 of the Constitution of India. The functions of the President are largely ceremonial. The President’s critical role usually comes to play in the case of a hung parliament, imposition of state of emergency and with respect to signing of certain controversial bills/ordinances. In the last two decades the President’s role on all these issues has seldom been questioned. It can, therefore, be safely stated that the President’s most controversial decisions have been with respect to the mercy petitions of the death row convicts filed under Article 72 of the Constitution of India.

That there are no accurate records of the mercy petitions considered since India’s independence shows the callousness of the Government of India on the question of life and death and the respect for human dignity. In 2013, the Government of India informed the Supreme Court that over 300 mercy petitions were filed before the President by convicts on death row between 1950 and 2009.<sup>2</sup> The Government of India was obviously unaware that it had earlier informed the Rajya Sabha, upper house of Indian Parliament, on 29.11.2006 that 1,261 mercy petitions were disposed of by the President between 1965 and 2006 alone!<sup>3</sup> Other studies indicated that about 3,796

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1. Law Commission of India, Report No.262 The Death Penalty August 2015 available at <http://lawcommissionofindia.nic.in/reports/Report262.pdf>
  2. The statistics was submitted by the Additional Solicitor General of India in Devender Pal Singh Bhullar v. State of N. C. T. of Delhi decided on 12.04.2013, <http://judis.nic.in/supremecourt/imgst.aspx?filename=40266> (Accessed 13.05.2015)
  3. See Annexure A in reply to Rajya Sabha unstarred question No. 815 of S.S. Ahluwalia answered by S. Regupath, Minister of State in the Ministry of Home Affairs on 29.11.2006 at: <http://164.100.47.5/qsearch/QResult.aspx> (Accessed 14.05.2015)
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mercy petitions were filed with the President between 1947 and 1964.<sup>4</sup> Information collated by Asian Centre for Human Rights (ACHR) shows that since India's independence, a total of 5,106 mercy petitions were filed by death row convicts from 1947 to 2015 (as on 05.08.2015). Of these, 3,534 mercy petitions or 69% were rejected while death sentences in 1,572 mercy petitions or 31% were commuted to life imprisonment.

The Supreme Court in a number of judgments including in the *Shatrughan Chauhan v. Union of India*<sup>5</sup> held that “*exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. ... Right to seek for mercy under Articles 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*”.

The Government of India has issued instructions<sup>6</sup> for dealing with mercy petitions and adopted broad guidelines for granting mercy<sup>7</sup>. The Supreme Court in a number of judgments has held that the decisions of the President on mercy petitions did not meet the test of due care and diligence with respect to compliance with the instructions for dealing with mercy petitions and guidelines for granting mercy.

### 1.1 Violations of the instructions for dealing with mercy petitions

The instructions for dealing with mercy petitions are routinely violated. Rule I of the instructions provides for “*submission of a mercy 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*”. Considering that majority of the death row convicts are poor and illiterate and held in solitary confinement, most of them are unlikely to be able to collate all the necessary documents before filing mercy petitions. There is no provision for providing legal aid to death row convicts to prepare the mercy petitions. Consequently, mercy petitions filed fail to reflect the grounds which ought to be considered for

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4. Bikram Jeet Batra, ‘Court’ of Last Resort A Study of Constitutional Clemency for Capital Crimes in India, See Annexure I, pp 94-95, <http://www.jnu.ac.in/cslg/workingPaper/11-Court%20%28Bikram%29.pdf> (Accessed 14.05.2015)

5. *Shatrughan Chauhan v. Union of India* (2014) 3 SCC 1, *Sher Singh and others Vs State of Punjab* (1983)2SCC 344, *Triveniben Vs State of Gujarat* (1989) 1SCC 674 etc

6. The instructions are available at <http://court.mah.nic.in/courtweb/criminal/pdf/chapter18.pdf>

7. *Rajya Sabha*, Unstarred question no.2280 on “Guidelines regarding clemency to death row convicts” answered on the 12th February 2014 available at <http://mha1.nic.in/par2013/par2014-pdfs/rs-120214/2280.pdf>

granting clemency and the condemned prisoners depend on the predilections of injudicious officials of the Ministry of Home Affairs (MHA). One week time to file mercy petition as provided in Rule I is inherently against the death row convicts.

Rule V of the instructions states that *“in all cases in which a petition for mercy from a convict under sentence of death is to be forwarded to the concerned authorities, 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”*. However, mercy petitions are often forwarded without all the records, in piecemeal or one by one. In fact, mercy petitions of *Suresh and Ramji*<sup>8</sup> of Uttar Pradesh and *Praveen Kumar*<sup>9</sup> of Karnataka were rejected without considering the trial court judgments which are the basic documents to assess mercy petitions. There have been cases of suppression of facts from the President by the Ministry of Home Affairs. The note dated 30.09.2005 prepared by then President A.P.J. Abdul Kalam in which he recommended to commute the death sentence of *Mahendra Nath Das* of Assam to life imprisonment was not provided to his successor, President Ms. Pratibha Devisingh Patil who actually went on to reject the mercy petition of *Mahendra Nath Das*.<sup>10</sup> The opinion of the prison authorities that death row convicts *Manganlal Barela* of Madhya Pradesh and *Sundar Singh* of Uttarakhand were mentally unfit was not shared with the President while advising rejection of their mercy petitions.<sup>11</sup>

Rule VI of the instructions mandates that *“upon receipt of the orders of the President, 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”*. This Rule is routinely violated and the condemned prisoners are not provided any information about the rejection of their mercy petitions.

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

9. Ibid

10. Mahindra Nath Das v. Union of India (2013) 6 SCC 253

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

As the *Shantrughan Chauhan* judgment shows, in the case of *Suresh and Ramji*, on 29.07.2004 the Governor of Uttar Pradesh rejected the mercy petitions but they were never informed about the same until 20.06.2013. In the case of *Praveen Kumar*, on 26.03.2013 the President had rejected the mercy petition but he had not received any communication till the judgment of the Supreme Court on 21.01.2014. In the case of *Gurmeet Singh*, on 05.04.2013 he heard the news reports that his mercy petition was rejected by the President but till the judgment of the Supreme Court on 21.01.2014 he had not received any official written communication about the rejection of his mercy petition.<sup>12</sup>

Further, when the condemned prisoners are informed about the rejection of their mercy petitions, there is considerable delay. In the case of *Jafar Ali* of Uttar Pradesh on 22.06.2013 the prison authorities were informed vide letter dated 18.06.2013 that the President rejected the condemned prisoner's mercy petition but it was only on 08.07.2013 that he was informed of the rejection. In the case of *Maganlal Barela*, on 16.07.2013 the President rejected his mercy petition but he was orally informed on 27.07.2013 and was neither furnished with any official written communication regarding the rejection of his mercy petition by the President nor was he informed that his mercy petition had been rejected by the Governor. With respect to *Shivu and Jadeswamy* of Karnataka, on 27.07.2013 the President rejected their mercy petitions but they were informed only on 13.08.2013. In the case of *Simon, Gnana Prakash, Madhiah and Bilavendra* of Karnataka, the President rejected their mercy petitions on 08.02.2013 but they were informed only orally and the prison authorities refused to hand over the copy of the rejection letter to them or to their advocates despite obtaining their signatures.<sup>13</sup>

The failure to notify the rejection of a mercy petition on time or notify at all, has direct implications on the right to challenge the rejection of mercy petition by the President before the Courts and subsequent execution of the condemned prisoners. As per the Prison Manuals, which vary from State to State, execution can be scheduled from one day to 14 days of informing the prisoner of rejection of mercy petition. This was blatantly violated in the case

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12. Ibid

13. Ibid

of Afzal Guru who was denied the opportunity to challenge the rejection of his mercy petition by the President and was executed on 09.02.2013 in secrecy.<sup>14</sup> The family members of Guru were not informed about the rejection of the mercy petition and about his scheduled execution. The official communication dated 06.02.2013 informing the scheduled execution of Guru was received by his family members two days after his execution at Tihar Jail, Delhi.<sup>15</sup>

## 1.2. Violations of the guidelines for granting mercy

The Ministry of Home Affairs has framed broad guidelines<sup>16</sup> for granting mercy to death row convicts. These guidelines are violated at will.

The MHA in complete disregard for the guideline (i) relating to “personality of the accused” recommended rejection of mercy petitions of *Sundar Singh* and *Mangamal Barela* who were declared as mentally unfit by doctors.<sup>17</sup>

With respect to guideline (ii) “cases in which the appellate Court expressed doubt as to the reliability of evidence but has nevertheless decided on conviction”, *Devender Pal Singh Bhullar* was sentenced to death by majority decision of 2:1 by the Supreme Court, the first appellate court under the Terrorist and Disruptive Activities (Prevention) Act, (TADA).<sup>18</sup> The presiding judge of the bench, Justice M B Shah in a dissenting judgment set aside conviction of Bhullar as the reliability of evidence was questionable and ordered his release.<sup>19</sup> Yet, the MHA recommended rejection of his mercy petition and the President was too compliant.

With respect to Guideline (iii) “cases where it is alleged that fresh evidence is obtainable mainly with a view to seeing whether fresh enquiry is justified”, *Surender Koli*, accused of rape and murder of several children who went missing between 2005 and 2006 from Nithari Village in Gautam Budh

14. Afzal Guru hanged in secrecy, buried in Tihar Jail, The Hindu, 10 February 2013

15. See ‘2 days after hanging, Afzal Guru’s wife receives letter from Delhi’ Rediffnews, 11 February 2013, <http://www.rediff.com/news/report/letter-from-delhi-delivered-to-afzal-guru-s-wife-today/20130211.htm>

16. GUIDELINES REGARDING CLEMENCY TO DEATH ROW CONVICTS available at <http://mha1.nic.in/par2013/par2014-pdfs/rs-120214/2280.pdf>

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

18. *Devender Pal Singh Bhullar v. State (NCT of Delhi)* (2002) 5 SCC 234

19. Dissenting judgment of Justice M B Shah in *Devender Pal Singh v. State (NCT of Delhi)* is available at: <http://judis.nic.in/supremecourt/imgst.aspx?filename=18351>

Nagar district, Uttar Pradesh,<sup>20</sup> alleged that he was tortured by the police to extract confession and was threatened with more torture if he did not repeat his confession before the magistrate. In his letter to the Supreme Court, Koli mentioned that the magistrate failed to notice the telltale signs of torture on him. His fingernails and toenails were allegedly missing due to torture. Koli's confessional statement was made before a magistrate in Delhi and not in Ghaziabad, Uttar Pradesh. Koli alleged that it was done so that the investigators could have a magistrate of their choice. The police on the other hand claimed that the statement was recorded before a magistrate in Delhi due to security reason following an attack on Koli by the lawyers when he was brought to a Ghaziabad court. However, the police had taken him to the same court in Ghaziabad twice after the said attack before recording the statement in Delhi. It was also alleged that the statement was taken down in English, a language Koli did not understand. Further, the stenographer who noted down the statement of Koli was not examined in court. Koli was allegedly not medically examined before or after the confessional statement.<sup>21</sup> The police were under pressure to solve the case due to high media coverage. While the Supreme Court could not have acted as a trial court to consider the fresh allegations made by Koli before it, the President while considering his mercy petition ought to have ensured the respect for guideline "*relating to cases where it is alleged that fresh evidence is obtainable mainly with a view to see whether fresh enquiry is justified*".

With respect to guideline "*(iv) where the High Court has reversed on appeal an acquittal by a Session Judge or has on appeal enhanced the sentence*", the Ministry of Home Affairs recommended rejection of mercy petitions of death row convicts in cases where the appellate courts had enhanced the life sentence to death sentence. *Simon, Gnana Prakash, Madhiah* and *Bilavendra* were sentenced to life imprisonment by the designated TADA Court but the Supreme Court *suo motu* enhanced their sentence to death.<sup>22</sup> The President rejected their mercy petitions on 08.02.2013<sup>23</sup> despite the Supreme Court as the first and the

20. Surendra Koli v. State of U.P. Ors available at <http://judis.nic.in/supremecourt/imgst.aspx?filename=37556>

21. See 'Hanging Koli May Bury The Truth Of Nithari Killings', Tehelka, 30 August 2014, Issue 35 Volume 11, at: <http://www.tehelka.com/nithari-killing-hanging-surinder-kohli-will-bury-the-truth/>

22. Simon And Ors v. State Of Karnataka, Supreme Court of India, 16 October, 2003, <http://judis.nic.in/supremecourt/imgst.aspx?filename=21075>

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

only appellate court under the TADA<sup>24</sup> had enhanced the sentence. Similarly, *Sonia Choudhary* and *Sanjeev Choudhary*<sup>25</sup> of Haryana were convicted in May 2004 of the murder of eight relatives in August 2001 and sentenced to death. On appeal, the Punjab and Haryana High Court commuted their sentences to life imprisonment in April 2005 but the Supreme Court enhanced the life sentence into death penalty in February 2007. Their mercy petitions were rejected by the President on 29.06.2013.

With respect to guideline (v) “*any difference of opinion in the Bench of High Court Judges necessitating reference to a larger Bench*”, there are a number of cases such as *Gurmeet Singh*<sup>26</sup>, *Saibanna Nigappal Natikar*<sup>27</sup> and *B A Umesh*<sup>28</sup>, where difference of opinion in the Bench of High Court judges necessitated reference to a larger Bench. The President once again had been too compliant to reject their mercy petitions.

In fact, the government of India has developed its unwritten guideline to reject all mercy petitions of those convicted of terror offences.

Equally disturbing is the blatant violations of the orders of the Supreme Court by the Government of India. The President should ideally be the first person to ensure respect for the judgments and the rule of *stare decisis* i.e. law established by previous decisions of the superior courts. However, while rejecting mercy petitions, the President repeatedly violated the courts’ ruling by failing to consider violations of the court directions like prohibition of solitary confinement, grant of mercy in the cases already declared *per incuriam* by the Supreme Court, consider “delay” as a ground for granting mercy after the

24. See TADA at <http://www.satp.org/satporgtp/countries/india/document/actandordinances/Tada.htm#19>. Section 19 of the TADA laid down the following for appeal. “19. Appeal- (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Designated Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment; sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

25. *Sonia and Sanjeev v. Union of India*, 2007(2)ACR1708(SC), AIR2007SC1218

26. *Gurmeet Singh v. State of Uttar Pradesh* in Criminal Appeal No. 1371 of 2004, Supreme Court of India, 28.9.2005

27. Criminal Ref. Case No. 2/2003 and Criminal Appeal No. 497 of 2003, High Court of Karnataka, Judgment available at: <http://judgmthck.kar.nic.in/judgments/bitstream/123456789/367873/1/CRLRC2-03-10-10-2003.pdf>

28. *B.A. Umesh v. Registrar General, High Court of Karnataka.*, MANU/SC/0082/2011 : (2011) 3 SCC 85

*Shatrughan Chauhan*<sup>29</sup> judgment (*Holiram Bordoloi*<sup>30</sup>) and consult with the Presiding Judge as per Section 432(2) of the Criminal Procedure Code while deciding on mercy petitions despite specific direction in the case of *Devender Pal Singh Bhullar*.

While the political decision to reject mercy petitions of all terror convicts is all pervasive, in order to examine arbitrariness and non-application of mind, ACHR examined 41 cases of mercy petitions considered by the President. These are broadly categorised into six categories i.e. (1) cases of murder of spouse and children, (2) cases of murder by servants for gains; (3) cases of murder due to enmity, (4) cases of murder by relatives, (5) cases of rape and murder of minor girls, and (6) cases of kidnapping followed by murder for gains. In all these cases, the President gave contradictory opinion with respect to the cases with similar facts and circumstances. That President Kalam recommended commutation of death penalty of *Mahendra Nath Das* while his successor President Patil was made to act on the recommendation to rejection of the mercy petition of the same *Mahendra Nath Das* shows the grave arbitrariness in granting mercy.

### 1.3. Conclusion and recommendations

The failure to ensure due care and diligence has resulted in wrongful executions including of *Ravji Rao* and *Surja Ram*<sup>31</sup> while *Afzal Guru* was denied the right to challenge the rejection of his mercy petition by the President before the Courts unlike others sentenced to death under the same terror offences.

The failure to ensure respect for the instructions for dealing with mercy petitions and the guidelines for granting mercy are caused either by incompetence leading to non application of mind by the officials of the Ministry of Home Affairs or belief of the officials of the MHA in death penalty as the panacea for all crimes, which seriously hampers independent and impartial consideration of the mercy petitions. This failure has made the decisions of the President poorer than many Superintendents of Prisons and brought so much disrepute that the President has lost the moral authority and his decisions on mercy

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29. (2014) 3 SCC 1

30. *Holiram Bordoloi v. State of Assam* [AIR2005SC2059]

31. Law Commission of India Report No. 262 "The Death Penalty" August 2015

petitions no longer evoke the necessary confidence that the decisions taken by the President meet the tests of due care and diligence for compliance with the instructions for dealing with mercy petitions, the guidelines for granting mercy, judgments of the Supreme Court and respect for *stare decisis*.

The instructions for dealing with mercy petitions and the guidelines for granting mercy are highly inadequate, restrictive and inherently against the death row convicts. At the same time, ACHR is of the considered opinion that had these instructions and guidelines were implemented in letter and spirit, a number of death row convicts would have been given mercy.

In order to reduce death penalty in India, Asian Centre for Human Rights recommends the following:

**Recommendation 1:**

- The Government of India should establish a Presidential Panel on Mercy Petitions comprising eminent citizens, *inter alia*, to (i) vet the advice of the Ministry of Home Affairs on mercy petitions to ensure due care and diligence for compliance with instructions for dealing with mercy petitions, the guidelines for granting mercy, judgments of the Supreme Court and respect for *stare decisis* and other related international human rights standards on death penalty; (ii) review the instructions and guidelines on mercy petitions from time to time to ensure compliance with the Supreme Court judgements and international human rights standards on death penalty; and (iii) advise the President and the Government of India on the mercy petitions;

**Recommendation 2:**

- Considering the constitutional right to seek mercy and the right to challenge the rejection of mercy petitions by the President, the instructions for dealing with mercy petitions be amended to provide for adequate time of at least 90 days to challenge the rejection of mercy petitions by the President;

**Recommendation 3:**

- The Government of India should revise its guidelines<sup>32</sup> for granting mercy after taking into account the standards set by the Supreme Court

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



of India and the United Nations and in this regard, ACHR, in addition to existing standards on prohibition on execution of juveniles, pregnant women and those who are mentally unsound, recommends the following 10-Point Recommendations on Consideration of Mercy Petitions for Reduction of Death Penalty in India:

**Principle 1.** The consequences of inordinate and unexplained delay in the disposal of mercy petitions of condemned prisoners should be considered as grounds for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

**Principle 2.** Possibility of reform of the condemned prisoner should be considered as a ground for granting mercy and that the State must prove that the condemned prisoner cannot be reformed.

**Principle 3.** A dissenting judgment at any stage of the proceeding before the Court should be a ground for granting mercy.

**Principle 4.** Denial of the right to appeal because of the enhancement of punishment by the Supreme Court in the form of death penalty should be a ground for granting mercy.

**Principle 5.** Conviction based on self-incrimination should be a ground for granting mercy.

**Principle 6.** Inability to defend oneself by hiring own lawyer as reflected from appointment of *amicus curiae* or lawyers from legal aid services by the Courts in all stages of the proceedings should be a mitigating ground for granting mercy.

**Principle 7.** Conviction in cases declared as *per incuriam* should be a ground for granting mercy.

**Principle 8.** Imposition of mandatory death penalty should be a ground for granting mercy.

**Principle 9.** Death penalty imposed solely based on circumstantial evidence should be a ground for granting mercy.

**Principle 10.** Making orphan should be a ground for granting mercy.

## 2. GRANTING MERCY: NOT A MERE PREROGATIVE OF THE PRESIDENT

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Under Article 72 of the Constitution, the President of India is empowered to grant pardon<sup>33</sup> and the Governor of a State is provided more or less similar power under Article 161 of the Constitution.<sup>34</sup> However, the Supreme Court in a number of judgments held that the President exercises his powers with the aid and advice of the Council of Ministers as per Article 53 of the Constitution.<sup>35</sup> Therefore, the President can act only on the aid and advice of the Council of Ministers and not empowered to have independent views of his/her own. As the Ministry of Home Affairs or the State Home Departments are entrusted with maintenance of law and order, internal security, crime control etc and act as the nodal Ministry/Department to advice on mercy petitions, it can be safely concluded that the prosecutor is the grantor of mercy to the death row convicts.

The Supreme Court in a number of decisions including in the landmark ruling in *Shatrughan Chauhan* also held that death row convicts can approach the Courts even after the mercy petitions are rejected by the President for commutation of the death sentence to life imprisonment if the mercy petitions

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33. 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— (a) in all cases where the punishment or sentence is by a Court Martial; (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; (c) in all cases where the sentence is a sentence of death.

(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 (c) 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.

34. 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.

35. Article 53. Executive power of the Union.—(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall— (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or (b) prevent Parliament from conferring by law functions on authorities other than the President.

are rejected without considering the supervening events. In *Shatrughan Chauhan*, the Supreme Court held:

*“244. It is well established that exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitution Framers did not stipulate any outer time-limit for disposing of the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing of 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 Articles 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.”*

### 3. STATISTICS ON MERCY PETITIONS

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There are no official statistics on the actual number of mercy petitions filed by convicts on death row in independent India. Available official information on mercy petitions are clogged with confusion.

In 2013, the Ministry of Home Affairs informed the Supreme Court that over 300 mercy petitions were filed before the President of India by convicts on death row between 1950 and 2009.<sup>36</sup> However, the MHA had earlier informed the Rajya Sabha on 29.11.2006 that 1,261 mercy petitions filed by death row convicts were disposed of by the President between 1965 and 2006. Of these, 660 mercy petitions were rejected, 592 were commuted and the remaining petitions were pending.<sup>37</sup> Other studies indicated that about 3,796 mercy petitions were filed with the President between 1947 and 1964. Of these, 2,847 were rejected and 949 were accepted.<sup>38</sup> As per information collated by Asian Centre for Human Rights from various official statistics, out of a total of 49 mercy petitions (old and new), 45 petitions were disposed of by the President from 2007 to 2015 (as on 05.08.2015). Of these, 27 were rejected and 18 were commuted, while four petitions, two each with the President and the MHA, were pending disposal.<sup>39</sup>

In other words, a total of 5,106 mercy petitions were filed by death row convicts from 1947 to 2015 (as on 05.08.2015). Of these, 3,534 mercy petitions or 69% were rejected while death sentences in 1,572 mercy petitions or 31% were commuted to life imprisonment. As on 05.08.2015, four mercy

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36. The statistics was submitted by the Additional Solicitor General of India in *Devender Pal Singh Bhullar v. State of N.C.T. of Delhi* decided on 12.04.2013, <http://judis.nic.in/supremecourt/imgst.aspx?filename=40266> (Accessed 13.05.2015)

37. See Annexure A in reply to Rajya Sabha unstarred question No. 815 of S.S. Ahluwalia answered by S. Regupath, Minister of State in the Ministry of Home Affairs on 29.11.2006 at: <http://164.100.47.5/qsearch/QResult.aspx> (Accessed 14.05.2015)

38. Bikram Jeet Batra, 'Court' of Last Resort A Study of Constitutional Clemency for Capital Crimes in India, See Annexure I, pp 94-95, <http://www.jnu.ac.in/cslg/workingPaper/11-Court%20%28Bikram%29.pdf> (Accessed 14.05.2015)

39. Source of information: 'Statement of Mercy Petitions' President's Secretariat, <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>; Schedule 'A' to the judgment *Devender Pal Singh Bhullar v. State of N.C.T. of Delhi* delivered on 12 April 2013; Annexure in reply to part (a) of Lok Sabha Unstarred Question No. 1565 for 27.11.2007 Details of pending Mercy petitions [http://164.100.47.132/Annexure\\_New/lsq14/12/au1565.htm](http://164.100.47.132/Annexure_New/lsq14/12/au1565.htm); and Lok Sabha Unstarred Question No.3929 answered on 18.12.2012 [http://164.100.47.132/Annexure\\_New/lsq15/12/au3929.htm](http://164.100.47.132/Annexure_New/lsq15/12/au3929.htm)

petitions were pending, two each with the President and the Ministry of Home Affairs.<sup>40</sup>

**Table 1: Year-wise details of mercy petitions disposed of by the President of India (1947 – 1964)<sup>41</sup>**

Year	Mercy petitions rejected	Mercy petitions commuted	Total
1947	276	7	283
1948	144	23	167
1949	174	43	217
1950	157	46	157
1951	120	75	195
1952	123	41	164
1953	205	58	263
1954	166	55	221
1955	154	45	199
1956	124	68	192
1957	120	80	200
1958	127	48	175
1959	201	56	257
1960	216	47	263
1961	174	88	262
1962	126	62	188
1963	112	41	153
1964	128	66	194
Total	2847	949	3796

40. Source of information: ‘Statement of Mercy Petitions’ President’s Secretariat, <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>; Schedule ‘A’ to the judgment Devender Pal Singh Bhullar v. State of N.C.T. of Delhi delivered on 12 April 2013; Annexure in reply to part (a) of Lok Sabha Unstarred Question No. 1565 for 27.11.2007 Details of pending Mercy petitions [http://164.100.47.132/Annexure\\_New/lsq14/12/au1565.htm](http://164.100.47.132/Annexure_New/lsq14/12/au1565.htm); and Lok Sabha Unstarred Question No.3929 answered on 18.12.2012 [http://164.100.47.132/Annexure\\_New/lsq15/12/au3929.htm](http://164.100.47.132/Annexure_New/lsq15/12/au3929.htm)
41. Bikram Jeet Batra, ‘Court’ of Last Resort A Study of Constitutional Clemency for Capital Crimes in India, See Annexure I, pp 94-95, <http://www.jnu.ac.in/cslg/workingPaper/11-Court%20%28Bikram%29.pdf> (Accessed 14.05.2015)

**Table 2: Decade-wise details of mercy petitions disposed of by the President of India (1965 – 2006)<sup>42</sup>**

Decade	Mercy petitions rejected	Mercy petitions accepted	Total
1965-1974	491	543	1034
1975-1984	121	52	173
1985-1994	41	4	45
1995-2006	7	2	9

**Table 3: Details of mercy petitions disposed of by the President of India between 2007 and 2015 (as on 05.08.2015)<sup>43</sup>**

Sl No.	Names of convicts who filed Mercy Petitions	Case Status
1	R. Govindasamy	Commuted (2009)
2	Piara Singh, Sarabjit Singh, Gurdev Singh and Satnam Singh	Commuted (2010)
3	Shyam Manohar, Sheo Ram, Prakash, Suresh, Ravinder and Harish	Commuted (2010)
4	Shobhit Chamar	Commuted (2010)
5	Dharmender Kumar and Narendra Yadav	Commuted (2010)
6	Mohan and Gopi	Commuted (2011)
7	Murugan, Santhan and Arivu	Rejected (2011)
8	Jai Kumar	Commuted (2011)
9	Mahender Nath Das	Rejected (2011)
10	S.B. Pingale	Commuted (2011)
11	Sattan and Guddu	Commuted (2011)

42. See Annexure A in reply to Rajya Sabha unstarred question No. 815 of S.S. Ahluwalia answered by S. Regupath, Minister of State in the Ministry of Home Affairs on 29.11.2006 at: <http://164.100.47.5/qsearch/QResult.aspx> (Accessed 14.05.2015)

43. Source of information: 'Statement of Mercy Petitions' President's Secretariat, <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>; Schedule 'A' to the judgment Devender Pal Singh Bhullar v. State of N.C.T. of Delhi delivered on 12 April 2013; Annexure in reply to part (a) of Lok Sabha Unstarred Question No. 1565 for 27.11.2007 Details of pending Mercy petitions [http://164.100.47.132/Annexure\\_New/lsq14/12/au1565.htm](http://164.100.47.132/Annexure_New/lsq14/12/au1565.htm); and Lok Sabha Unstarred Question No.3929 answered on 18.12.2012 [http://164.100.47.132/Annexure\\_New/lsq15/12/au3929.htm](http://164.100.47.132/Annexure_New/lsq15/12/au3929.htm)

Sl No.	Names of convicts who filed Mercy Petitions	Case Status
12	Molai Ram and Santosh	Commuted (2011)
13	Devender Pal Singh Bhullar	Rejected (2011)
14	Sheikh Meeran, Selvam and Radhakrishnan	Commuted (2012)
15	Md. Ajmal Kasab	Rejected (2012)
16	Om Prakash	Commuted (2012)
17	Kunwar Bahadur Singh and Karan Bahadur Singh	Commuted (2012)
18	Sushil Murmu	Commuted (2012)
19	Lai Chand and Shivlal	Commuted (2012)
20	Satish	Commuted (2012)
21	Atbir	Commuted (2012)
22	Dharam Pal	Rejected (2013)
23	Jafar Ali	Rejected (2013)
24	Suresh and Ramji	Rejected (2013)
25	Mohd. Afzal Guru	Rejected (2013)
26	Gurmeet Singh	Rejected (2013)
27	Praveen Kumar	Rejected (2013)
28	Simon, Ghanaprakash, Madaiah, Bilavendra	Rejected (2013)
29	Saibanna Ningappa Natikar	Rejected (2013)
30	Sonia and Sanjeev	Rejected (2013)
31	Sundar Singh	Rejected (2013)
32	Maganlal Barela	Rejected (2013)
33	Shivu and Jadeswamy	Rejected (2013)
34	BA Umesh	Rejected (2013)
35	Ajay Kumar Pal	Rejected (2013)
36	Sonu Sardar	Rejected (2014)
37	Holiram Bordoloi	Rejected (2014)
38	Renuka Gavit and Seema Gavit	Rejected (2014)
39	Jagdish	Rejected (2014)
40	Surender Koli	Rejected (2014)

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<b>Sl No.</b>	<b>Names of convicts who filed Mercy Petitions</b>	<b>Case Status</b>
41	Rajendra Pralhadrao Wasnik	Rejected (2014)
42	MA Anthony	Rejected (2015)
43	Yakub Abdul Razak Memon	Rejected (2015)
44	Shiwaji Shankar Alhat	Rejected (2015)
45	Tote Dewan @ Man Bahadur Dewan	Commuted (2015)
46	Mohan Anna Chavan	Pending (President)
47	Jeetendra @Jitu Nainsingh Gehlot	Pending (President)
48	Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh	Pending (MHA)
49	Balwant Singh Rajoana	Pending (MHA)



## 4. VIOLATIONS OF THE INSTRUCTIONS FOR DEALING WITH MERCY PETITIONS

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In India, a mercy petition is preferred by a condemned prisoner or by someone on his/her behalf before the President of India or Governor of a State after all the judicial process is fully exhausted to have the death sentence commuted. The President of India under Article 72 of the Constitution of India and the Governor of a State under Article 161 of the Constitution can commute the death sentence of the condemned prisoners.

The death row convicts first approach the Governor under Article 161 with a mercy petition after the Supreme Court finally decided the matter. The execution of the death sentence is stayed during the pendency of the mercy petition. Once the mercy petition is rejected by the Governor, the convict prefers mercy petition to the President under Article 72. While deciding the mercy petitions of the condemned prisoners the President and Governors have to act as per advice of the Union Cabinet and State Cabinet respectively.

### 4.1. Instructions for dealing with mercy petitions

The Ministry of Home Affairs has issued instructions regarding procedure to be followed by the States for dealing with petitions for mercy from or on behalf of convicts under sentence of death and with appeals to the Supreme Court and applications for special leave to appeal to that Court by such convicts.<sup>44</sup> The instructions are reproduced below:

#### **“PART A**

##### ***A. Petition for Mercy***

- I. A Convict under sentence of death shall be allowed, if he has not already submitted a petition for mercy, for the preparation and submission of petition for mercy seven days after, and exclusive of, the date 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

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44. The instructions are available at <http://court.mah.nic.in/courtweb/criminal/pdf/chapter18.pdf>

to the Supreme Court: Provided that in cases where no appeal to the Supreme Court has been preferred or no application for special leave to appeal to the Supreme Court has been lodged, the said period of seven days shall be computed from the date after the date on which the period allowed for an appeal to the Supreme Court or for lodging an application for special leave to appeal to the Supreme Court expires.

II. If the convict submits a petition within the above period, it shall be addressed:

- (a) in the case of the State to the Governor of the State (Sadar-i-Riyasat in the case of Jammu and Kashmir) and the president of India;
- (b) in the case of the Union Territories to the President of India;

The execution of sentence shall in all cases be postponed pending receipt of their orders.

III. The Petitions shall in the first instance

- (a) in the case of the States be sent to the State Government concerned for consideration and orders of the Governor (Sadar-i-Riyasat in the case of Jammu and Kashmir )

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 an intimation of the fact shall be sent to the petitioners;

Note: The Petition made in a case where the sentence of death is for an offence against any law exclusively relatable to a matter to which the executive powers of the Union extends, shall not be considered by the State Government but shall forthwith be forwarded to the secretary to the Government of India ,Ministry of Home Affairs.

- (b) in the case of the Union Territories, be sent to the Lieutenant Government / Chief Commissioner / Administration who shall forward it to the Secretary to the Government of India, Ministry

of Home Affairs, stating that the execution has been postponed pending the receipt of the orders of the President of India.

IV. If the convict submits the petition after the period prescribed by Instruction I above, it will be within the discretion of the Lieutenant Governor/Chief Commissioner/ Administrator or the Government of the State concerned, as the case may be, to consider the petition and to postpone execution pending such consideration and also to withhold or not to withhold the petition addressed to the President. In the following circumstances, however, the petition shall be forwarded to the Secretary to the Government of India, Ministry of Home Affairs:

- (i) If the sentence of death was passed by the appellate Court on an appeal against the convict's acquittal, or as a result of an enhancement of sentence by the Appellate Court, whether on its own motion or on an application for enhancement of sentence ;  
or
- (ii) When there are any circumstances about the case, which in the opinion of the Lieutenant Governor /Chief Commissioner/ Administrator or the Government of the State concerned, as the case may be, render it desirable that the President should have an opportunity of considering it, as in case of a political character and those in which for any special reason considerable public interest has been aroused when the petition is forwarded to the Secretary to the Government of India, Ministry of Home Affairs, the execution shall simultaneously be postponed pending receipt of orders of the President thereon.

V. 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 Lieutenant 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. In the case of the States, the Government of the State concerned shall, if it had previously rejected any petition addressed to itself or the

Governor/Sadar-i-Riyasat also forward a brief statement of the reasons for the rejection of the previous petition or petitions.

- VI. Upon the receipt of the order of the President, an acknowledgment shall be sent to the Secretary to the Government of India, Ministry of Home Affairs, immediately in the manner hereinafter provided. In the case of the Assam and the Andaman and Nicobar Islands, all orders will be communicated by telegram and the receipt thereof shall be acknowledged by telegram. 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 letter in the case of Delhi and by telegram in all other cases and receipt thereof shall be acknowledged by express letter or telegram, as the case may be.
- VII. A petition submitted by a convict shall be withheld by the Lieutenant Governor/Chief Commissioner/Administrator or the Government of the State concerned, as the case may be, if a petition containing a similar prayer has already been submitted to the President. When a petition is so withheld, the petitioner shall be informed of the fact and of the reason for withholding it.
- VIII. Petitions for mercy submitted on behalf of a convict under sentence of death shall be dealt with, *mutatis mutandis*, in the manner provided by these instructions for dealing with a petition from the convict himself. The Petitioner on behalf of a condemned convict shall be informed of the orders passed in the case. If the petition is signed by more than one person, it shall be sufficient to inform the first signatory. The convict himself shall also be informed of the submission of any petition on his behalf and of the orders passed thereon.

## **PART B.**

### ***B. Appeal to the Supreme Court and Applications for Special Leave to Appeal to the Supreme Court.***

- IX. Whenever a sentence of death has been passed by any Court or Tribunal the sentence shall not be executed until after the dismissal of the appeal

to the Supreme Court or of the application for special leave to appeal to the Supreme Court, or in case no such appeal has been preferred or no such application has been lodged, until after the expiry of the period allowed for an appeal to the Supreme Court or for lodging of an application for special leave to appeal to the Supreme Court:

Provided that, if a petition for mercy has been submitted by or on behalf of the convict, execution of the sentence shall further be postponed pending the orders of the President thereon.

Note: If the sentence of death has been passed on more than one person in the same case and if an appeal to a higher Court or an application for special leave to appeal to the Supreme Court is lodged by, or on behalf of, only one or more but not all of them, the execution of sentence shall be postponed in the case of all such persons and not only in the case of the person or persons by whom, or on whose behalf, the appeal or the application is lodged.

- X. On receipt of the intimation of the lodging or an appeal to the Supreme Court or of an application for special leave to appeal to the Court or of an intention to do so, the Lieutenant Governor /Chief Commissioner /Administrator or the Government of the State concerned, as the case may be, shall forthwith communicate by telegram to the Government Advocate, Ministry of Law, and also to the Secretary to the Government of India, Ministry of Home Affairs (i) the name of the convict under sentence of death, and (ii) Particulars relating to the appeal or the application.

If it is desired to oppose the appeal or the application, three copies of the Paper Books and of the Judgment of the High Court or the Judicial Commissioner's Court or the Tribunal, as the case may be (one copy of each being a certified copy), a power of attorney in the form prescribed by the Supreme Court and instructions, if any for the purpose of opposing the appeal or the application shall be immediately sent to the Government Advocate, Ministry of Law; Notice of the intended appeal or application, if and when served by or on behalf of the convict, shall also be transmitted to him without delay. If the intended

appeal or application is not lodged within the period prescribed by the Supreme Court Rules, the Government Advocate shall intimate the fact by telegram to the Lieutenant Governor / Chief Commissioner / Administrator or the Government of the State concerned, as the case may be. The execution of the sentence shall not thereafter be postponed, unless a petition for mercy has been submitted by or on behalf of the convict.

- XI. If an appeal or an application for special leave to appeal has been lodged in the Supreme Court on behalf of the convict, the Government Advocate, Ministry of Law, will intimate the fact to the Lieutenant Governor / Chief Commissioner / Administrator or the State Government, as the case may be, and also to the Secretary to Government of India, Ministry of Home Affairs. The Government Advocate, Ministry of Law, will keep the aforesaid authorities informed of all developments in the Supreme Court, in those cases which present unusual features. In all cases, however, he will communicate the result of the appeal or application for special leave to appeal, to the Lieutenant Governor/ Chief Commissioner/ Administrator or the State Government, as the case may be, by telegram in the case of Assam and by an express letter in other cases, endorsing a copy of his communication to the Secretary to the Government of India, Ministry of Home Affairs. The Lieutenant Governor/Chief Commissioner/ Administrator or the State Government, as the case may be, shall forthwith acknowledge the receipt of the communication received from the Government Advocate, Ministry of Law. A certified copy of the Judgment of the Supreme Court in each case will be supplied by the Government, Advocate, Ministry of Law in due course to the Lieutenant Governor /Chief Commissioner /Administrator or the State Government, as the case may be, who shall acknowledge the receipt thereof. The execution of the sentence of death shall not be carried until after the receipt of the certified copy of the Judgment of the Supreme Court dismissing the appeal or the application for special leave to appeal and until an intimation has been received from the Ministry of Home Affairs about the rejection by the President of India, of the Petition for mercy submitted, if any, by or on behalf of the convict.

11. An order of Government will be sufficient authority to the Superintendent of a jail to carry out a sentence of execution which has been postponed pending an appeal to Government. A fresh or amended warrant by the Judge is not necessary.

12. Under the provisions of section 419 of the Code of Criminal Procedure, 1973, warrants should invariably be directed to the Officer-in-charge of the jail in which the Prisoner is at the time of conviction, or is to be confined immediately upon conviction.”

## **4.2. Violations of the instructions for dealing with mercy petitions**

The prescribed instructions in handling the mercy petitions are often not implemented in letter and spirit as shown below.

### **i. Not providing the mandatory documents necessary for filing mercy petitions**

Rule V of the Instructions for dealing with mercy petitions 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 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”.*

The records of mercy petitions such as police records, judgments of the trial court, the High Court and the Supreme Court and all other connected documents including observations in respect of any of the grounds urged in the petition are indispensable for judicious consideration of any mercy petition. However, the records are often sent in piece-meal or one by one which affects just decision by the President.

In *Shatrughan Chauhan*, the Supreme Court noted *“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*

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*Departments are also not adhering to the procedure/instructions by sending all the required materials at one stroke.”* Further, the Supreme Court directed that it is the responsibility of the Ministry of Home Affairs to send periodical reminders and provide required materials for early decision in case of no response from the office of the President pursuant to sending of recommendations.<sup>45</sup>

**Case 1: Mercy petition of Suresh and Ramji rejected without examining the trial court judgment<sup>46</sup>**

As per the Supreme Court judgment in *Shatrughan Chauhan*, the Ministry of Home Affairs wrote to the Government of Uttar Pradesh on 22.04.2001 asking for the record of the case and information on whether mercy petitions of Suresh and Ramji have been rejected by the Governor. On 04.05.2001, the Government of Uttar Pradesh wrote to the Government Advocate, District Varanasi asking for a copy of the trial court judgment.

On 23.05.2001, the Government of Uttar Pradesh 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 the State Government that it is not possible to get a copy of the trial court judgment as all the papers were lying in the Supreme Court. On 13.12.2001, without obtaining a copy of the trial court judgment, the Government of Uttar Pradesh 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, the Government of Uttar Pradesh informed the MHA that the Governor had rejected the mercy petitions of Suresh and Ramji.

On 28.03.2002, the MHA wrote to the State Government seeking copy of the trial court judgment. On 12.06.2002, the judgment of the trial court was furnished to the MHA. The Supreme Court observed that there was no explanation for the delay of about five months in sending the requisite papers to the MHA by the Government of Uttar Pradesh.

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

46. *Ibid*



**Case 2: Mercy petition of Praveen Kumar rejected without considering the trial court judgment<sup>47</sup>**

On 12.12.2003, the Ministry of Home Affairs requested the Government of Karnataka to consider the mercy petition of death-row convict Praveen Kumar 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. By order dated 15.09.2004, the Governor rejected the mercy petition. On 30.09.2004, Government of Karnataka informed the MHA that the petitioner's mercy petition was rejected by the Governor.

On 18.10.2004, the MHA requested the State Government for the second time to send the judgment of the trial Court along with the police diary and court proceedings. On 20.12.2004, the Government of Karnataka sent the relevant papers to the MHA but the same were in Kannada language. On 07.01.2005, the MHA returned the documents sent by the Government of Karnataka requesting them to provide English translation. The Government of Karnataka 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.

On 06.09.2005, the mercy petition of Praveen Kumar was processed by the officials of the MHA 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, the MHA advised the President to reject the petitioner's mercy petition. The English versions of the relevant documents were sent to the MHA only on 14.03.2006 i.e. 14 months after the mercy petition was rejected by the President!

**Case 3: Medical opinion that Manganlal Barela is mentally unfit concealed<sup>48</sup>**

Maganlal Barela, a tribal and aged about 40 years, hailing from the State of Madhya Pradesh was sentenced to death on 03.02.2011 by the Sessions Court

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47. Ibid

48. Ibid

under Section 302 IPC for the murder of his five daughters. 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 before the Supreme Court. The Supreme Court did not grant special leave and dismissed the SLP in *limine*.

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

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 of the form, it was stated that his conduct in prison was good. In column 19, which was for the Prison Superintendent, it was stated, "*Commutation of sentence is recommended*".

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 *inter alia*, stated that the petitioner was not a habitual criminal, he belonged to the weaker section of the society and he was suffering from mental disorder and at present undergoing treatment at Psychiatry Department of Hamidia Hospital, Bhopal. In Column No. 11 which seeks the Superintendent's recommendations, it was stated that, "*Commutation of sentence is recommended*".

On 07.08.2012, the Ministry of Home Affairs received the petitioner's mercy petition forwarded by the State Government. On 31.08.2012, the MHA sought the petitioner's medical report from the State Government as it was stated in his mercy petition that he was suffering from mental illness. The State Government was also requested to confirm whether the petitioner had filed a review petition in the Supreme Court against the dismissal of his SLP. On 25.03.2013, the Jail Superintendent, Central Jail, Indore sent the medical report of the petitioner to the MHA confirming his mental illness. The fact

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that the petitioner had not filed a review petition against dismissal of his SLP was also confirmed to the MHA.

On 06.06.2013, the Home Minister advised the President to reject the 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 the Supreme Court had rejected the petitioner's SLP *in limine* in a death case. On 16.07.2013, the President rejected the petitioner's mercy petition.

When the rejection of his mercy petition was challenged before the Supreme Court, the Supreme Court observed that the MHA had not considered the fact that during the period of trial before the Sessions court and even after conviction, the petitioner was suffering from mental illness. This fact was brought to the notice of the MHA in the mercy petition forwarded by the Prison Superintendent who opined for alteration of petitioner's sentence from death to life.

The Supreme Court further observed that while considering the notes for approval of the President, the MHA had not taken into account the fact that the petitioner had filed SLP through legal aid and the Supreme Court Bench which heard his SLP did not grant special leave and dismissed the SLP *in limine*. This fact was not highlighted in the notes prepared for the approval of the President. All these indeed made the decision of the President of India poorer than the Prison Superintendent!

#### **Case 4: Medical opinion that Sundar Singh is mentally unfit concealed<sup>49</sup>**

In Writ Petition (Crl.) No. 192 of 2013, the Supreme Court noted that the MHA, despite being submitted all the details about the mental illness of death row convict Sundar Singh, had neither adverted those facts to the Home Minister nor the summary sent to the President made any reference to the mental condition of Sundar Singh whose mental illness was certified by three doctors. The observation of the apex court is reproduced as under:

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49. Ibid

*“As per records of this case, on 29.09.2010, Sundar Singh sent a mercy petition through jail authorities addressed to the President stating 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. On the same day, 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 the Ministry of Home Affairs and State of Uttaranchal. 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, was further examined by doctors from the HMM District Hospital, Haridwar. As 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 and half years till his discharge on 28.07.2012 with further prescriptions and advice for follow up treatment.”*

On 24.05.2011, the MHA asked the State Government of Uttarakhand to send a copy of Sundar Singh’s nominal roll, medical record and crime record which were sent on 01.06.2011. In the covering letter itself the Uttarakhand Government informed the MHA 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.

Unfortunately, despite being fully informed about the mental illness of Sundar Singh, on 03.02.2012, the MHA advised the President to reject his mercy petition. On 30.10.2012, the President returned the mercy petition of Sundar Singh ostensibly in view of the petition sent by 14 former judges wherein there was a specific reference to the case of Sundar Singh. 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, the MHA again advised the President to reject the mercy petition of Sundar Singh.

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 that Sundar Singh “is suffering from chronic psychotic illness and he needs long term management”.

As per records, the prison authorities sent the report of the team of psychiatrists to the MHA. Yet, on 31.03.2013 the President rejected the mercy petition of Sundar Singh.

This conclusively proves that the MHA has concealed the mental illness of Sundar Singh in the summary sent by it to the President.

## **ii. Non communication of rejection of mercy petitions**

Rule VI of the Instructions for dealing with mercy petitions provides that *“upon receipt of the orders of the President, 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”*.

However, Rule VI is routinely violated. In the case of Suresh and Ramji, on 29.07.2004, the Governor of Uttar Pradesh rejected the mercy petitions but they were never informed about the same. In the case of Pravin Kumar, on 26.03.2013, the President rejected the petitioner’s mercy petition but he had not received any communication till the judgment of the Supreme Court on 21.01.2014 even though he had heard news on 05.04.2013 that his mercy petition was rejected by the President of India. In the case of Gurmeet Singh, on 05.04.2013, the petitioner heard the news reports that

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his mercy petition was rejected by the President of India but till the judgment of the Supreme Court on 21.01.2014 he had not received any official written communication about the rejection of his mercy petition. In the case of Jafar Ali on 22.06.2013, the prison authorities were informed vide letter dated 18.06.2013 that the President rejected the petitioner's mercy petition but only on 08.07.2013, Superintendent of Jail informed the petitioner that his mercy petition had been rejected by the President. In the case of Maganlal Barela, on 16.07.2013, the President rejected the petitioner's mercy petition but he was orally informed on 27.07.2013 and was neither furnished with any official written communication regarding the rejection of his mercy petition by the President of India nor was the petitioner informed that his mercy petition has been rejected by the Governor. With respect to Shivu and Jadeswamy, on 27.07.2013, the President rejected the petitioners' mercy petitions but the prisoners were informed only on 13.08.2013. In the case of Simon, Gnaprakash and two others, on 08.02.2013, the President rejected the mercy petitions and State Government of Karnataka was informed vide letter dated 09.02.2013 but although they were only informed orally and their signatures were obtained, the prison authorities refused to hand over the copy of the rejection letter to them or to their advocate.<sup>50</sup>

### **The case of Afzal Guru:**

Mohd. Afzal Guru was convicted of playing a central role in the conspiracy leading to the attack on the Indian Parliament on 13.12.2001. Sentenced to death by a Special Court of the Prevention of Terrorism Act (POTA) in December 2002, the Supreme Court upheld his death sentence on 04.08.2005. He filed a mercy petition. In 2011, the MHA advised rejection of Guru's petition and forwarded it to then President Pratibha Patil. Ms. Patil chose not to act, but when Pranab Mukherjee took over as President on 25.07.2012, he returned all pending mercy petitions, including that of Afzal Guru for reconsideration after Mr. Sushil Kumar Shinde took over as Home Minister in August 2012. On 21.01.2013 the MHA recommended for rejection of Guru's mercy petition<sup>51</sup> and the same was received by the

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50. Ibid

51. Afzal Guru hanged in secrecy, buried in Tihar Jail, The Hindu, 10 February 2013

President's Secretariat on 24.01.2013. On 03.02.2013, President Mukherjee rejected Guru's mercy petition.<sup>52</sup>

In the list of pending mercy petition cases put out on the webpage of the President's Secretariat on 28.10.2012, Guru's case was listed at No.6 in order of sequence, with the oldest listed first. As per that list, there were at least five cases before Guru's case. These included cases of Gurmeet Singh, put at No.1, followed by Dharampal at No.2, Suresh and Ramji at No.3; Simon, Gnanaprakash, Madaiah and Bilavendra at No.4 and Praveen Kumar at No.5.<sup>53</sup>

President Mukherjee jumped the queue of convicts in five other cases who appeared before Guru in sequential order and went on to reject Guru's mercy petition on 03.02.2013.<sup>54</sup> At about 8.00 am on 09.02.2013, Guru was hanged to death and buried inside Delhi's Tihar jail. The process of execution of Guru was shrouded in utmost secrecy.<sup>55</sup> The family members of Guru were not informed about the rejection of the mercy petition and about his scheduled execution. The official communication dated 06.02.2013 informing the scheduled execution of Guru was received by his family members two days after his execution at Tihar Jail.<sup>56</sup> On 10.02.2013, Afzal Guru's cousin, Mohammad Yaseen Guru, told NDTV in an interview *"We were not informed by the government. We learnt about the execution through NDTV channel. At least on humanitarian grounds, the family should have been allowed to speak to Afzal Guru or meet him and find out if he had any last wishes. It's really unfortunate."*<sup>57</sup>

There were a number of grounds which could have been taken into consideration while examining the mercy petition of Guru. Guru was only a conspirator and was sentenced to death on the basis of circumstantial evidence. There was no direct evidence against him. This has been acknowledged by the Supreme

52. President Secretariat: Statement of Mercy Petition cases - Rejected as on 01.08.2014; available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

53. Ajmal Kasab's mercy petition last among 12 pending petitions in President Pranab Mukherjee's office, The Times of India, 30 October 2012; link [http://articles.economicstimes.indiatimes.com/2012-10-30/news/34817055\\_1\\_mercy-petitions-mercy-plea-afzal-guru](http://articles.economicstimes.indiatimes.com/2012-10-30/news/34817055_1_mercy-petitions-mercy-plea-afzal-guru)

54. President Secretariat: Statement of Mercy Petition cases - Rejected as on 01.08.2014; available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

55. Afzal Guru hanged in secrecy, buried in Tihar Jail, The Hindu, 10 February 2013

56. See '2 days after hanging, Afzal Guru's wife receives letter from Delhi' Rediffnews, 11 February 2013, <http://www.rediff.com/news/report/letter-from-delhi-delivered-to-afzal-guru-s-wife-today/20130211.htm>

57. Afzal Guru's family counters Govt, says not informed about execution, NDTV, 10 February 2013, <http://www.ndtv.com/india-news/afzal-gurus-family-counters-govt-says-not-informed-about-execution-512910>

Court in its judgment that there is no proof that Guru was a member of a terrorist group, and the evidence against him was only circumstantial. There were various lapses in the investigation and the trial. There were instances where the court found that the police and investigating agency had doctored or fabricated crucial evidence. There were glaring discrepancies in the time and place of Guru's arrest and the seizure memo. The Delhi High Court noted that there was "material contradiction" in the story of the police. The High Court also said in its judgment that "the time of arrest of the accused persons has been seriously dented". Though the court found the fabrication of documents and forgery in memos as a 'disturbing feature', it chose to dismiss the discrepancies without seeking any further explanation and investigation. Even the Supreme Court, in response to the submissions of the defence counsels that the confessions were not true and voluntary, held that "*though these arguments are plausible and persuasive, it is not necessary to rest conclusion on these probabilities.*" Most importantly, the investigation was concluded in only 17 days. Further, Guru was denied proper legal counsel including the right to have competent legal representation at the crucial trial stage. Many believed Guru was denied a fair trial.

These circumstances were not given due consideration even though the same are clearly covered under the existing guidelines of the MHA, suggesting that the rejection of Guru's mercy petition and his subsequent execution was politically motivated as alleged by many including recently by then Chief Minister of Jammu and Kashmir.<sup>58</sup>

Most importantly, by not being informed about the rejection of his mercy petition, Guru was denied the opportunity to challenge rejection of his mercy petition by the President like other terror convicts including Santhan, Murugan and Arivu convicted for the assassination of former Prime Minister Rajiv Gandhi.<sup>59</sup>

The Supreme Court subsequently in the *Shatrughan Chauhan* case ruled that "*Since the convict has a constitutional right under Article 72 to make a mercy*

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58. See 'Afzal Guru was hanged for political reasons: Omar', The Hindu, 25 May 2015, <http://www.thehindu.com/news/national/afzal-guru-hanging-afzal-guru-was-hanged-for-political-reasons-says-omar-abdullah/article7241745.ece>

59. AIR 1999 SC2640



*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.*<sup>60</sup>

### iii. Suppression of facts from the President

It is well settled that the President has to act with the aid and advice of the Council of Ministers while deciding on the mercy petitions of death convicts. The President cannot overrule the MHA's advice. However, the President in appropriate cases, can after scanning the record of a case, form his/her independent opinion whether a case is made out for grant of pardon, reprieve, etc and may ask the MHA to review its recommendations. The same applies with respect to the Governors.

The MHA regularly and deliberately conceals information while preparing advice to the President of India which led to the President of India rejecting mercy petition of even convicts who have been declared mentally unfit.

The following cases are illustrative.

#### Case 1: Mahendra Nath Das, Assam

On 01.05.2013, the Supreme Court declared the rejection of mercy petition of convict Mahindra Nath Das of Assam by the President illegal and commuted the sentence to life imprisonment. The Court found that the MHA had failed to inform the then President Ms. Pratibha Singh Patil about a note dated 30.05.2005 prepared by her predecessor A.P.J Abdul Kalam in which he opined to commute the death sentence of the convict to life imprisonment. The Supreme Court considering the MHA's failure to mention the note a serious infirmity vitiating the very rejection held:

*“..... what is most intriguing is that even though in note dated 5.10.2010 prepared by the Joint Secretary, Ministry of Home Affairs, a reference was made to note dated 30.9.2005 of the then President Dr. A.P.J. Abdul Kalam, while making recommendation on 12.10.2010 to the successor in the office of the President that the appellant's mercy petition be rejected,*

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

*the Home Minister did not even make a mention of note dated 30.9.2005. In the summary prepared by the Home Ministry for the President's consideration, which was signed by the Home Minister on 18.10.2010, also no reference was made to the order and note dated 30.9.2005 of the then President. Why this was done has not been explained by the respondents. Though, the file containing the petition filed by the appellant and various notings recorded therein must have been place before the President, omission to make a mention of the order passed by her predecessor and note dated 30.9.2005 from the summary prepared for her consideration leads to an inference that the President was kept in dark about the view expressed by her predecessor and was deprived of an opportunity to objectively consider the entire matter.”<sup>61</sup>*

## **Case 2: Dharam Pal, Haryana**

Dharam Pal was sentenced to death sentence vide judgment dated 04.07.1992 passed by the court of Additional Sessions Judge, Sonapat. On 10.06.1993 at about 3.30 AM, when on bail in a rape case, Dharam Pal along with his brother Nirmal Singh committed murder of five members of the family, who were related to the prosecutrix, for whose rape he was convicted. Vide judgment dated 05.05.1997, Dharam Pal and his brother Nirmal Singh were convicted and sentenced to death. Vide judgment dated 29.09.1998, the Punjab and Haryana High Court confirmed the death sentence. The Supreme Court vide judgment dated 18.03.1999 while taking into consideration the fact that Dharam Pal was convicted in rape case and had committed murder of members of the family of the rape victim upheld the death sentence awarded on him. However, the Supreme Court commuted the the death sentence awarded to his brother Nirmal Singh to life imprisonment as he was not an accused in the rape case. Thereafter, Dharam Pal filed a mercy petition before the President of India on 02.11.1999 and the said mercy petition remained pending in the office of the President of India for about 13 years and 5 months and was rejected by the President of India vide order dated 28.03.2013. In the meanwhile, vide judgment dated 19.11.2003, Dharam Pal was acquitted by the Punjab and Haryana High Court in the rape case on the basis of which his death sentence was upheld by the Supreme Court while his brother's

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61. Mahindra Nath Das v. Union of India (2013) 6 SCC 253

death sentence was commuted to life imprisonment. The fact of Dharam Pal being acquitted of the rape charge by the High Court was never brought to the notice of the President of India either by the jail authorities or by the State Government. This caused the President to reject his mercy petition. The Punjab and Haryana High Court in its judgment on 21.04.2015, *inter alia*, held that “*non-placing of the material fact before the President of India, which in our opinion make out the present case as a fit case where this court, in exercise of its powers under Article 226 of the Constitution, may allow the writ petition as ordering the execution of death sentence will be highly unjust and unreasonable, and violative of the fundamental right of the condemned prisoner*” and commuted the death sentence on Dharam Pal to life imprisonment.<sup>62</sup>

#### **iv. Attempt to subvert the prisoners’ right to avail judicial remedies against rejection of mercy petitions**

The Supreme Court in a number of decisions including in the landmark ruling in *Shatrughan Chauhan* recognized the “*right to seek for mercy under Articles 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive*”. However, there are legal procedures which deny this very right of the prisoners.<sup>63</sup>

The notice given to the death convicts informing about the scheduled date of execution after the rejection of mercy petitions is very short. Some prison manuals provide for a minimum period of one day, others have a minimum period of 14 days, while some prison manuals do not provide for any minimum period between the rejection of the mercy petitions being communicated to the prisoner and his family members and the scheduled date of execution.<sup>64</sup>

In *Shatrughan Chauhan*, the Supreme Court ruled that “*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....*” Among others, the apex court observed that “*Without sufficient notice of the*

62. Dharam Pal v. State Of Haryana Etc on 21 April, 2015, Punjab and Haryana High Court available at <http://indiankanoon.org/doc/153007779/>

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

64. *Ibid*

*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.*<sup>65</sup>

Further, the Supreme Court directed, *"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.*<sup>66</sup>

As stated, the official communication dated 06.02.2013 informing Afzal Guru about the scheduled execution of Afzal Guru was received by his family members two days after his execution at Tihar Jail, Delhi on 09.02.2013.<sup>67</sup>

#### **v. The scandal: The loss of mercy petition files by the President's Secretariat**

The callousness of the Government of India on the question of life and death is reflected from the loss of mercy petitions of four death convicts namely Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh who were awarded death sentence for killing 35 persons at Bara village in Gaya district of Bihar in 1992. The prison authorities claimed that they had forwarded the mercy petitions to the President of India on 03.03.2003. However, the "list of mercy petition cases since 1981" received by the President of India as provided by the Ministry of Home Affairs, Government of India vide letter dated 28.03.2013 to Asian Centre for Human Rights does not show the names of the four convicts.<sup>68</sup>

Asian Centre for Human Rights subsequently filed a complaint with the National Human Rights Commission (NHRC) of India on 02.02.2014 clearly stating that the mercy petitions were lost and the cases fall under the *Shatrughan Chauhan* judgment. On 02.02.2014, the NHRC issued notices and called for reports from the Chief Secretary of Bihar and the Secretary, Ministry of Home Affairs. The MHA vide its letter dated 04.04.2014 informed that "no mercy petition of the said death row convicts have been received till now". It is clear that the mercy petitions of these death row convicts were

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65. Ibid

66. Ibid

67. See '2 days after hanging, Afzal Guru's wife receives letter from Delhi' Rediffnews, 11 February 2013, <http://www.rediff.com/news/report/letter-from-delhi-delivered-to-afzal-guru-s-wife-today/20130211.htm>

68. ACHR complaint to NHRC dated 6 February 2014 registered as Case No. 684/4/5/2014

lost. The NHRC vide its proceedings dated 15.04.2015 enquired from the Secretary of the Hon'ble President of India what decision was taken on the mercy petitions of (1) Krishna Mochi (2) Bir Kunwar Paswan (3) Nanhe Lal Mochi (4) Dharmendra @ Dharu Singh referred to the in the above-mentioned letter dated 7.7.2004 of the Deputy Secretary, Home Department, Government of Bihar, Patna.

The latest proceeding of the NHRC dated 08.03.2015 is reproduced below:

*“The Commission received a complaint dated 6.2.2014 from Shri Subas Chakma, Director, Asian Centre for Human Rights seeking intervention of the Commission in the matter of refusal and/or failure to consider the mercy petitions filed by four death row convicts, Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh of Bihar from March 2003. The complainant alleged that the Prison authorities claimed that they had forwarded the mercy petitions to the President of India on 3rd March, 2003 but the “list of mercy petitions cases since 1981” received by the President of India, as provided by the Ministry of Home Affairs, Government of India did not show the names of Krishna Mochi & Others which clearly indicated that their petitions had been lost.*

*Taking cognizance of the issue the Commission called for reports from the Chief Secretary, Government of Bihar and Secretary, Ministry of Home Affairs, Government of India, New Delhi. The Joint Secretary (Judicial), Ministry of Home Affairs, Government of India, vide communication dated 4.4.2014, informed the Commission that no mercy petition of the death convicts namely Krishna Mochi & others of Bihar were received in the Ministry of Home Affairs. However, in the letter dated 12.11.2014 submitted to the Commission by the IG Prisons & Correctional Services, Bihar it was stated that the concerned mercy petitions of the convicts Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh had been sent to the Secretary of the Hon'ble President of India, New Delhi from the Home Department (Special), Bihar vide letter No. 4245 dated 7.7.2004. A copy of letter No. K/Kara-Bandi-23/2004-4245 dated 7.7.2004 from the Deputy Secretary to Government, Home Department, Bihar, Patna addressed to the Officer on Special Duty, President Secretariat, New Delhi is available on record.*

*The said letter dated 7.7.2004 is extracted below:- “Sub: Regarding applications of prisoners (1) Krishna Mochi (2) Bir Kunwar Paswan (3) Nanhe Lal Mochi (4) Dharmendra @ Dharu Singh of Central Jail, Bhagalpur sentenced with Capital Punishment. “As directed, with regard to abovementioned subject, the original application of prisoners (1) Krishna Mochi (2) Bir Kunwar Paswan (3) Nanhe Lal Mochi (4) Dharmendra @ Dharu Singh of Central Jail, Bhagalpur sentenced with Capital Punishment and confined in Central Jail, Bhagalpur received vide letter No. 2778 dated 29.5.2004 of the Assistant Inspector General of Prisons, are hereby attached with this letter.*

*In the light of the above facts, the Commission deems it appropriate to enquire from the Secretary of the Hon’ble President of India what decision was taken on the mercy petitions of (1) Krishna Mochi (2) Bir Kunwar Paswan (3) Nanhe Lal Mochi (4) Dharmendra @ Dharu Singh referred to the in the above-mentioned letter dated 7.7.2004 of the Deputy Secretary, Home Department, Government of Bihar, Patna. Hence, the Secretary to the Hon’ble President of India is requested to inform the Commission whether the above-mentioned letter dated 7.7.2004 of the Dy. Secretary to the Government, Home Department, Government of Bihar and the enclosed mercy petitions were received by the Secretariat of Hon’ble President of India and if received what action was taken by the Hon’ble President on the petitions. The information may be supplied to the Commission within four weeks.”<sup>69</sup>*

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69. The proceedings of the NHRC are available at <http://nhrc.nic.in/display.asp?fno=684/4/5/2014>

## 5. VIOLATIONS OF THE GUIDELINES FOR GRANTING MERCY

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Then Union Minister of State for Home Affairs, Mullappally Ramachandran while replying before the Rajya Sabha on 12.02.2014 stated that *“No specific guidelines can be framed for examining the mercy petitions due to vast majority of different types of cases and varied circumstances. However, the broad guidelines generally considered while examining the mercy petitions in the Ministry of Home Affairs provide that clemency may be justified on the following grounds”*:<sup>70</sup>

- Personality of the accused (such as age, sex or mental deficiency) or the circumstances of the case (such as provocation or other similar justification).
- Cases in which the Appellate court has expressed its doubt as to the reliability of the evidence and has nevertheless decided on conviction.
- Cases where it is alleged that fresh evidence is obtainable mainly with a view to seeing whether fresh enquiry is justified.
- Where the High Court has reversed on appeal an acquittal by a Session Judge or has on appeal enhanced the sentence.
- Difference of opinion in a Bench of two Judges necessitating reference to the third Judge of the High Court.
- Consideration of evidence in fixation of responsibility in gang murder cases.
- Long delays in the investigations and trial etc.

Though the then Minister of State for Home Affairs further asserted that *“The Government has always adopted a uniform and transparent procedure in dealing with mercy petition cases under Article 72 of the Constitution”*,<sup>71</sup> these guidelines are seldom respected while advising the President of India.

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70. Rajya Sabha, Unstarred question no.2280 on “Guidelines regarding clemency to death row convicts” answered on the 12th February 2014 available at <http://mha1.nic.in/par2013/par2014-pdfs/rs-120214/2280.pdf>

71. Ibid

**Guideline I. Personality of the accused (such as age, sex or mental deficiency) or circumstances of the case (such as provocation or similar justification)**

The MHA had failed to take into account the Guideline I while recommending rejection of mercy petitions to the President of India. The following two cases are illustrative.

**Case 1: Mentally unfit Sundar Singh, Uttarakhand**

Sundar Singh of Uttarakhand was accused of killing five members of a family in 1989 and awarded death sentence by the trial court in 2004. The High Court and the Supreme Court confirmed the death sentence in 2005 and 2010 respectively. Sundar Singh filed a mercy petition to the President in 2010 but the same was rejected on 31.03.2013.

On 21.01.2014, the Supreme Court in *Shatrughan Chauhan* while adjudicating a series of writ petitions filed by death row convicts including Sundar Singh challenging the rejection of their mercy petitions by the President noted that the MHA, despite being submitted all the details about the mental illness of Sundar Singh, had neither adverted those facts to the Home Minister nor the summary sent to the President made any reference to the mental condition of Sundar Singh whose mental illness was certified by three doctors. On 03.02.2012, the MHA despite being fully informed about the mental illness of Sundar Singh 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 to the MHA for reexamination. 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, the MHA again advised the President to reject the mercy petition. On 16.02.2013, the prison authorities again called a team of three psychiatrists from the State Mental Hospital, Dehradun, who examined Sundar Singh and in their report they mentioned that Sundar Singh had already been diagnosed as suffering from undifferentiated schizophrenia. They concluded that Sundar Singh “is suffering from chronic psychotic illness and he needs long term management”. As per records, the prison authorities sent the report of the team of psychiatrists to the MHA. Yet, on 31.03.2013 the President rejected the mercy petition of Sundar Singh on the recommendation of the MHA.



This was a fit case for commutation of the death sentence as the case clearly falls under the Guideline I.

The Supreme Court commuted the death sentence of Sundar Singh on 21.01.2014 on the ground of mental illness.<sup>72</sup>

### **Case 2: Mentally unfit Manganalal Barela, Madhya Pradesh**

Maganlal Barela of Madhya Pradesh was sentenced to death on 03.02.2011 by the trial Court for the murder of his five daughters. The death sentence was confirmed by the Madhya Pradesh High Court in 2011. On 09.01.2012, Maganalal Barela, through legal aid, appealed before the Supreme Court but the appeal petition was dismissed in *limine*. On 02.02.2012, Maganalal Barela filed a mercy petition through jail authorities addressed to the President of India and the Governor of Madhya Pradesh.

The prison authorities while forwarding the mercy petition stated that the convict was suffering from mental illness and was continuously undergoing treatment at the Central Jail, Bhopal and accordingly recommended commutation of the death sentence. On 31.08.2012, the MHA sought the convict's medical report from the State Government as it was stated in his mercy petition that he is suffering from mental illness. The State Government was also requested to confirm whether the petitioner had filed a review petition in the Supreme Court against the dismissal of his SLP. On 25.03.2013, the Jail Superintendent, Central Jail, Indore sent the medical report of the petitioner to the MHA confirming his mental illness as well as the fact that the petitioner had not filed a review petition against dismissal of his SLP. On 06.06.2013, the Home Minister advised the President to reject the mercy petition and the President rejected the mercy petition on 16.07.2013. On 21.01.2014, the Supreme Court in *Shatrughan Chauhan v. Union of India* while adjudicating a series of writ petitions filed by death row convicts including Maganalal Barela challenging the rejection of their mercy petitions by the President observed that the MHA had not considered the fact that during the period of trial before the Sessions court and even after conviction, the petitioner was suffering from mental illness. This fact was brought to the notice of the MHA in the mercy petition forwarded by the Prison Superintendent who opined for alteration of

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

petitioner's sentence from death to life. The Supreme Court further observed that while considering the notes for approval of the President, the MHA had not taken into account the fact that the petitioner had filed SLP through legal aid and the Supreme Court Bench which heard his SLP did not grant special leave and dismissed the SLP in *limine*. The death sentence was accordingly altered by the Supreme Court to life imprisonment on the ground, among others, on mental illness.<sup>73</sup>

## **Guideline II: Cases in which the appellate Court expressed doubt as to the reliability of evidence but has nevertheless decided on conviction**

### **Case 1: Devender Pal Singh Bhullar, Delhi**

Devender Pal Singh Bhullar was charged with criminal conspiracy for alleged assassination bid on the then President of Indian Youth Congress (I) by causing bomb blasts at Raisina Road, New Delhi on 11.09.1993. Nine persons were killed in the blast. Bhullar was arrested after the German authorities deported him from Frankfurt during the night between 18<sup>th</sup> and 19.01.1995. Bhullar and co-accused namely Kuldeep, Sukhdev Singh, Harnek and Daya Singh Lahoria were accused of being members of a terrorist organization called Khalistan Liberation Force, and carrying out the attack.<sup>74</sup>

On 25.08.2001, the Designated TADA Court, New Delhi convicted Bhullar for the offence punishable under Section 3(2)(i) of the TADA and Section 120B read with Section 302, 307, 326, 324, 323, 436 and 427 of the IPC and sentenced him to death. Other accused Daya Singh Lahoria, who was extradited from United States to India, was also arrested and tried along with Bhullar but was acquitted by the Designated Court on the ground that there was no evidence against him and that he had not made any confessional statement. The Court also observed that there was not an iota of material on record to corroborate confessional statement made by accused Bhullar against his co-accused Daya Singh Lahoria and in the absence of corroboration, Daya Singh was acquitted on benefit of doubt. Bhullar's conviction was based solely on his confessional statements recorded by Deputy Commissioner of Police B S Bhola under Section 15 of the TADA.<sup>75</sup>

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73. Ibid

74. Devender Pal Singh Bhullar v.. State (NCT of Delhi), (2002) 5 SCC 234

75. Ibid

Against the judgment and order dated 25.08.2001, Bhullar filed Criminal Appeal No. 993 of 2001 awhile the State filed Death Reference Case (Crl.) No. 2 of 2001 for confirmation of death sentence before the Supreme Court. By majority of 2:1, the Supreme Court confirmed the conviction and sentence as awarded by the Designated Court and dismissed the appeal.<sup>76</sup>

The presiding judge, Justice M B Shah had passed a dissenting judgment setting aside Bhullar's conviction and ordered for his release. With respect to the question of conviction of the appellant solely on the basis of alleged confessional statements, Justice M B Shah held that *"before solely relying upon the confessional statement, the Court has to find out whether it is made voluntarily and truthfully by the accused. Even if it is made voluntarily, the Court has to decide whether it is made truthfully or not"*. On the plea of non-corroboration of confessional statements with evidence, Justice Shah held *"There is nothing on record to corroborate the aforesaid confessional statement. Police could have easily verified the hospital record to find out whether D.S. Laboria went to the hospital and registered himself under the name of V.K. Sood on the date of incident and left the hospital after getting First Aid. In any set of circumstances, none of the main culprits i.e. Harnaik or Laboria is convicted. In these set of circumstances, without there being corroborative evidence, it would be difficult to solely rely upon the so-called confessional statement and convict the accused and that too when the confessional statement is recorded by the investigating officer"*. In conclusion, Justice Shah held:<sup>77</sup>

*"In this view of the matter, when rest of the accused who are named in the confessional statement are not convicted or tried, this would not be a fit case for convicting the appellant solely on the basis of so-called confessional statement recorded by the police officer.*

*Finally, such type of confessional statement as recorded by the investigating officer cannot be the basis for awarding death sentence."*

There is no doubt that this is a *"case in which the appellate Court expressed doubt as to the reliability of evidence but has nevertheless decided on conviction"*. The

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76. Ibid

77. Dissenting judgment of Justice M B Shah in Devender Pal Singh v. State (NCT of Delhi) is available at: <http://judis.nic.in/supremecourt/imgst.aspx?filename=18351>

Supreme Court is the first appellate court under the TADA.

On 14.01.2003, Bhullar submitted a mercy petition to the President. In May 2011, the President of India rejected Bhullar's mercy petition without applying the Guideline II relating to a "*case in which the appellate Court expressed doubt as to the reliability of evidence but has nevertheless decided on conviction*".

On 24.06.2011, Bhullar's wife filed a Writ Petition (Criminal) No. 146 of 2011 before the Supreme Court challenging the rejection of his mercy petition by the President of India. On 12.04.2013, the Supreme Court held that there was an unreasonable delay of eight years in disposal of mercy petition, which is one of the grounds for commutation of death sentence to life imprisonment as per the established judicial precedents. However, the apex court dismissed the writ petition on the ground that when the accused was convicted under the TADA, there was no question of showing any sympathy or considering supervening circumstances for commutation of death sentence.<sup>78</sup>

Thereafter, Bhullar's wife had filed a Review Petition being (Criminal) No. 435 of 2013 which was also dismissed by the apex court on 13.08.2013. In the landmark *Shatrughan Chauhan*<sup>79</sup> delivered on 21.01.2014 the Supreme Court declared the judgment of 12.04.2013 on the review petition as *per incuriam* as there is no provision in law which states that terror convicts cannot be given mercy as per law! On 31.03.2014, the Supreme Court based on the principle enunciated in *Shatrughan Chauhan* judgment commuted the death sentence on Bhullar into life imprisonment both on the ground of unexplained/inordinate delay of eight years in disposal of mercy petition and on the ground of insanity.<sup>80</sup>

### **Guideline III: Cases where it is alleged that fresh evidence is obtainable mainly with a view to seeing whether fresh enquiry is justified**

With respect to Guideline (iii) "*cases where it is alleged that fresh evidence is obtainable mainly with a view to seeing whether fresh enquiry is justified*", the case of Surender Koli falls into the same. Koli was sentenced to death based

78. Devender Pal Singh Bhullar & Anr v. State Of NCT of Delhi on 12 April, 2013 Writ Petition (Criminal) D.No. 16039 of 2011

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

80. See Navneet Kaur v. State of NCT of Delhi, Curative Petition (Criminal) No. 88 of 2013

on his confession to the magistrate under Section 164 of the CrPC. Koli was accused of rape and murder of several children who went missing between 2005 and 2006 from Nithari Village in Gautam Budh Nagar district, Uttar Pradesh.<sup>81</sup> In 2009, a special trial court in Ghaziabad awarded death sentence to Surendra Koli in one of the 16 cases against him.<sup>82</sup> The remaining cases were pending adjudication at the time of the judgment in this case.<sup>83</sup> On appeal, the Allahabad High Court and the Supreme Court confirmed the death sentence.<sup>84</sup>

In his letter to the Supreme Court, Koli mentioned that the magistrate failed to notice the telltale signs of torture on him. His fingernails and toenails were allegedly missing due to torture. Koli's confessional statement was made before a magistrate in Delhi and not in Ghaziabad. Koli alleged that it was done so that the investigators could have a magistrate of their choice. The police on the other hand claimed that the statement was recorded before a magistrate in Delhi given an attack on Koli by the lawyers when he was brought to a Ghaziabad court. However, the police had taken him to the same court in Ghaziabad twice after the said attack before recording the statement in Delhi. It was also alleged that the statement was taken down in English, a language Koli did not understand. Further, the stenographer who noted down the statement of Koli was not examined in court. Koli was allegedly not medically examined before or after the confessional statement.<sup>85</sup>

Further, the critical findings of the Committee of the Ministry of Women and Child Development (MWCD) constituted to investigate into allegations of large-scale sexual abuse, rape and murder in Nithari were ignored. As per the report of the MWCD, the doctor, Vinod Kumar who supervised the postmortems of the children *“indicated that it was intriguing to observe that the middle part of all bodies (torsos) was missing...Such missing torsos give*

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81. Surendra Koli v. State of U.P. Ors, <http://judis.nic.in/supremecourt/imgst.aspx?filename=37556>

82. See 'Justice still far away in 18 Nithari cases', Rediff.com, 28 December 2009, at: <http://news.rediff.com/report/2009/dec/28/noida-justice-still-far-away-for-18-nithari-cases.htm>

83. See 'Nithari killings: Koli guilty of seven-year-old's murder', NDTV, 4 May 2010, at: <http://www.ndtv.com/article/india/nithari-killings-koli-guilty-of-seven-year-old-s-murder-23049>

84. Surendra Koli v. State of U.P. <http://judis.nic.in/supremecourt/imgst.aspx?filename=37556>

85. See 'Hanging Koli May Bury The Truth Of Nithari Killings', Tehelka, 30 August 2014, Issue 35 Volume 11, at: <http://www.tehelka.com/nithari-killing-hanging-surinder-kohli-will-bury-the-truth/>

rise to a suspicion that wrongful use of bodies for organ sale, etc could be possible. ..The surgical precision with which the bodies were cut also pointed to this fact. .. body organs of small children were also in demand as these were required for transplant for babies/ children. A body generally takes more than 3 months to start decomposing and the entire process continues for nearly 3 years. Since many of the reported cases related to children having been killed less than a year back, it is a matter for investigation as to why only bare bones were discovered. ...The theory of cannibalism ... could be a ruse to divert attention from the missing parts of the bodies".<sup>86</sup> The MWCD recommended the CBI to look into all angles including organ trade, sexual exploitation and other forms of crimes against women and children and the organ transplant records of all hospitals in Noida over the last few years to study the pattern and trend of these operations and tracing the donors and recipients.<sup>87</sup> These aspects were never investigated by the CBI for reasons best known to it. This is despite the fact that the prosecution witness (PW), Ramesh Prasad Sharma who deposed before the trial court at Ghaziabad, as recorded in the Allahabad High Court's order, stated that his employer namely Dr Naveen Chaudhary was arrested in 1997 in some kidney scam matter. Dr Naveen Chaudhary was the next door neighbor of Pandher and lived in the neighboring bungalow that overlooked the same ditch where the bodies were found. Ramesh Prasad Sharma was the cook of Dr Naveen Chaudhary.<sup>88</sup> The police failed to prevent the crimes and threatened to take action against the parents of the poor families for not taking care of their own children when they went to lodge the complaints about their missing children. This discouraged the families from approaching the police. This had been duly noted by the Committee of the MWCD which stated, "*A number of them complained that when their children were originally found to be missing, the police would not heed their complaints nor even register them*".<sup>89</sup>

While the Supreme Court could not have acted as a trial court to consider the allegations of torture by Koli before it, President of India while considering

86. Report of the Committee Investigating into allegations of large scale sexual abuse, rape and murder of children in Nithari village of NOIDA (UP), Ministry of Women and Child Development Government of India Shastri Bhawan, New Delhi available at <http://wcd.nic.in/nitharireport.pdf>

87. Ibid

88. Why We Should Not Hang Surinder Koli, Yahoo News, 27 October 2014, <https://in.news.yahoo.com/why-we-should-not-hang-surinder-koli-071255867.html>

89. Report of the Committee Investigating into allegations of large scale sexual abuse, rape and murder of children in Nithari village of NOIDA (UP), Ministry of Women and Child Development Government of India Shastri Bhawan, New Delhi available at <http://wcd.nic.in/nitharireport.pdf>

his mercy petition ought to have ensured the respect for guideline “*relating to cases where it is alleged that fresh evidence is obtainable mainly with a view to see whether fresh enquiry is justified*”. The President failed at that.

**Guideline IV: Where the High Court has reversed on appeal an acquittal by a Session Judge or has on appeal enhanced the sentence.**

With respect to guideline “*(iv) where the High Court has reversed on appeal an acquittal by a Session Judge or has on appeal enhanced the sentence*”; the MHA recommended rejection of mercy petition of death convicts in cases where the appellate courts had enhanced the life sentence to extreme penalty of death. The case of *Simon, Gnana Prakash, Madhiah and Bilavendra of Karnataka* is an example. In September 2001, a designated TADA Court awarded life imprisonment to the four in connection with the 1993 land mine explosion which killed 22 persons. However, on appeal their sentences were enhanced to death penalty *suo moto* by the Supreme Court in 2004.<sup>90</sup> The President rejected their mercy petitions on 08.02.2013 on the advice of the MHA.<sup>91</sup> Under the TADA, the Supreme Court is the first appellate court.

Similarly, Sonia Choudhary and Sanjeev Choudhary<sup>92</sup> were convicted in May 2004 of the murder of eight relatives in August 2001 and sentenced to death. On appeal, the Punjab and Haryana High Court commuted their sentences to life imprisonment in April 2005. However, the Supreme Court enhanced the life sentence into death penalty in February 2007.

**Guideline V: Difference of opinion in a Bench of two Judges necessitating reference to the third Judge of the High Court**

There are number of cases in which difference of opinion in a bench of two judges necessitated reference to the third Judge of the High Court. However, the President of India while considering mercy petitions failed to take the same guideline into account.

90. *Simon And Ors v. State Of Karnataka*, Supreme Court of India, 16 October, 2003, <http://judis.nic.in/supremecourt/imgst.aspx?filename=21075>

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

92. *Sonia and Sanjeev v. Union of India*, 2007(2)ACR1708(SC), AIR2007SC1218

### Case 1: Gurmeet Singh, Uttar Pradesh

In 1992, Gurmeet Singh of Uttar Pradesh was convicted and sentenced to death by the trial court for the murder of his 13 family members in 1986. In 1994, the Division Bench of the Allahabad High Court pronounced a split judgment after they disagreed with each other on the question of guilt. One of the judges upheld the conviction and death sentence and while the other acquitted the accused. There after the matter was placed before a third judge who upheld the conviction and death sentence. Accordingly, the High Court confirmed Gurmeet Singh's death sentence in 1996. The Supreme Court upheld the death sentence in 2005.<sup>93</sup>

Clearly, the case of Gurmeet Singh was covered under the guideline relating to difference of opinion between the two judges of the High Court bench. Pertinently, the MHA was aware of these facts and the same were also brought to the attention of the Union Home Minister in the file by recommending commutation of the death sentence to life imprisonment. In the file of the MHA the recommendations made for commutation of death sentence to life imprisonment 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."<sup>94</sup>*

93. Gurmeet Singh v. State of Uttar Pradesh in Criminal Appeal No. 1371 of 2004, Supreme Court of India, 28.9.2005

94. See Shatrughan Chauhan v. Union of India (2014) 3 SCC 1



However, the Union Minister for Home did not agree with the recommendations and finally the MHA recommended the President to reject the mercy petition of Gurmeet Singh. The President rejected his mercy petition on 01.03.2013.<sup>95</sup>

In addition, the case was also covered under the second and seventh guidelines as there was doubt on the evidence at least on the mind of one judge of the High Court, who acquitted the accused, and due to the long delays in investigation and trial. It took 13 years for the investigation and the trial to complete.

On 21.01.2014, the Supreme Court in *Shatrughan Chauhan v. Union of India* commuted the death sentence of Gurmeet Singh to life imprisonment on the ground of delay in disposal of his mercy petition by the President.<sup>96</sup>

### **Case 2: Saibanna Nigappal Natikar, Karnataka**

Saibanna Nigappal Natikar, a resident of Mandwal village in Gulbarga, Karnataka, was initially convicted for life for the murder of his first wife in 1992. While on parole in September 1994, Saibanna killed his second wife and his minor daughter suspecting her fidelity. After assaulting the deceased Saibanna also attempted to commit suicide by inflicting injuries on himself. The First Information Report (FIR) was registered under Sections 303, 307 and 309 of the IPC. After investigation, the police filed charge sheet against the accused in the court. On 04.01 2003, the trial court convicted Saibanna under Section 303 of the IPC and awarded the sentence of death. The trial court found that the prosecution had proved beyond reasonable doubt that the accused was guilty of the offence under Section 303 of the IPC. Pertinently, the accused was awarded death penalty despite bringing to the notice of the trial court that Section 303 of the IPC was declared unconstitutional by the Supreme Court in a decision delivered on 07.04.1983 in *Mithu v. State of Punjab*.<sup>97</sup>

95. See Statement on mercy petitions of the President's Secretariat dated 07.09.2015 available at <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

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

97. Criminal Ref. Case No. 2/2003 and Criminal Appeal No. 497 of 2003, High Court of Karnataka, Judgment available at: <http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/367873/1/CRLRC2-03-10-10-2003.pdf>

On 10.06.2003, a Division Bench of Justices A M Farooq and S R Bannurmath of the High Court of Karnataka had differed on the quantum of sentence to be awarded to the appellant. Justice A M Farooq took the view that the appropriate punishment would be life imprisonment, while Justice S R Bannurmath was of the opinion that it was a fit case in which death sentence had to be imposed. However, both the judges agreed on the conviction of the appellant under Section 302 of the IPC. They further held that framing of charge for offence under Section 303 of the IPC by the trial court was incorrect in the light of the *Mithu v. State of Punjab*. However, the Division Bench of the High Court pointed out that the case can be considered as having been tried under Section 302 of the IPC in the light of the Supreme Court judgment in the case of *Ranjith Singh v. Union Territory of Chandigarh*.<sup>98</sup>

In his dissenting judgment, Justice A M Farooq who was of the view that the appropriate sentence would be life imprisonment held as under:<sup>99</sup>

*“The motive for committing the murder is a mystery. It is not spoken to by anybody. It is also the prosecution case that the accused inflicted injuries on his person. The said injuries on the accused show that they were grievous injuries. The offences were not committed in a calculated manner. Thus all the circumstances show that the accused had no motive at all to commit the offence. In fact admittedly he had not carried away any weapon to commit the offences and the fact that he inflicted grievous injuries on his person show his regret for having committed the acts. All these facts of the case show that this is not a case where the accused has acted in a diabolic manner or that it pricks the conscience of the Court or there are any circumstances which show that the accused is a menace to the society or that he is not capable of reformation or rehabilitation. Moreover, the acts are not committed in a gruesome manner and reason to commit the murders surrounds in mystery. The accused did not run away or try to escape. Under these circumstances, I am of the view of the view that this Court cannot say that this is a rarest of rare case where the accused should be sentenced to death. Hence in my view the reference has to be rejected and the accused has to be sentenced to life imprisonment instead of death sentence.”*

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98. Ibid

99. Ibid

Because of the split judgment over the quantum of sentence, the case was referred to a third Judge of the High Court (Justice B. Padmaraj), who after hearing the matter concluded that the case as “rarest of rare” involving pre-planned brutal murders without provocation and confirmed the death penalty awarded by the trial court to appellant Saibanna on 21 August 2003.<sup>100</sup>

The appellant preferred an appeal against the judgment and order of the High Court. A Supreme Court bench comprising Justice K G Balakrishnan and B N Srikrishna dismissed the appeal and upheld the death sentence of the appellant. The Supreme Court held “*Thus, taking all the circumstances in consideration, we are of the view that the High Court was right in coming to the conclusion that the appellant’s case bristles with special circumstances requisite for imposition of the death penalty*”.<sup>101</sup>

By judgment dated 13.09.2009 in *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*<sup>102</sup>, a Bench of the Supreme Court comprising Justice S B Sinha and Justice Cyriac Joseph held the decision in *Saibanna v. State of Karnataka* as *per incuriam* on “*to that extent it is inconsistent with Mithu (supra) and Bachan Singh (supra)*”.<sup>103</sup>

On 04.01.2013, President Pranab Mukherjee rejected Saibanna’s mercy petition despite being aware of the fact that the judgement sentencing Saibanna had been already held as *per incuriam*. The rejection of his mercy petition by the President suggests that the issue of divergent opinion of the High Court judges was either not considered or ignored by the Governor of Karnataka and the President.

Saibanna filed a writ petition seeking judicial review of rejection of his mercy petition in the High Court of Karnataka which stayed Saibanna’s execution.<sup>104</sup>

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100. Ibid

101. Saibanna v. State of Karnataka [2005(2)ACR1836(SC)]

102. Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra: (2009)6SCC498

103. Ibid

104. Karnataka HC extends stay on murder convict Saibanna’s execution till April 6, Times of India, 5 March 2013; available at: <http://timesofindia.indiatimes.com/india/Karnataka-HC-extends-stay-on-murder-convict-Saibannas-execution-till-April-6/articleshow/18810209.cms>

**Case 3: B A Umesh, Karnataka**

B A Umesh @ Umesh Reddy was accused of committing rape and murder of the deceased, a widowed mother in Bangalore, Karnataka on 28.02.1998. On 26.10.2006, the trial Court convicted the accused under Sections 376, 302 and 392 of the IPC and awarded him death sentence. On 04.10.2007, two judges Bench of the High Court of Karnataka confirmed the conviction on the accused. However, the judges had differed on the quantum of sentence. Justice V G Sabhahit confirmed the trial Court's order imposing death penalty. Justice Ravi B Naik differed on the ground that death penalty as a deterrent had failed to curb crime, and modified the death sentence to imprisonment for life, with no scope for amnesty under any circumstances. Justice Naik, while agreeing with the conviction of the appellant by the trial Court, was of the view that *"as a rule death sentence should be imposed only in the rarest of rare cases in order to eliminate the criminal from society, but the same object could also be achieved by isolating the criminal from society by awarding life imprisonment for the remaining term of the criminal's natural life"*. The case was referred to a third judge who concurred with Justice V G Sabhahit and confirmed the death sentence on the B A Umesh in February 2009.<sup>105</sup>

B A Umesh challenged the impugned judgment of the High Court in the Supreme Court. The Supreme Court upheld his death penalty on 02.01.2011 stating that the case fell within the category of the rarest of rare cases.<sup>106</sup> On 12.05.2013, President Pranab Mukherjee rejected the mercy petition of B A Umesh.<sup>107</sup> The review petition of B A Umesh is currently pending for hearing in open court after a Five-Judge Constitution Bench of the Supreme Court, in a majority judgment, decided that review of death sentence cases will be heard in open court by a Bench of three judges.<sup>108</sup>

The rejection of the mercy petition suggests that the issue of divergent opinion of the High Court judges was either not considered or ignored both by the Governor of Karnataka and the President.

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105. B.A. Umesh v. Registrar General, High Court of Karnataka., MANU/SC/0082/2011 : (2011) 3 SCC 85

106. Ibid

107. See 'Statement of Mercy Petition-Rejected' at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

108. The judgment was passed in Writ Petition (Criminal) No. 77 of 2014 with Writ Petition (Criminal) No. 137 of 2010, Writ Petition (Criminal) No.52 of 2011, Writ Petition (Criminal) No. 39 of 2013, Writ Petition (Criminal) No. 108 of 2014 and Writ Petition (Criminal) No. 117 of 2014

## Guideline VII: Long delays in the investigations and trial etc.

The delays in the investigations and trial have been an integral part of Indian justice system. However, long delays in the investigations and trial does not seem to be one of the criteria considered for granting mercy.

### MHA's own guideline: No mercy in terror cases

The MHA has developed its own guidelines to reject mercy petitions filed by terror convicts. The rejection includes that of Kehar Singh, Balbir Singh and Satwant Singh in *Kehar Singh v. The State (Delhi Administration)*<sup>109</sup>, Devender Pal Singh Bhullar in *Devender Pal Singh Bhullar v. State (NCT of Delhi)*<sup>110</sup>, Simon, Gnana Prakash, Madaiah & Bilavendra in *Simon and Ors v. State of Karnataka*<sup>111</sup>, Mohd. Afzal in *State (N.C.T of Delhi) v. Najyot Sandhu @ Afsan Guru And Shaukat Hussain Guru v. State (N.C.T. of Delhi)*<sup>112</sup>, Sukhdev Singh and Harjinder Singh in *State of Maharashtra v. Sukhdev Singh and Harjinder Singh*<sup>113</sup> and Santhan, Murugan and Arivu in *State through Superintendent of Police, CBI/SIT v. Nalini and Ors*<sup>114</sup>.

### Supreme Court's guidelines for safeguarding the interest of the death row convicts

The Supreme Court in the landmark *Shatrughan Chauhan v. Union of India* delivered on 21.01.2014 held 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.*” In view of the disparities in implementing the already existing laws, the Supreme Court framed the following 12 guidelines for safeguarding the interest of the death row convicts as given below<sup>115</sup>:

109. (1989) 1 SCC 204

110. AIR2002SC1661

111. (2004)2SCC694

112. AIR2005SC3820

113. AIR1992SC2100

114. AIR1999SC2640

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

**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.

## 6. VIOLATIONS OF THE JUDGMENTS OF THE SUPREME COURT

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The Supreme Court of India has been regularly delivering judgments relating to consideration of mercy petitions. However, many of the directions of the Supreme Court are routinely violated.

### 6.1. Delay as a ground for commutation

On 21.01.2014, the Supreme Court in *Shatrughan Chauhan*<sup>116</sup> held that “*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.*” The apex Court further held:

*“244. It is well established that exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitution Framers did not stipulate any outer time-limit for disposing of the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing of 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 Articles 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.”*

*Shatrughan Chauhan* is not the first case the Supreme Court had dealt with the issue of delay in execution of death convicts. Prior to *Shatrughan Chauhan*, the Supreme Court had issued appropriate orders in a series of

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

cases in *T.V. Vatheeswaran v. State of Tamil Nadu*<sup>117</sup> (1983), *Sher Singh v. State of Punjab*<sup>118</sup> (1983), *Triveniben v. State of Gujarat*<sup>119</sup> (1988), *Madhu Mehta v. Union of India*<sup>120</sup> (1989), *Daya Singh v. Union Of India*<sup>121</sup> (1991), *Mahindra Nath Das v. Union Of India*<sup>122</sup> (2013), *Devender Pal Singh Bhullar v. State Of NCT of Delhi*<sup>123</sup> (2013) etc.

In *Sher Singh* decided in 1983, the Supreme Court observed “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.” However, the government had ignored this advice as is evident from the delay in disposal of mercy petitions involving a number of death row convicts.<sup>124</sup>

However, *Shatrughan Chauhan* specifically recommended the Government of India to include “delay” in disposal of mercy petitions as a ground for commutation of death sentence in the existing guidelines considered in deciding mercy petitions. The Court stated “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.”

The decision in *Shatrughan Chauhan* was followed in subsequent decisions of the Supreme Court and the High Court and death sentences were commuted. On 18 February 2014, the Supreme Court in *V Sriharan alias Murugan v. Union of India*<sup>125</sup> commuted the death sentence of four death convicts, V. Sriharan @ Murugan, T. Suthendraraja @ Santhan and A.G. Peraivalan @ Arivu into life imprisonment. In this case, the apex Court reiterated the

117. (1983) 2 SCC 68

118. (1983) 2 SCC 344

119. (1988) 4 SCC 574

120. 1989 AIR 2299

121. 1991 AIR 1548

122. (2013) 6 SCC 253

123. *Sher Singh v. State of Punjab* (2013) 6 SCC 195

124. (1983) 2 SCC 344

125. AIR 2014 SC 1368

recommendation to include delay as another criterion in the existing mercy petition guidelines.<sup>126</sup>

### **The case of Holiram Bordoloi**

The Ministry of Home Affairs continues to reject delay as a ground for converting death sentence into life imprisonment in utter disrespect to the rulings of the highest court of India. On 23.06.2014, the Ministry of Home Affairs recommended the President to reject the mercy petition of death convict, Holiram Bordoloi of Assam without considering the delay of over eight years in disposal of his mercy petition by the Governor of Assam and the President.

Holiram Bordoloi was convicted in connection with the murder of three persons in Morigaon district of Assam in 1996. The trial court awarded him death sentence in 2003, which was confirmed by the Guwahati High Court and the Supreme Court in March 2004 and April 2005 respectively.<sup>127</sup> In June 2005, Holiram Bordoloi filed mercy petition with the Governor of Assam. As per RTI information provided to ACHR vide letter dated 09.07.2013 from the office of the Inspector General of Prisons, Assam it was been revealed that the mercy petition of Holiram Bordoloi was pending with the President of India.

On 06.02.2014, ACHR filed a complaint with the NHRC seeking its interventoin to commute the death sentence of Hoiliram Bordoloi as his case is covered by the *Shatrughan Chauhan*. On 25.02.2014, the NHRC issued notice to the MHA calling for a report. The MHA replied on 04.04.2014. However, even before the NHRC could conclude its proceedings, the MHA recommended rejection of mercy petition of Holiram Bordoloi and the President rejected the mercy petition on 05.07.2014.<sup>128</sup>

There was delay of over eight years in deciding his mercy petition both by the Governor of Assam and President of India. Therefore, it was fit case for commutation to life imprisonment on the ground of delay as ruled in *Shatrughan Chauhan*.

126. AIR 2014 SC 1368

127. Holiram Bordoloi v. State of Assam (Appeal (Crl.) 1063 of 2004]

128. STATEMENT OF MERCY PETITION CASES - REJECTED by the President of India as on 01.08.2014 available at <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

## 6.2. Prohibition of solitary confinement

The Supreme Court in more than one occasion had ruled that solitary confinement of a death convict is illegal. In 1978, the Supreme Court had declared the practice of solitary confinement in *Sunil Batra v. Delhi Administration*. The Supreme Court held<sup>129</sup>

*“It follows that during the pendency of a petition for mercy before the State Governor or the President of India the death sentence shall not be executed. Thus, until rejection of the clemency motion by these two high dignitaries it is not possible to predicate that there is a self-executor death sentence. Therefore, a prisoner becomes legally subject to a self-working sentence of death only when the clemency application by the prisoner stands rejected. Of course, thereafter Section 30(2) [of Prison Act] is attracted. A second or a third, a fourth or further application for mercy does not take him out of that category unless there is a specific order by the competent authority staying the execution of the death sentence.”*

Despite the unambiguous decision of the Supreme Court on solitary confinement, convicts under the sentence of death continued to be kept in solitary confinement. Almost all the convicts under the sentence of death were kept in solitary confinement. In *Shatrughan Chauhan*, the Supreme Court lamented the widespread use of solitary confinement of convicts under sentence of death and urged the prison authorities to implement the *Sunil Batra* decision in spirit. The Supreme Court observed<sup>130</sup>

*“Even in Triveniben [Triveniben vs. State of Gujarat, (1989) 1 SCC 678 : 1989 SCC (Cri) 248], this Court observed that keeping a prisoner in solitary confinement is contrary to the ruling in Sunil Batra [Sunil Batra vs. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155] and would amount to inflicting “additional and separate” punishment not authorised 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*

129. *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494

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

*in Sunil Batra [Sunil Batra vs. Delhi Admn., (1978) 4 SCC 494: 1979 SCC (Cri) 155].”*

Even after the Supreme Court’s judgment in *Shatrughan Chauhan*, the courts in India had commuted the death sentences in a number of cases on the ground of solitary confinement. These show the continued practice of solitary confinement. Some of the cases are given below:

### Case1. Ajay Kumar Pal, Jharkhand

Ajay Kumar Pal of Jharkhand was accused of killing five persons in 2003. On conviction, the trial court awarded death sentence on him on 09.04.2007. The death sentence was confirmed by the High Court of Jharkhand on 28.08.2007 and by the Supreme Court on 16.03.2010. Ajay Kumar Pal had filed mercy petitions addressed to the President as well as to the Governor of Jharkhand on 10.04.2010. The President rejected the mercy petition on 27.10.2013.<sup>131</sup> However, Ajay Kumar Pal was communicated the result of the disposal of his mercy petition on 10.04.2014.<sup>132</sup>

Ajay Kumar Pal challenged the rejection of his mercy petition before the Supreme Court. On 12.12.2014, the Supreme Court commuted his death sentence to life imprisonment on the ground of delay in disposal of mercy petition and on account of imposition of solitary confinement. The Supreme Court observing that “*the petitioner has all the while been in solitary confinement i.e. since the day he was awarded death sentence*” held<sup>133</sup>:

*“In the light of the enunciation of law by this Court, the petitioner could never have been “segregated” till his Mercy Petition was disposed of. It is only after such disposal that he could be said to be under a finally executable death sentence. The law laid down by this Court was not adhered to at all while confining the petitioner in solitary confinement right since the order of death sentence by the first court. In our view, this is complete transgression of the right under Article 21 of the Constitution causing incalculable harm to the petitioner.”*

131. Mercy and the machinery of death, Frontline, 4 April 2014, <http://www.frontline.in/the-nation/mercy-and-the-machinery-of-death/article5795913.ece>

132. Ajay Kumar Pal v. Union of India (2014) 42 SCD 193

133. Ibid

## Case 2. Surendra Koli, Uttar Pradesh

Surendra Koli is an accused in the case relating to the serial Nithari killings in Noida, Uttar Pradesh of 2005 and 2006. At least 19 girls and women were stated to have been raped and killed. The Central Bureau of Investigation (CBI) filed charge sheets in 16 out of the 19 cases of abduction, rape and murder. Surendra Koli was charged with rape, abduction and murder in all the cases. On 13.02.2009, a special trial court in Ghaziabad awarded death sentence to Surendra Koli for the rape and murder of 14-year-old girl Rimpa Halder. On appeal, the Allahabad High Court upheld the death sentence of Koli. The Supreme Court confirmed the death penalty on 15.02.2011. On 20.07.2014, the mercy petition of Koli was rejected by the President of India. The Supreme Court rejected the review petition of Koli on 28.10.2014.<sup>134</sup>

On 28.01.2015, the Allahabad High Court while hearing a Public Interest Litigation commuted the death sentence of Koli into life imprisonment considering solitary confinement of the convict as one of the grounds. The High Court held: <sup>135</sup>

*“This is nothing but solitary confinement. The convict cannot be described as a convict under an executable sentence of death so long as the judgment of the sessions trial was not confirmed by the High Court and thereafter until the matter had not attained finality before the Supreme Court and for that matter until the rejection of the mercy petition. The affidavits which have been filed by the State have not established any need, having a bearing on the security or the safety of the convict or any other compelling circumstance which warranted his segregation in a solitary cell from the date of the judgment of the trial court on 13 February 2009. Nor for that matter, have the affidavits drawn any facts to the notice of the Court bearing on the behaviour of the convict which warranted a decision to place him in solitary confinement. The law on this is formulated in the judgment of the Supreme Court in Sunil Batra (supra).”*

134. See ‘Death Reserved For The Poor’ ACHR, November 2014

135. Peoples’ Union of Democratic Rights v. Union of India, 2015 (2) ADJ 398

The High Court further rejecting the submissions of the State Government in its defence on the issue stated “Neither of these circumstances would result in obliterating the consequence of an unlawful act of solitary confinement. In fact, in the decision in *Sunil Batra*, the Supreme Court observed that the mere act of the prison authorities in allowing the convict to meet prison visitors would not result in taking an act of solitary confinement out of that category.”<sup>136</sup>

### 6.3. *Per incuriam* cases

An analysis of *Shatrughan Chauhan* reveals that MHA does not take into account the judicial precedents while advising the President of India to reject mercy petitions of death row convicts whose death sentences were confirmed on basis of precedents that have been held *per incuriam*.

Vide judgment dated 13.05.2009 in *Bariyar*, a bench of the Supreme Court comprising Justice S.B. Sinha and Justice Cyriac Joseph had rendered the decisions in *Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra*<sup>137</sup>, *Mohan Anna Chavan v. State of Maharashtra*<sup>138</sup>, *Bantu v. The State of U.P.*<sup>139</sup>, *Surja Ram v. State of Rajasthan*<sup>140</sup>, *Dayanidhi Bisoi v. State of Orissa*<sup>141</sup>, *State of U.P. v. Sattan @ Satyendra and Ors* as *per incuriam*.<sup>142</sup> However, the MHA has not been examining this aspect while advising the President to reject mercy petitions of death row convicts.

In respect of death row convict Praveen Kumar,<sup>143</sup> the Supreme Court noted that the trial court had relied on decisions which were later held to be *per incuriam*. But the MHA did not examine this aspect while advising the President of India to reject his mercy petition. President rejected the mercy petition on 26.03.2013. The MHA also failed to examine that Shivu and Jadeswamy were sentenced to death based on judgments which were later held as *per incuriam*.

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136. Peoples' Union of Democratic Rights v. Union of India, 2015 (2) ADJ 398

137. AIR2009SC56

138. (2008)11SCC113

139. (2008)11SCC113

140. (1996)6SCC271

141. (2003)9SCC310

142. 2009(3)SCALE394

143. Writ Petition (Crl.) No. 187 of 2013



Apart from the existing seven guidelines, many other factors influenced the Government in deciding mercy petitions. However, there are cases when the mercy petitions of death convicts were rejected without consideration of other relevant factors such as judgments awarding death sentence which were later declared *per incuriam* by the Supreme Court.

The case of death convict Saibanna was an example. On 04.01.2013, President Pranab Mukherjee rejected Saibanna's mercy petition on the advice of the MHA. The rejection of the petition suggests that the MHA either failed to consider the fact that the Supreme Court in 2009 in *Bariyar* declared *Saibanna v. State of Karnataka* as *per incuriam* on the ground that it upheld mandatory death sentence under section 303 IPC, which was declared unconstitutional in *Mithu v. State of Punjab*<sup>144</sup> or simply ignored this fact.

#### **6.4. Consultation with the Presiding judge under Section 432(2) of the CrPC**

Devender Pal Singh Bhullar was charged with criminal conspiracy for alleged assassination bid on the then President of Indian Youth Congress (I) by causing bomb blasts at Raisina Road, New Delhi, in which nine persons were killed on 11.09.1993. On 25.08.2001, the Designated TADA Court, New Delhi convicted Bhullar and sentenced him to death. In 2001, by majority of 2:1, the Supreme Court confirmed the conviction and sentence.<sup>145</sup> While one of the three judges, Justice M B Shah had passed a dissenting judgment setting aside Bhullar's conviction and ordered for his release. However, the majority judgment of the Supreme Court stated that the government may consult Justice M B Shah, the presiding judge of the bench under Section 432(2) of the Criminal Procedure Code when Bhullar's mercy petition is considered.<sup>146</sup>

On 14.01.2003, Bhullar submitted a mercy petition to the President. In May 2011, the President of India had rejected Bhullar's mercy petition.

144. Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra: (2009)6SCC498

145. Devender Pal Singh Bhullar v. State (NCT of Delhi), (2002) 5 SCC 234

146. Dissenting judgment of Justice M B Shah in Devender Pal Singh v. State (NCT of Delhi) is available at: <http://judis.nic.in/supremecourt/imgst.aspx?filename=18351>

Section 432(2) CrPC provides that whenever an application is made to the government for remission of a sentence, the government may require the presiding judge of the court by which the conviction was confirmed, to state his opinion as to whether the application should be granted or refused together with his reasons for such opinion. Although the Ministry of Home Affairs' recommendation to the President to reject the mercy petition of Bhullar mentioned that the Supreme Court judgment had suggested that the government invoke Section 432(2), but there was no information on whether Justice M B Shah was consulted. Justice M B Shah later stated that the government never consulted him before rejecting Bhullar's mercy petition.<sup>147</sup>

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147. Government did not consult me on Bhullar, says Justice MB Shah, The Economic Times, 17 April 2013, [http://articles.economictimes.indiatimes.com/2013-04-17/news/38616286\\_1\\_mercy-petition-mercy-plea-justice-shah](http://articles.economictimes.indiatimes.com/2013-04-17/news/38616286_1_mercy-petition-mercy-plea-justice-shah)

## 7. THE POOR AND THE QUESTION OF ARBITRARY MERCY

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### 7.1. The question of poverty and access to justice

As per Article 39 of the Constitution of India, access to justice must be equal in substance, procedure and availability regardless of a person's economic status. In capital cases, the quality of legal representation is one of the most important factors in determining whether or not a defendant will receive the death penalty.

In *Shatrughan Chauhan*, the Supreme Court noted “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”. The apex Court further noted that “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.”<sup>148</sup>

Since his swearing on 25.07.2012, President Pranab Mukherjee has considered 28 mercy petitions involving 34 death row convicts. As per information available in the website of the President's Secretariat, 28 mercy petitions involving 34 death row convicts were received by President Pranab Mukherjee as on 07.09.2015. Out of the 28 cases, President Mukherjee rejected 24 mercy petitions involving 31 death row convicts including three women, and commuted death sentence in two cases while two cases are pending disposal

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

as on 07.09.2015.<sup>149</sup> Out of total 28 cases, at least in 12 cases the death row convicts were defended on legal aid lawyers during trial and appeal stages. These 12 cases include Md. Ajmal Kasab, Saibanna Ningappa Natikar, Mohd. Afzal Guru, Gurmeet Singh, Praveen Kumar, Sundar Singh, Maganlal Barela, Ajay Kumar Pal, Holiram Bordoloi, Surender Koli, Shivaji Shankar Alhat and Mohan Anna Chavan. On 19.03.2015, President Mukherjee commuted the death sentence of Tote Dewan to life imprisonment following recommendation of the Ministry of Home Affairs that the crime was committed due to abject poverty and unemployment.<sup>150</sup> It is not known whether the lawyers who defended Dewan from the trial court to the apex court were hired by him or provided by the Courts from the legal aid services. Given his poor economic condition it is presumed the lawyers were provided from the legal aid services.

**Table 4: Chart showing whether death row convicts whose mercy petitions were processed by President Pranab Mukherjee were defended by legal aid or not**

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment/ Review/Curative	Date of recommendation received in President's Secretariat from MHA	Date of Disposal	Status of mercy petitions	Whether defended through Legal Aid
1	Md. Ajmal Kasab	29.08.2012	17.10.2012	05.11.2012	Rejected	Yes
2	Saibanna Ningappa Natikar	21.04.2005	03.10.2007 08.09.2011 05.11.2012	04.01.2013	Rejected	Yes
3	Mohd. Afzal Guru	04.08.2005	04.08.2011 24.01.2013	03.02.2013	Rejected	Yes (Trial Court)
4	Simon, Gnanaprakash, Madaiah and Bilavandra	29.01.2004	03.05.2005 30.05.2011 16.01.2013	08.02.2013	Rejected	Not known
5	Suresh and Ramji	02.03.2001	12.04.2004 22.06.2005 24.02.2011 16.01.2013	08.02.2013	Rejected	Not known

149. See <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

150. President Pranab Mukherjee commutes death penalty of Assam man, The Indian Express, 27 March 2015, <http://indianexpress.com/article/india/india-others/president-pranab-mukherjee-commutes-death-penalty-of-assam-man/>

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment/ Review/Curative	Date of recommendation received in President's Secretariat from MHA	Date of Disposal	Status of mercy petitions	Whether defended through Legal Aid
6	Gurmeet Singh	28.09.2005	22.05.2007 11.12.2009 16.01.2013	01.03.2013	Rejected	Yes (Supreme Court)
7	Jafar Ali	05.04.2004	21.08.2006 03.11.2011 25.01.2013	14.03.2013	Rejected	Not known
8	Dharampal	18.03.1999	09.02.2000 14.07.2005 15.09.2010 16.01.2013	25.03.2013	Rejected	Not known
9	Praveen Kumar	15.10.2003	12.09.2005 18.07.2011 16.01.2013	26.03.2013	Rejected	Yes (Supreme Court)
10	Sundar Singh	16.09.2010	07.02.2012 05.02.2013	31.03.2013	Rejected	Yes
11	B.A. Umesh	01.02.2011	04.04.2013	12.05.2013	Rejected	Not known
12	Sonia and Sanjeev	15.02.2007	12.02.2008 22.05.2009 20.01.2012 29.01.2013 06.06.2013	29.06.2013	Rejected	Not known
13	Maganlal	09.01.2012	06.06.2013	16.07.2013	Rejected	Yes
14	Shivu and Jadeswamy	13.02.2007	04.04.2013 24.06.2013	27.07.2013	Rejected	Not known
15	Ajay Kumar Pal	16.03.2010	21.08.2013	27.10.2013	Rejected	Yes
16	Yakub Abdul Razak Memon	21.03.2013	14.03.2014	11.04.2014	Rejected	Not known
17	Sonu Sardar	23.02.2012	27.03.2014	05.05.2014	Rejected	Not known
18	Holiram Bordoloi	08.04.2005	23.06.2014	05.07.2014	Rejected	Yes (Supreme Court)
19	Renukabai @ Rinku @ Ratan and Seema @ Devli Mohan Govit	31.08.2006	15.10.2013 26.06.2014	07.07.2014	Rejected	Not known

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment/ Review/Curative	Date of recommendation received in President's Secretariat from MHA	Date of Disposal	Status of mercy petitions	Whether defended through Legal Aid
20	Jagdish	18.09.2009	30.03.2014 26.06.2014	07.07.2014	Rejected	Not known
21	Surender Koli	15.02.2011	26.06.2014	20.07.2014	Rejected	Yes
22	Rajendra Pralhadrao Wasnik	29.02.2012	23.06.2014	31.07.2014	Rejected	Not known
23	M. A. Antony @ Antappan	22.04.2009	27.01.2015	19.4.2015	Rejected	Not known
24	Shiwaji Shankar Alhat	05.09.2008 / 02.09.2014	16.03.2015	19.4.2015	Rejected	Yes (Supreme Court)
25	Atbir	09.08.2010	19.06.2012	15.11.2012	Death Sentence commuted to life imprisonment.	Not known
26	Tote Dewan @ Man Bahadur Dewan	08.08.2005	19.01.2015	19.03.2015	Death Sentence commuted to life imprisonment.	Not known
27	Mohan Anna Chavan	16.05.2008	13.07.2015		Mercy petition is pending	Yes (Supreme Court)
28	Jeetendra @ Jitu Nainsingh Gehlot	05.09.2000	27.07.2015	06.08.2015	Mercy petition is pending	Yes (Supreme Court)

## 7.2. The issue of arbitrariness in granting mercy

Extreme poverty which indicates inability to defend oneself has often been used to grant mercy. In March 1998, the then President commuted the death sentences of S. Chalapathi Rao and G. Vijayavardhana Rao found guilty in the torching of a bus in Andhra Pradesh in 1993, which resulted in the death of 23 persons. The then President K. R. Narayanan found a number

of mitigating circumstances such as young age, no previous criminal record, poor socio-economic background, etc sufficient to grant clemency under the first ground.<sup>151</sup>

The incumbent President Pranab Mukherjee also commuted the death sentence of two death row convicts namely Tote Dewan @ Man Bahadur Dewan of Assam, convicted for the murder of his wife, two minor sons and a neighbourhood woman in 2002 as the crime had socio-economic basis<sup>152</sup> and Atbir of Delhi, convicted for the murder of his step mother, step sister and step brother over a property dispute in 1996 on the ground that the murders were committed due to abject poverty and unemployment.<sup>153</sup>

However, the mercy petitions of a number of death row convicts were not given the same benefit despite the fact that they were equally poor and had to be defended by legal aid lawyers such as Gurmeet Singh, Sundar Singh, etc.

While the political decision to reject mercy petitions of terror convicts is omnipresent, to understand arbitrariness and non-application of mind, Asian Centre for Human Rights examined 41 cases of mercy petitions considered by the President of India broadly categorised under six categories i.e. (1) cases of murder of spouse and children, (2) cases of murder by servants for gains; (3) cases of murder due to enmity, (4) cases of murder by relatives, (5) cases of rape and murder of minor girls, and (6) cases of kidnapping followed by murder for gains. In all these cases, the President gave contradictory opinion with respect to the cases with similar facts and circumstances.

### **7.2.1. Cases of murder of spouse and children**

In cases of mercy petitions by death-row convicts convicted for murder of spouse and children, the President gave different decisions in different cases of similar circumstances and evidence.

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151. See 'Mercy guidelines', Frontline, Volume 26 - Issue 07, 28 March - 10 April 2009 <http://www.frontline.in/static/html/fl2607/stories/20090410260703400.htm> (Accessed 14.05.2015)

152. See 'First commutation of death sentence by Pranab', The Hindu, 03.12.2012, <http://www.thehindu.com/news/national/first-commutation-of-death-sentence-by-pranab/article4161249.ece> (Accessed 15.05.2015) and See 'Statement of Mercy Petitions' as on 11.05.2015 available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf> (Accessed 13.05.2015)

153. See 'President Pranab Mukherjee commutes death penalty of Assam man', The Indian Express, 27.03.2015, <http://indianexpress.com/article/india/india-others/president-pranab-mukherjee-commutes-death-penalty-of-assam-man/> (Accessed 15.05.2015) and See 'Statement of Mercy Petitions' as on 11.05.2015 available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf> (Accessed 13.05.2015)

Death penalty was commuted to life imprisonment in *Sunil Baban Pingale v. State of Maharashtra*<sup>154</sup>, where death row convict was convicted for murder of his mother-in-law and sister-in-law. The convict also attempted to kill his wife and father-in-law. The conviction was based on accounts of the eyewitness and documentary evidence. Similarly, death penalty of Kheraj Ram was commuted in *State of Rajasthan v. Kheraj Ram*<sup>155</sup>. The accused was convicted for murder of his wife, his two children and brother in law on suspicion of infidelity on the part of his wife. Though the conviction was based on circumstantial evidence but the same conclusively established the guilt of the accused.

However, the President rejected mercy petitions of a several death row convicts who had been convicted of similar offences committed in similar circumstances. For example, in *Bheru Singh v. State of Rajasthan*<sup>156</sup>, the accused was convicted for the murder of his wife and his five minor children; in *Saibanna v. State of Karnataka*<sup>157</sup> the accused was convicted for murder of his wife and his minor daughter on suspicion of infidelity on the part of his wife while on parole in a life imprisonment term; and in *Jafar Ali v. Union of India and Ors.*<sup>158</sup>, the accused was convicted for the murder of his wife and five daughters.

### **i. Cases of murder of spouse and children commuted by the President**

#### **Case 1: Sunil Baban Pingale, Maharashtra**

Death penalty was commuted to life imprisonment in *Sunil Baban Pingale v. State of Maharashtra*.<sup>159</sup> According to eyewitnesses the accused appellant Sunil Baban Pingale with a pre-plan had reached the house of his father-in-law in the midnight armed with a sword and not only killed his mother-in-law but also one Jaishree, his sister-in-law and also wanted to get rid of his wife Suneeta by throwing her inside the tank and also assaulted his father-in-law, both of whom luckily survived.

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154. (1999) 5 SCC 702

155. AIR2004SC3432

156. 1994()ACR491(SC)

157. 2005(2)ACR1836(SC)

158. Writ Petition (Cr.) No. 190 of 2013

159. (1999) 5 SCC 702



The accused Sunil Baban Pingale was convicted under Section 302 IPC and was sentenced to punishment of death by the Additional Sessions Judge, Pune. He was also convicted under Section 307 for having injured his wife and father-in-law. The High Court affirmed the death sentence awarded by the Additional Sessions Judge.

On the date of the offence the accused was only 26-year-old. On this ground, the counsel for the accused prayed for commutation of the death sentence into life imprisonment. But the Supreme Court declined to commute the death sentence and dismissed the appeal. The apex court held,

*“But we are unable to persuade ourselves to agree with this submission of the learned Counsel for the appellant particularly when the entire scenario in which the appellant had come being armed with a sword and assaulted and killed two persons and also injured two persons which has been fully described in the impugned judgment of the High Court. Having scrutinised the judgment of the learned Sessions Judge as well as the judgment of the High Court, we do not find any mitigating circumstances from which the Court would be justified in taking the view that this is not one of the rarest of the rare cases. On the other hand, the manner in which the appellant had come with a prior plan to finish the entire family and for no justifiable reason would indicate that the penalty of death is the only appropriate sentence that can be awarded against the appellant.”*

However, the President commuted the death sentence to life imprisonment.<sup>160</sup>

## Case 2: Kheraj Ram, Rajasthan

In *State of Rajasthan v. Kheraj Ram*<sup>161</sup>, accused Kheraj Ram was convicted for murder of his wife, his two children and brother-in-law on suspicion of infidelity on the part of his wife. Though the conviction was based on circumstantial evidence but the same conclusively established the guilt of the accused.

In appeal, the High Court held that the circumstances on which the conviction was based have not been proved nor were the same sufficient to prove the

160. Please refer to Annexure-I, Serial No. 84 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

161. AIR2004SC3432

guilt of the accused. The High court acquitted the accused. The State of Rajasthan challenged the acquittal in the Supreme Court which reversed the High Court decision and restored the death sentence imposed by the trial court. The Supreme Court held as under-

*“The factual matrix as described by the prosecution and established by the evidence on record shows the cruel and diabolic manner in which the killings were conceived and executed. The accused did not act on any spur of the moment provocation. It was deliberately planned and meticulously executed. There was not even any remorse for such gruesome act. On the contrary, after the killing the accused tried to divert attention and used PW-9 as the cat’s-paw. He went on taking divertive tactics to suit his purpose. The calmness with which he smoked ‘chilam’ was an indication of the fact that the gruesome act did not even arouse any human touch in him. On the contrary, he was satisfied with what he had done. In a given case, a person having seen a ghastly crime may act in a different way. That itself in another case may not constitute a suspicious circumstance. But when the entire chain of events and circumstances are comprehended, the inevitable conclusion is that the accused acted in the most cruel and inhuman manner and the murder was committed in extremely brutal, grotesque, diabolical, revolting and dastardly manner. The victims were two innocent children and a helpless woman. Taking note of these factors, the death sentence imposed by the Trial Court is most appropriate. The respondent shall surrender to custody forthwith and serve out the sentence.”*

The President commuted the death penalty of Kheraj Ram to life imprisonment.<sup>162</sup>

## **ii. Cases of murder of spouse and children rejected by the President**

The President rejected mercy petitions of several death row convicts who had been convicted of similar offences committed in similar circumstances. These include *Bheru Singh*<sup>163</sup> who was convicted for the murder of his wife and his five minor children; in *Saibanna v. State of Karnataka*<sup>164</sup> the accused

162. Please refer to Annexure-I, Serial No. 76 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

163. 1994(1)ACR491(SC)

164. 2005(2)ACR1836(SC)

was convicted for murder of his wife and his minor daughter on suspicion of infidelity on the part of his wife while on parole in a life imprisonment term; and *Jafar Ali*,<sup>165</sup> who was convicted for the murder of his wife and five daughters.

**Case 1: Bheru Singh, Rajasthan<sup>166</sup>**

On 03.06.1988, Bheru Singh was accused of killing his wife, Smt. Kajodbai, his two daughters Manrajbai, aged 4 years and Hansabai, aged about 7 years and his sons Raj Bahadur, aged 2 years, Nand Kanwar, aged 14 years and Nathu Singh, aged 8 years. After committing the murders, the appellant went to the police station Dablana holding the blood stained sword by which the murders were committed and himself lodged the first information report. The dead body of Smt. Kajodbai was found lying in the house with her head completely severed from the rest of her body. Other dead bodies were also lying in the same compound and outside in the lane.

According to the prosecution, the motive in the case appears to be the suspicion by the appellant of infidelity of his wife, deceased Kajodbai. During the night of occurrence while he was in a disturbed state of mind, he got the impression during questioning of his wife that she had developed some illicit relations with Bhojak Gujar and was having an affair with him. He, therefore, not only doubted the fidelity of his wife but also thought that the five children born of Smt. Kajodbai were not his children. Harboursing those feelings, he committed the murders of his wife and all the five children even though his brother's wife, Smt. Ratnabai while seeing him commit the murders of his children pleaded with him not to go on the killing spree but to no effect.

The Sessions Judge Bundi convicted the accused under Section 302 IPC and awarded him death penalty. The Division Bench of the High Court dismissed his appeal and confirmed the sentence of death. The Supreme Court also dismissed Bheru Singh's appeal and confirmed the death sentence imposed by the trial court and upheld by the High Court. The apex court made the following observation-

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

166. *Bheru Singh v. State of Rajasthan* (1994) ACR 491 (SC)

*“The barbaric gruesome and heinous type of crime which the appellant committed is a revolt against the society and an affront to human dignity. There are no extenuating or mitigating circumstances whatsoever in this case nor have any been pointed out and in our opinion it is a fit case which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant. The plea of his learned counsel for mercy is unjustified and the prayer for sympathy, in the facts and circumstances of the case, is wholly misplaced. We, therefore, upheld the conviction and sentence of death imposed upon the appellant by the courts below for the offence under Section 302 IPC.”*

The President rejected the mercy petition of Bheru Singh.<sup>167</sup>

### **Case 2: Saibanna, Karnataka<sup>168</sup>**

While serving the sentence of life imprisonment for murder of his first wife, accused Saibanna was released on parole for a period of one month in August 1994. During this time Saibanna murdered his second wife, Nagamma suspecting her fidelity, and his minor daughter. After assaulting the deceased the Saibanna also attempted to commit suicide by inflicting injuries on himself.

The Sessions Court found that the prosecution had proved beyond reasonable doubt that Saibanna was guilty of the offence under Section 302 IPC and imposed death sentence. Conviction was based on ocular and documentary evidences. The High Court of Karnataka confirmed the conviction and death sentence on Saibanna. He preferred an appeal against the impugned judgment and order of the High Court and the Supreme Court dismissed the appeal and affirmed the death sentence. The Supreme Court made the following observations-

*“20. Thus, taking all the circumstances in consideration, we are of the view that the High Court was right in coming to the conclusion that the appellant’s case bristles with special circumstances requisite for imposition of the death penalty.”*

167. Please refer to Annexure-I, Serial No. 66 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

168. Saibanna v.. State of Karnataka 2005(2)ACR1836(SC)

The President rejected the mercy petition of the death convict.<sup>169</sup>

### Case 3: Jafar Ali, Uttar Pradesh<sup>170</sup>

Jafar Ali of Etawah in Uttar Pradesh was married with two sons and five daughters. He had difficulties in meeting the household expenses due to lack of sufficient income. In order to shroud his inability to meet the household expenses, he started casting aspersions on the fidelity of his wife and used to vex and beat her. The brother-in-law of Jafar Ali requested him a number of times not to harass his sister, but in vain. On 27.07.2002, Jafar Ali killed his wife and five daughters after giving them knife blows. On the same day, Jafar Ali surrendered at the local police station with the blood stained knife and confessed to his guilt.

On 27.01.2004, the Division Bench of the Allahabad High Court confirmed the death sentence passed on Jafar Ali. On 05.04.2004, Jafar Ali through legal aid filed SLP (Crl.) No. 1129 of 123 2004. The Supreme Court did not grant special leave and dismissed the SLP in *limine*.

On 28.11.2005, the Governor rejected the mercy petition of the accused. On 14.03.2013, the President also rejected his mercy petition.<sup>171</sup> However, vide judgment and order dated 21.01.2014, a three-judge Bench of the Supreme Court comprising Chief Justice P. Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh commuted the death sentence of Jafar Ali to life imprisonment on the ground of unexplained and undue delay in disposal of mercy petition by the President. The Supreme Court observed that the details furnished by the petitioner, counter affidavit filed by the Union of India as well as the State clearly show that the delay was to the extent of nine years.<sup>172</sup>

### 7.2.2. Cases of murder by servants for gains

In two exactly similar cases, the President gave contradictory decisions. Death penalty on Omprakash was commuted in *Omprakash @ Raja v. State*

169. Please refer to Annexure-I, Serial No. 101 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

170. See *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 and *Jafar Ali v. State of UP*, High Court of Allahabad decided on 27.01.2004 available at: <http://www.the-laws.com/Encyclopedia/Browse/Case?CaselD=304002901000>

171. Please refer to Annexure-II, Serial No. 7 of "Statement of Mercy Petition Cases-Rejected"

172. Writ Petition (Crl.) No. 190 of 2013

of *Uttaranchal*<sup>173</sup> where the accused, a domestic servant, had committed the murder of his employer, his son and sister-in-law and also attempted on the life of his employer's wife. The conviction was based on oral and documentary evidence. On the other hand, the President rejected the mercy petition of the death-row convict in *Amrutlal Someshwar Joshi v. State of Maharashtra*<sup>174</sup> where the condemned prisoner, a domestic male servant, was convicted for committing murder of three members of a Sindhi family living in a flat in Bombay City, where he was employed. His conviction was mainly based on circumstantial evidence.

### **i. Cases of murder by servants for gains commuted by the President**

#### **Case 1: Omprakash @ Raja, Uttaranchal<sup>175</sup>**

In this case the accused who was working as a domestic servant in the house of retired Brigadier Shyam Lal Khanna in Vasant Vihar area of Dehradun. He committed murder of three members of the family including Mr. Khanna and attempted to kill Mr. Khanna's wife.

The additional Sessions Judge, Dehradun, convicted the accused under Sections 302 and 307 IPC and sentenced him to death and rigorous imprisonment of 7 years. Conviction was based on oral and documentary evidence

The High Court dismissed the appeal preferred by the accused and confirmed the death sentence and other sentences passed against him for the offences under Sections 302 and 307 IPC. Aggrieved with the judgment of the High Court, the accused appellant preferred an appeal before the Supreme Court. The Supreme Court dismissed the appeal and affirmed the conviction and death sentence of the accused under Section 302 IPC. The apex court made the following observations-

*“As rightly observed by the High Court, the crime had been cleverly pre-planned and committed in a brutal and diabolical manner. Three out of the four inmates of the house in which he was employed, were eliminated. There was an attempt to kill the fourth person (PW-1) also. The accused*

173. 2003(2)ACR1639(SC)

174. AIR1994SC2516, 1995CriLJ400

175. Omprakash @ Raja v. State of Uttaranchal, 2003(2)ACR1639(SC)

*had inflicted injuries on the young Sarit Khanna in such a cruel manner that his neck was practically severed from his body. Multiple injuries were inflicted on the vital parts of the other victims. The cruel tendency of the appellant was writ large even in the manner of attack. His antecedents also reveal a cruel and savage behavior on his part. The evidence on record reveals that he killed a pet bird and pierced feathers inside the nose of the hen. He was determined to kill all the members of the Khanna family to take revenge on a flimsy ground. Alternatively, he stooped to the ghastly crime in order to take away the valuables in the house. His conduct and behavior is repulsive to the collective conscience of the society. It is fairly clear that he does not value the lives of others in the least. The crime committed by the appellant shocks the conscience of the society at large and of the Court and the facts and circumstances unfolded in the case leave the Court with an irresistible feeling that he is beyond reformation though young he is. As held in Amrutlal Someshwar Joshi vs. State of Maharashtra MANU/SC/0510/1994: 1995CriLJ400 mere young age of the accused is not a ground to desist from imposing death penalty, if it is otherwise warranted. Moreover, in the present case, none is dependent on the appellant. There are no mitigating circumstances in his favour. The accused is a menace to the society and it seems to us that the death sentence is the most appropriate punishment in this case. On facts, the case on hand is closest to Amrutlal Someshwar's case (supra) where the death sentence was up held. Accordingly, the sentence of death is confirmed. The appeal is dismissed".<sup>176</sup>*

The President commuted the death penalty of Omprakash.<sup>177</sup>

## **ii. Cases of murder by servants for gains rejected by the President**

### **Case 1: Amrutlal Someshwar Joshi, Maharashtra<sup>178</sup>**

In this case, the accused who was engaged as a cook by a Sindhi family living in a flat in Bombay City, allegedly committed murders of three members of that family by causing multiple stab injuries by means of a big knife. The

176. 2003(2)ACR1639(SC)

177. Please refer to Annexure-I, Serial No. 920 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

178. Amrutlal Someshwar Joshi v. State of Maharashtra AIR1994SC2516

motive for the crime was alleged to be the gain of the property consisting of cash, jewellery and other valuable goods worth Rs. 2,06,000. The case rested mainly on the circumstantial evidence.<sup>179</sup>

The trial Court accepted the prosecution case and convicted the accused under Section 302 IPC in respect of each of the murder and sentenced him to death, subject to confirmation by the High Court and also convicted him under Section 394 IPC and sentenced to imprisonment for life. The High Court confirmed the death sentence.<sup>180</sup>

The Supreme Court observed that both the trial court and the High Court have carefully analysed the evidence and the circumstances established by independent evidence have rightly been held to be sufficient to bring home the guilt to the accused beyond all reasonable doubt. Upon appreciation of the entire evidence, the court held that the circumstances on record are more than sufficient to establish the guilt of the accused and upheld the death sentence.<sup>181</sup>

On the quantum of punishment, the Supreme Court held that as below:<sup>182</sup>

*“On a careful consideration of the entire material both the courts below have categorically found that the accused and accused alone committed the murders for gain. Even assuming for argument’s sake that more than one person could have participated, we are unable to see as to how in the facts and circumstances of the case, participation by the accused does not warrant imposition of death sentence. He was working as a domestic servant staying alongwith the family members in the flat who trusted him. The accused having become extremely greedy cleverly pre-planned the commission of the crime at a time when P.W.2 was not in the flat and when only the old retired person, a helpless lady and a child were in the flat. The knife used is a big knife which he must have procured and he killed the three deceased persons at the time when they were resting after having their meals. He did not even spare the young girl Vaishali, deceased No. 3, aged about three*

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179. AIR1994SC2516

180. Ibid

181. Ibid

182. Ibid



years. P.W.6, who conducted the post-mortem, found five incised injuries on the child. He found 32 incised injuries on deceased No. 1 Shri Parsharam Sadarangani and the Doctor opined that many of the injuries individually were necessarily fatal. On deceased No. 2, Hema Mirchandani, the Doctor found 12 incised injuries and the Doctor opined that injuries nos. 2, 3 and 7 were singularly sufficient to cause death in the ordinary course of nature. The medical evidence shows that some of the injuries found on the three deceased person were very serious and would show that the assailant practically butchered them. The attack was so brutal and the same establishes that the accused left no chance for anybody's survival lest they may figure a witness and this heinous crime has been committed in that cruel and diabolical manner only with a view to commit robbery. The subsequent conduct and his movements would show that the accused is a clever criminal prepared to go to any extent in committing such serious crimes for his personal gain and the murders committed by him manifest an exceptional depravity.”

The President rejected the mercy petition of the death-row convict Amrutlal Someshwar Joshi.<sup>183</sup>

### 7.2.3. Cases of murder due to enmity

In cases of murder due to enmity, the President commuted the death sentence in some cases while rejected in other similar cases and circumstances. The President commuted the death penalty of six death-row convicts into life imprisonment in *Shri Ram and Shiv Ram and Anr. v. State of UP and Ors*<sup>184</sup>, of five death-row convicts in *Gurdev Singh and Anr. v. State of Punjab*<sup>185</sup>, of two death-row convicts in *Shobit Chamar and Anr. v. State of Bihar*<sup>186</sup>, of two death-row convicts in *Karan Singh and Anr. v. State of UP*<sup>187</sup> and of one death-

183. 'The Death Penalty in India: A Lethal Lottery, A study of Supreme Court judgments in death penalty cases 1950-2006', May 2008, Amnesty International India and People's Union for Civil Liberties (Tamil Nadu & Puducherry)

184. Please refer to Annexure-I, Serial No. 78 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

185. Please refer to Annexure-I, Serial No. 80 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

186. Please refer to Annexure-I, Serial No. 81 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

187. Please refer to Annexure-I, Serial No. 94 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

row convict in *Prajeet Kumar Singh v. State of Bihar*<sup>188</sup>. Convictions in all these cases were based on oral and documentary evidences.

In contrary, the President rejected the mercy petitions of death-row convicts who have been awarded death sentence for similar charges as stated above. The President rejected the mercy petitions of two death-row convicts in *Mahesh and Ram Narayan v. State of Madhya Pradesh*<sup>189</sup> and one death-row convict in *Sundar Singh v. State of Uttaranchal*.<sup>190</sup>

### **i. Cases of murder due to enmity commuted by the President**

#### **Case 1: Shri Ram and others, Uttar Pradesh**<sup>191</sup>

In this case, the accused committed murder of five persons including a boy of ten years who had been assaulted and thrown into fire and burnt alive; heads of three of the deceased were severed while another deceased who sustained firearm injuries died in the hospital after about 17 days of the attack.

Twenty-four persons were arraigned at the trial as accused and at the conclusion of the trial, the trial court awarded death sentence to four accused, life imprisonment to twelve accused and acquitted seven accused. Their conviction was based on testimony of eye-witnesses and evidence.

The trial court made a reference under Section 366 Criminal Procedure Code (CrPC) for confirmation of the death sentence while the convicted accused filed appeals including those who had been awarded capital punishment. The batch of criminal appeals was heard together by the High Court of Allahabad. The High Court confirmed the death sentences awarded to four accused and in addition thereto while allowing the State appeal for enhancement, awarded the death sentence to three accused.

Against the judgment of the High Court, Sheo Ram (A-2), Harish (A-4), Shyam Manohar (A-1), Suresh (A-13), Prakash (A-8) and Ravindra

188. Please refer to Annexure-I, Serial No. 95 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

189. Please refer to Annexure-I, Serial No. 46 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

190. (2010) 10 SCC 661

191. *Shri Ram and Shiv Ram and Anr. v. State of UP and Ors* Criminal Appeal No.593 OF 1997

(A-5) preferred appeals in the Supreme Court which upheld the death sentence awarded to each of these accused. The court made the following observation-

*“28. We have already analysed the evidence of the prosecution as well as the defence. Look at the modus operandi adopted by the accused persons who formed an unlawful assembly and its common object was not only to commit the murders of Sheo Pal and Ram Gulam but also to commit mass murder of family members of Sukhdarshan (since deceased) as they were under the belief that Sheo Pal and Ram Gulam were hiding and taking shelter in the house of Sukhdarshan. The accused persons first fired at Kamlesh, injured him and thereafter opened the door and searched for Ram Gulam and Sheo Pal. Kamlesh was immobilised by causing a gunshot injury. Sukhdarshan (since deceased) came out of his room. He was fired at on a non-vital part by immobilizing him and thereafter the accused persons assaulted him with banka; A-2, A-4 and A-13 held him facilitating A-1 to sever his head. The accused did not stop there but thereafter they fired at Surendra and assaulted him with bankas. A-2, A-4 and A-13 caught hold of him and A-1 severed his head. Sandeep, a young boy of 10 years, when came out of the room which was then set on fire was bodily lifted by A-5 and A-8 who threw him into the smouldering fire. He was roasted alive. Bhuaneshwari who was returning from the market was fired at and was given the same cruel treatment by severing his head. This only shows that they were thirsty to sever the heads from the alive but injured bodies in order to take revenge of the murder of Chandrika. All the three heads were put together in a piece of cloth and a victory procession was taken out by the accused raising slogans “Shyam Manohar Zindabad; Nandlal and Prem Giri Zindabad etc., etc.”, and then they went to the house of Chandrika. A simple question which requires to be considered is as to whether the conscience of the society was not shocked to see such ghastly and brutal murders? The accused persons had shown scant regard for human dignity. Upon taking overall view of the circumstances in the light of the ratio laid down by this Court in the aforesaid judgments and taking into account the manner of commission of crime, motive for commission of crime and criminals, magnitude of the crime and little regard for human dignity and in particular a young boy of 10 years (sic).*

29. Now let us draw a final balance-sheet of the aggravating and mitigating circumstances after giving due consideration to the rival contentions put forth before us as regards six condemned prisoners. In our considered view justification clearly leans in favour of death sentence to each of the six condemned prisoners. Totality of circumstances outweighed the mitigating circumstances as pointed out by Mr. Ganguli. Sentence of life imprisonment to these six accused persons would be totally inadequate in the facts and circumstances of this case. The proved facts of this case unmistakably indicate that the present case squarely falls within the ambit of “rarest of rare” case. Five murders were committed in an extremely brutal, grotesque, diabolical, revolting and dastardly manner which would arouse intense and extreme indignation of the community. Award of lesser punishment to these six accused persons would disintegrate the rule of law upon which the edifice of our civilized society stands.”

The President commuted the death sentence of the convicts to life imprisonment.<sup>192</sup>

### Case 2: Gurdev Singh and others, Punjab<sup>193</sup>

As per the prosecution case, Gurdev Singh and Satnam Singh, along with Piara Singh, Sarabjit Singh and Jasvinder Singh had caused the death of 15 persons, four of them children in the age group of 7-15 years, besides causing grievous injuries to eight others.

In 1996, the Sessions Judge, Amritsar, tried and convicted Piara Singh and Sarabjit Singh and sentenced them to death while Jasvinder Singh was acquitted on the ground of benefit of doubt. Gurdev Singh and Satnam Singh were also tried and found guilty of offence punishable under Section 302 read with Section 149 IPC and other allied offences and both were sentenced to death. Their conviction was based on testimony of eye-witnesses and evidences.

The High Court confirmed the death sentences as imposed by the trial court. In 1997 the Supreme Court dismissed the Special Leave Petition filed by

192. Please refer to Annexure-I, Serial No. 78 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

193. Gurdev Singh and Anr. v. State of Punjab, AIR2003SC4187

Piara Singh and Sarabjit Singh. Aggrieved with the dismissal they had filed a Review Petition which was also dismissed. Gurdev Singh and Satnam Singh also challenged the judgment of the High Court affirming their conviction and death sentence before the apex court. The Supreme Court dismissed their appeal and upheld their conviction and the sentence of death penalty. While confirming the death sentences, the apex court stated-

*“29. .... The entire incident is extremely revolting and shocks the collective conscience of the community. The acts of murder committed by the appellants are so gruesome, merciless and brutal that the aggravating circumstances far outweigh the mitigating circumstances. Moreover, the two accused who were earlier tried are already sentenced to death and their Special Leave Petition was finally disposed of by this Court.*

*30. Having regard to these facts, we do not think that this is a case where imprisonment for life is an adequate sentence to meet the ends of justice. Though we have deep sympathy to the members of the family of the appellants, we are constrained to reach the inescapable conclusion that death sentence imposed on the appellants be confirmed.”*

The President commuted the death sentence to life imprisonment.<sup>194</sup>

### **Case 3: Shobit Chamar, Bihar<sup>195</sup>**

During the night intervening between 01-02.01.1989, a group of 15-20 dacoits attacked the house of one Jagarnath Pandey residing at village Tirojpur under police station Durgawati, district Rohtas, Bihar. Before decamping with the valuables of the family, the dacoit allegedly led by Shobit Chamar (A-2) killed six male members, including two minor boys namely, Anil Pandey and Sunil Pandey and also assaulted the female members. The motive for the killings was apparently to take revenge of murders of brother and a nephew of Shobit Chamar.

The informant Lalmuni Devi identified Shiv Prakash Pandey (A-1), Shobhit Chamar (A-2) and another accused Ram Dular.

194. Please refer to Annexure-I, Serial No. 80 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

195. Shobit Chamar and Anr. v. State of Bihar, 1998(2)Crimes5(SC)

The trial court, vide its judgment and order dated 16.02.1996 held Shobhit Chamar (Accused No.2) and Shiv Prakash Pandey (Accused No.1) guilty of offences punishable under Sections 302, 302/149, 380 and 460 IPC as also under Section 27 of the Arms Act and sentenced them to death. Their conviction was based on oral and documentary evidence.

The High Court on re-appraisal of the entire evidence on record by its judgment and order dated 26.09.1997 accepted the Death Reference and confirmed the death sentence awarded to both the accused. The Supreme Court affirmed the conviction and death sentence of Shobhit Chamar (A-2) as passed by the trial court and on Reference confirmed by the High Court and dismissed his Criminal Appeal while the death sentence of Shiv Prakash Pandey (A-1) was commuted into life imprisonment.

On affirming the death sentence on Shobhit Chamar, the Supreme Court noted as under:

*“Coming to the case of Shobhit Chamar (A-2), the evidence on record proves beyond every reasonable doubt that he was the principal offender/miscreant who fired from his fire arm on all the six persons including the two innocent children. He had a deep routed revenge based upon suspicion about the murders of his brother and nephew by Haridwar Pandey which prompted him to take avenge against the family members of Haridwar and had gone to the extent of killing six persons belonging the family of Haridwar in a most brutal, heinous and barbaric manner. Nothing was suggested to the eye witnesses on behalf of A-2 that any of these deceased persons had played any role in committing the murders of his brother and nephew and at any rate having regard to the ages of Anil Pandey and Sunil Pandey it could not be even remotely suspected that they could be the assailants. Shobhit Chamar (A-2) wanted not only to teach a lesson to the family members of Haridwar but also to create a terror in the minds of the family members of Haridwar to satisfy his ego and muscle power. A-2 exhibited most inhuman conduct while rejoicing his victory after commission of the crime. It is in this background, we are of the considered view that the trial court as well as the High Court has committed no error in awarding death sentence to him.”*

The President commuted the death sentence.<sup>196</sup>

**Case 4: Karan Singh and another, Uttar Pradesh<sup>197</sup>**

The incident happened at 8.30 p.m. on 12.4.1999 in the district of Hamirpur in Uttar Pradesh. There was a long standing enmity between the accused/convicts, on one hand and the deceased Malkhan Singh and others, on the other hand. In 1982, one Channa Singh, father of Malkhan Singh was murdered. The accused/convict Karan Singh and his father Sewa Singh were prosecuted for the murder. At that time, the deceased Malkhan Singh was only 7 to 8 years old and Karan Singh had a grievance that the properties were being enjoyed by Malkhan Singh and others. On the date of the incident, the deceased Malkhan Singh along with one Mohd. Idris (P.W. 2) were engaged in thrashing of wheat. After the work, they went to take bath near the common pump. At that time, all the accused/convicts came down armed with axe and other weapons. As soon as they reached near Malkhan Singh, the second accused/convict Kanwar Bahadur Singh tried to give a blow on him but the blow fell on Mohd. Idris. Thereafter Malkhan Singh tried to run away but all the accused/convicts gave axe-blows and the attempt of Mohd. Idris to save him was not successful. Mohd. Idris raised an alarm and on hearing that, Ramesh Kumar, brother-in-law of Malkhan Singh came to the place. The accused/convicts then killed Malkhan Singh, his mother Ram Murti and his daughter Km, Sadi. To save his life, Ramesh Kumar hid himself and saw the accused/convicts going towards his house and he heard crying sounds from the house and later he found the dead bodies of Guddu and Sobit, the children. The accused/convicts then ran away.

The Sessions Court convicted the three accused and imposed death penalty. Their conviction was based on documentary evidence.

The High Court confirmed the death sentences on Karan Singh (Accused No.1) and Kanwar Bahadur Singh (Accused No.2) while commuted the death sentence of Phool Singh (Accused No.3) into life imprisonment.

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196. Please refer to Annexure-I, Serial No. 81 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

197. Karan Singh and Anr. v. State of UP, AIR2006SC210

The Supreme Court affirmed the conviction and death sentences on Karan Singh and Kanwar Bahadur Singh. The Supreme Court observed-

*“We are unable to accept the contentions advanced by the Appellants’ counsel. The Appellants killed as many as five persons one by one and the nature of the injuries sustained by the deceased persons show that almost all of them were butchered with axes and other weapons in a very dastardly manner. The Appellants after killing three of them even went to the house of the deceased and killed the children who were in no way involved with the property dispute with the Appellants. It seems that the Appellants wanted to exterminate the whole family. On reappraisal of the entire facts and circumstances of the case, we are not inclined to commute the death sentences imposed on the Appellants Karan Singh and Kanwar Bahadur Singh. The sentences imposed on them are confirmed and the interim stay granted by this Court on 12.3.2004 on the execution of the sentence is hereby vacated.”*

The President commuted the death sentence to life imprisonment.<sup>198</sup>

#### **Case 5: Prajeet Kumar, Bihar<sup>199</sup>**

Accused/convict Prajeet Kumar Singh, a friend of son of the informant Pawan Kumar Thakur (PW-3) was staying with Mr. Thakur’s family at Supriya Road in Mirja Toli of Bettiah Town in Bihar as a paying guest since four years preceding the present incident. However, he failed to pay for several months and was liable to pay Rs. 4,000/- altogether as room rent as well as for food to Mr. Thakur. During the night of incident everyone, including the accused retired to their respective rooms after dinner. At night, Mr. Thakur and his wife heard the noise of crying from the second floor and they suspected that the children had been quarrelling. Both of them came down and saw that the accused/convict having picked up dab (dagger like weapon) from the house, had murdered their younger son Deepak Kumar, daughter Kiran Kumari and niece Pooja Kumari. He also attacked Mr. and Mrs. Thakur and their elder son Prakash Kumar using the same dab.

198. Please refer to Annexure-I, Serial No. 94 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

199. Prajeet Kumar v. State of Bihar, 2008(2)ACR1483(SC)



The accused/convict was charged under Section 302 of the IPC for committing triple murders and under Section 307, IPC for attempting to commit the murder of Mr. and Mrs. Thakur. The Session Court found him guilty of the offence under Section 302, IPC and sentenced him to death penalty. His conviction was based on accounts of eye-witnesses as well as documentary evidence.

The High Court of Patna confirmed the conviction and death sentence on the accused/convict holding that the facts and circumstances of the case fell under the purview of 'rarest of the rare case'.

Aggrieved with confirmation of his death sentence by the High Court the accused/convict preferred an appeal in the Supreme Court. The Supreme Court dismissed his appeal and affirmed the death sentence.

The apex court made the following observations-

*“20. In the present case, the accused-appellant was living as a family member of PW-3 and PW-2 and was provided with shelter and meals, although for a sum of Rs. 500/- per month, being a friend of PW-1. He lived with the family not for a month or two, but for a continuous period of four years. There does not appear to be any apparent provocation or reason for committing the ghastly brutal murder of three innocent defenceless children who were aged 8, 15 and 16 years. We can safely assume that the time at which the incident happened the children must be asleep and were not in a position to defend themselves. It has come in the evidence of PW-1, PW-2 and PW-3 that the accused-appellant had assaulted them when they were running here and there to save themselves. The medical evidence led by the prosecution indicates the brutality in the commission of crime. Several incised wounds were caused to the deceased persons. The victims apparently did not have any weapon with them. When PW-3 (informant) and PW-2 (his wife) on hearing the noise came down to find out the cause for it and entered the room, they were also brutally attacked without the slightest of consideration by the accused-appellant that he had lived with them for four years. Not only that, when his friend on whose account he was accommodated in the house reached the place of incident on hearing the noise of his brother and sisters, he was also attacked and seriously injured. It*

*is clear from the material placed on record by the prosecution that all these persons were unarmed and the accused- appellant was the only person in the room having the deadly weapon in his hand. He could have escaped from the place giving the threat to the persons without causing any harm to the witnesses, but he acted in a different manner. The enormity of the crime is writ large. The accused-appellant caused multiple murders and attacked three witnesses. Thus, all the members of the family who were present on that day in the house became the victims of the accused. The brutality of the act is amplified by the manner in which the attacks have been made on all the inmates of the house in which the helpless victims have been murdered, which is indicative of the fact that the act was diabolic of the superlative degree in conception and cruel in execution and does not fall within any comprehension of the basic humanness which indicates the mindset which cannot be said to be amenable for any reformation.”*

The President commuted the death sentence to life imprisonment.<sup>200</sup>

## **ii. Cases of murder due to enmity rejected by the President**

### **Case 1: Mahesh and Ram Narayan, Madhya Pradesh<sup>201</sup>**

The accused/convicts Ram Narayan and his son Mahesh were alleged to have committed five murders on 21.06.1984. The deceased were Puran Baraua, his wife, Narbad Bai, his mother, Mula Bai, his daughter Kumari Nanhi Bai and his neighbour Gulab.

According to the prosecution, Mahesh axed Narbadbai without any provocation from any member of her family. Thereafter, Puran was assaulted and axed by Mahesh. When the assault of these two persons, by the father and son, was on, the mother of Puran came from inside and questioned as to why they were doing this. She too was killed by giving her axe blows by the accused/convicts. When the neighbour Gulab asked the appellants as to why they were murdering these people, he was also axed to death by the accused/convicts. A young girl aged about 14 years standing near the bathing place at the corner of the house was also not spared. Mahesh gave her an axe blow,

200. Please refer to Annexure-I, Serial No. 95 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

201. Mahesh and Ram Narayan v. State of Madhya Pradesh (1987) 3 SCC 80

on receipt of which she fell down at some distance and died. The evidence further shows that the blood thirst of the accused/convicts was so intense that they knocked and tried to break open the door of the room where Nandram, P.W. 1 and his wife Savithri Bai, P.W. 2 were hiding to save themselves and they left the place only when the door could not be broken.

The trial court had convicted the accused under Section 302 of IPC and sentenced them to death. The High Court observed that the act of the accused/convicts “*was extremely brutal, revolting and gruesome which shocks the judicial conscience*”. On the quantum of punishment, the High Court noted, “*in such shocking nature of crime as the one before us which is so cruel, barbaric and revolting, it is necessary to impose such maximum punishment under the law as a measure of social necessity which work as a deterrent to other potential offenders*”.

The Supreme Court confirmed the death sentence. Sharing the concern of the High Court the Supreme Court observed,

*“We also feel that it will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justice system of this country suspect. The common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon. When we say this, we do not ignore the need for a reformative approach in the sentencing process. But here, we have no alternative but to confirm the death sentence”.*

The President rejected the mercy petition.<sup>202</sup>

### **Case 2: Sundar Singh, Uttarakhand<sup>203</sup>**

The incident in this case had taken place on 30.06.1989 in village Mahargheti, Patwari Circle Dangoli in Bageshwar District of Uttaranchal. In this ghastly incident, Pratap Singh, his wife Nandi Devi, his elder son Balwant Singh (aged about 28 years), another son Prem Singh (aged about 19 years),

202. Please refer to Annexure-I, Serial No. 49 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

203. Sundar Singh v. State of Uttarakhand (2010) 10 SCC 611

daughter Kamla (aged about 16 years) lost their lives while wife of Balwant Singh, namely, Vimla Devi (PW-1) sustained grievous burn injuries. Five victims who lost their lives including Balwant Singh were burnt alive and died either on the spot or while being taken to the hospital or in the hospital. The prosecution alleged that this incident took place at about 10 p.m. when all the victims were taking their dinner in the ground floor room of their house. The appellant/accused, Sundar Singh, came there with jerry can containing petrol and burning torch and threw the petrol in the room and after setting fire by torch, he shut the door of the room. Though Balwant Singh was in flames he managed to come out of the room by opening the door. However, as soon as he came out of the room, the accused who was still waiting there gave him a sword blow on the neck because of which he fell down dead outside the house. The other five family members who sustained severe burns also died barring Vimla Devi who alone survived.

On 30.06.2004, Sundar Singh was convicted by the Sessions Court under Sections 302, 307 and 436 IPC and sentenced to death. His conviction was based on oral and documentary evidence. On 20.07.2005, the High Court confirmed the death sentence passed by the trial Court. On 16.09.2010, the Supreme Court dismissed the appeal filed by Sundar Singh and affirmed his death sentence. The apex noted as below:

*“35. Considering all these cases, on the backdrop of the facts, which have taken place and provided in this case, it must be said that this is one of the rarest of the rare cases. Here is a case where the whole family is wiped out. Five persons have lost their life while the sixth person, a helpless lady, who has now been left to be the only member of the family, has to live her life with 70% burn injuries. The murder was committed in a cruel, grotesque and diabolical manner. When all the members of the family were having their food, the accused poured petrol in the room and set it to fire and went to the extent of closing the door also. He closed the door as established by Vimla Devi (PW-1) and Prem Singh in the dying declaration. This was the most fouled act, by which the accused actually intended to burn all the persons inside the room and precisely that had happened. Barring Vimla Devi (PW-1), everybody in that room was burnt with the exception of Balwant Singh, who somehow, was able to open the room and come out. Even he*

*was not spared and almost beheaded by the accused. It was clear that the accused had done this with pre-meditated and cold-blooded mind, as he had taken the trouble of carrying petrol to his own cousin's house. As if all this was not sufficient, he was also carrying a sword, and probably prepared himself to fire on the complainant party, as a pistol with two bullets in it was also found on the spot. The accused shown extreme depravity of mind in causing a sword blow on the neck of Balwant Singh, who himself was burnt and was trying to escape. A murder by burning, by itself, would be a very cruel act. The agony caused to the dying witnesses because of their burn injuries would be enormous. Again, when it is seen that there was no immediate provocation to the accused and all this only was on account of the enmity going on in respect of the family lands, the enormity of the crime is increased by many folds. The accused showed scant respect for the law by remaining absconding for about 12 years and only because of that he could not be brought to books. It is only his accidental arrest and being lodged in other jail that the prosecuting agency was able to prosecute him. Out of the five persons who lost their life, Kamla was barely 16 years old while Prem Singh was 19 years old only. Their life was nipped in bud. Both the ladies who lost their life, as also the other three persons who lost their life were without any arms and were helpless. They could not have even saved themselves and did succumb to the burn injuries. The balance sheet of the aggravating circumstances thus exceeds the mitigating circumstances. In fact, there is no mitigating circumstance in this case. The age is not on the side of the accused. We cannot appreciate the argument that it was only a rash act on the part of the accused without an intention to commit the murder. That does not appear to be the case at all. Pouring of the petrol extensively would rule out the intention on the part of the accused only to burn the house. Again, his act of closing the door after setting the house to fire, would speak completely against him. Insofar as the other circumstance of the accused remaining under the shadow of death sentence right from 2004 is concerned, we do not think that that circumstance, by itself, is sufficient to mitigate his horrible crime as the time factor is identical with the case of Atbir vs. Govt. of NCT of Delhi (cited supra)."*

The President rejected the mercy petition. Subsequently a three judge bench of the Supreme Court comprising Chief Justice P. Sathasivam and Justices

Ranjan Gogoi and Shiva Kirti Singh, by judgment dated 21.01.2014, granted clemency to Sundar Singh on ground of mental illness.<sup>204</sup>

#### 7.2.4. Cases of murder by relatives

In most cases of this kind, the President rejected the mercy petitions of the death-row convicts. Mercy petition of – one death-row convict<sup>205</sup> in *Praveen Kumar v. State of Karnataka*, two death-row convicts<sup>206</sup> in *Ram Singh v. Sonia and Ors* and one death-row convict<sup>207</sup> in *Suresh Chandra Bahri v. State of Bihar*, two death-row convicts<sup>208</sup> in *Asharfi Lal and Sons v. State of U.P.*, one death-row convict namely Raj Gopal Nayar from Jammu & Kashmir<sup>209</sup>, one death-row convict<sup>210</sup> in *Surja Ram v. State of Rajasthan* and two death-row convicts<sup>211</sup> in *Suresh and Anr. v. State of U.P.* have been rejected.

However, in a few similar cases, the President commuted the death penalty of death-row convicts in *Atbir v. Govt. of NCT of Delhi*<sup>212</sup> and Jai Kumar in *Jai Kumar v. State of M.P.*<sup>213</sup> into life imprisonment.

#### i. Cases of murder by relatives rejected by the President

##### Case 1: Praveen Kumar, Karnataka<sup>214</sup>

Accused Praveen Kumar is the son of the brother of one of the deceased Smt. Appi Sherigarthy. About 3 years prior to the date of the incident the appellant used to stay with said Appi in her house at Vamanjur, Mangalore

204. *Shatrughan Chauhan v. Union of India* [(2014) 3 SCC 1]

205. Please refer to Annexure-II, Serial No. 9 “Statement of Mercy Petition Cases-Rejected” by the President of India

206. Please refer to Annexure-II, Serial No. 12 “Statement of Mercy Petition Cases-Rejected” by the President of India

207. Please refer to Annexure-I, Serial No. 69 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

208. Please refer to Annexure-I, Serial No. 53 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

209. See *Smt. Shashi Nayar v. Union of India* 1992 AIR 395

210. Please refer to Annexure-I, Serial No. 72 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

211. Please refer to Annexure-I, Serial No. 104 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

212. Please refer to Annexure-II, Serial No. 1, “Statement of Mercy Petition Cases-Commuted” by the President of India

213. Please refer to Annexure-I, Serial No. 85 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

214. *Praveen Kumar v. State of Karnataka* (2003) 12 SCC 199

Taluk, doing tailoring work. After his marriage, the petitioner shifted his residence to his native place namely Uppinangadi. Said deceased Smt. Appi had 3 sons and 3 daughters. Her one daughter Shakuntala and her daughter i.e. the grand-daughter of Appi by name Deepika were staying with said Appi while Shakuntala's husband Jayantha PW-7 was employed at Muscat. Appi's another son Govinda was also staying with her.

He was charged with murdering his aunt Appi, her son Govinda, her daughter Sakuntala and her minor grand-daughter Deepika.

During the course of investigation it came to the notice of the Investigation Officer that Praveen Kumar was a visitor to the house of deceased. He was apprehended and on interrogation, he made a voluntary disclosure statement wherein he stated that if taken to the place concerned he would show where he had hidden the ornaments, cash and the weapons used in the crime. On the next morning, he led the investigation officer and the panch (independent witnesses) to his house where he led them to a bamboo bush located in a hillock in the areca garden belonging to his father. He allegedly took out a bundle tied in a kerchief containing jewellery. He also led them to a place wherefrom he took out the sickle used in the attack on the victims.

The Principal Sessions Judge, Dakshina Kannada, Mangalore by her judgment dated 4.2.2002 in Sessions Case No. 64 of 1994 found Praveen Kumar guilty of offences punishable under Sections 302 and 392 read with Section 397 IPC and awarded the extreme penalty of death for the offence under Section 302 IPC.

The High Court by a common judgment dated 28.10.2002 while dismissing the criminal appeal of the accused/convict accepted the reference and confirmed the death sentence awarded to accused/convict by the trial court.

Aggrieved by the impugned judgment of the High Court, the accused/convict preferred an appeal before the Supreme Court. The Supreme Court dismissed the appeal and affirmed the conviction and sentence imposed by the trial court and confirmed by the High Court. Affirming the death penalty, the Supreme Court made the following observations-

*“We have independently considered the facts of the case and find no reason whatsoever to differ from the view taken by the two courts below even in regard to the quantum and nature of sentence. The appellant was a middle-aged person at the time of the crime and should be attributed with sufficient knowledge of the consequences of his act. The act in question cannot be construed as an act of revenge or arising out of a situation where in the appellant was constrained to commit murders. Hardly 3 years before the incident in question, Appi the aunt of the appellant had accommodated him in her house despite her large family and gave him an opportunity in life to make an honest living as a tailor. He left the house of Appi not out of any misunderstanding or disappointment but because of his marriage and shifted his residence to his parent village of Uppinangadi wherefrom also he moved out to Mangalore to eke out his living as a tailor. The appellant has only himself to blame for his financial losses which was as could be seen from the records, due to his addiction to alcohol as also his gambling habits and it is because of this he had to incur loans and as alleged by the prosecution it is for satisfying his addiction, he planned to rob the family of the victims even at the cost of their lives. In the process he did not even bother to spare the life of a young child. As noted by the trial court the conduct of his in absconding from judicial custody for nearly 4 years, also indicates the fact that the possibility of any rehabilitation is nil. The act of murder of 4 innocent sleeping victims without any provocation whatsoever from the victims’ side indicates cold-blooded, premeditated approach of the appellant to attain his goals, however illegal the same may be. In such circumstances we are in agreement with the courts below that the only sentence that would befit the facts of this case is that of extreme penalty of death which was rightly imposed by the trial court after due consideration and affirmed by the High Court also after independent consideration of the entire facts of the case.”*

The accused/petitioner filed mercy petitions before the Governor as well as the President. Both his mercy petitions were rejected. While the Governor rejected on 15.09.2004; the President rejected on 26.03.2013. However, the Supreme Court vide judgment and order dated 21.01.2014, commuted the death sentence to life imprisonment on the ground of delay in disposal of the mercy petition of the petitioner.<sup>215</sup>

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



**Case 2: Sonia and Sanjeev, Haryana<sup>216</sup>**

The accused Sonia and Sanjeev were charged with murder of Relu Ram [father], Krishna [mother], Sunil [brother], Shakuntala [sister-in-law], Priyanka @ Pamma [sister], Lokesh [nephew] and Shivani and Preeti [nieces] on 23<sup>rd</sup>/24<sup>th</sup> August 2001. Witnesses stated that about six months prior to the murder, Sonia with an intention to kill deceased Sunil had also fired a shot from the licensed gun of deceased Relu Ram over a dispute over property, but the matter was hushed up in the house.

On 27.05.2004, Sonia and Sanjeev were convicted for the offence punishable under Section 302 IPC and sentenced to death by the trial Court. Their conviction was based on circumstantial evidence. 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 the Supreme 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, the Supreme Court upheld their conviction and restored the death sentence imposed on them by the trial Court.

Both filed mercy petitions before the Governor and the President and the same were rejected on 31.10.2010 and 29.06.2013 respectively. However, a three-judge Bench of the Supreme Court comprising Chief Justice P. Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh, vide judgment and order dated 21.01.2014 commuted the death sentence to life imprisonment on the ground of undue delay in the disposal of the mercy petition. The Supreme Court also noted that due to unbearable mental agony after confirmation of death sentence, one of the convicts attempted to commit suicide.<sup>217</sup>

**Case 3: Suresh Chandra Bahri, Bihar<sup>218</sup>**

According to the prosecution the accused Suresh Bahri, Raj Pal Sharma and Gurbachan Singh killed deceased Urshia Bahri and her two children. The motive behind the murder of Urshia Bahri and her two children was said to be the strained relations and differences between the deceased Urshia

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216. Ram Singh v. Sonia and Ors (2007) 3 SCC 1

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

218. Suresh Chandra Bahri v. State of Bihar, AIR1994SC2420

and her husband, the appellant Suresh Bahri and her mother-in-law, Smt. Santosh Bahri which had developed on account of the firm determination of the deceased Urshia Bahri to dispose of the house No. 936 situated on the Station Road, Ranchi and migrate along with her two children to America where her parents were already settled because her life and that of her two children had become miserable due to the mental and physical torture caused by Suresh Bahri, his mother Santosh and Maternal uncle Y.D. Arya.

Vide judgment dated 27.07.1990 in Sessions Trial No. 77/85 the Additional Judicial Commissioner, Ranchi convicted the accused/convicts Suresh Bahri, Raj Pal Sharma and Gurbachan Singh under Section 302 IPC for causing murder of Urshia Bahri and her two children, namely, Richa Bahri and Saurabh Bahri.

The trial court made a reference to the High Court of Patna, Ranchi Bench under Section 366 of the CrPC for confirmation of the sentence of death and at the same time the three accused/convicts also preferred separate criminal appeals No. 142, 143 and 152 of 1990 challenging their convictions under Sections 302/120-B and 201 IPC. The High Court of Patna (Ranchi Bench) dismissed the three appeals preferred affirming the sentences awarded to them and accepted the death reference by judgment dated 16.12.91.

The Supreme Court dismissed the appeal filed by Suresh Chandra Bahri and affirmed the death sentence imposed on him by the trial court while the appeals of Raj Pal Sharma and Gurbachan Singh were partly allowed and death sentence imposed on them was reduced to life imprisonment.

The President rejected the mercy petition.<sup>219</sup> Suresh Bahri was executed on 12.06.1995.<sup>220</sup>

#### **Case 4: Asharfilal and Sons, Uttar Pradesh<sup>221</sup>**

There was long drawn litigation between Smt. Bulakan, widow of their paternal cousin on the one hand and accused Asharfi Lal and Babu on the

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219. Please refer to Annexure-I, Serial No. 69 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

220. No one hanged till death after 1995, The Times of India, 27 April 2011, <http://timesofindia.indiatimes.com/city/patna/No-one-hanged-till-death-after-1995/articleshow/8101436.cms>

221. Asharfilal and Sons v. State of Uttar Pradesh (1987) 3 SCC 224

other hand in respect of certain agricultural property. The last of the series of the litigation was a proceeding initiated under Section 145 of the CrPC, 1973 on a report made by Smt. Bulakan, PW 1. To wreak their vengeance, the accused/convict affected an entry on the night between August 13/14, 1984 into the courtyard of the adjoining house where the three ladies were sleeping on three different cots. Smt. Bulakan stated that she woke up hearing the shrieks of her younger daughter Kumari Sumati and found that one of the accused, Mata Badal, was perched over the lower part of the body of Kumari Sumati pressing down her legs while another accused, Babu, repeatedly struck her with a gandasa and severed her neck. The girl died almost instantaneously, her head hung down the cot partially attached to the neck. Smt. Bulakan further deposed that Asharfi Lal struck her other daughter Kumari Kalkanta on the neck and face with a banka while another accused, Hemraj, chopped off the right hand of the girl with a gandasa. She also shrieked and another accused, Ganga Prasad, struck her on the face and upper part of the body with a gandasa. She ran from her house through the village abadi and fell down near the house of Kandhai, PW 2, which was some 30-40 paces away. She narrated the incident to Kandhai who immediately ran and informed Bhagwati Prasad Pandey, PW 3 who resided some 200 paces away. The Village Pradhan Bhagwati Prasad Pandey, PW 3 accompanied by some of the villagers arrived at the house of Smt. Bulakan and saw the deceased Kumari Sumati lying dead on the cot and Kumari Kalkanta lying unconscious in a pool of blood on another cot. She subsequently died in the hospital.

The 1st Additional Sessions Judge, Barabanki by his judgment dated 23.08.1985 convicted the two accused Asharfi Lal and Babu under Section 302 of the IPC on two counts of murder and awarded them capital punishment.

The High Court by its judgment dated August 11, 1986 concurred with the findings of the Additional Sessions Judge and confirmed the conviction and sentences awarded to the accused. In affirming the sentence of death imposed on the two accused/convicts Asharfi Lal and Babu, the High Court observed that on a careful consideration of the entire material, the facts and circumstances and the applicable law, it was satisfied that this was one of the rarest of the rare cases where death penalty is the only appropriate sentence which ought to be imposed on them.

Before the Supreme Court, the counsel for the accused/convicts argued mainly on the question of sentence but could not convince the apex court for lesser punishment. The apex court held that the two accused/convicts Asharfi Lal and Babu were guilty of a heinous crime out of greed and personal vengeance and deserves the extreme penalty. The apex court noted-

*“This case falls within the test ‘rarest of the rare cases’ as laid down by this Court in Bachan Singh vs. State of Punjab. The Court observed that the punishment must fit the crime. These were cold-blooded brutal murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocks the judicial conscience. Failure to impose a death sentence in such grave cases where it is a crime against the society particularly in cases of murders committed with extreme brutality will bring to naught the sentence of death provided by S. 302 of the Penal Code. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment. The only punishment which the appellants deserve for having committed the reprehensible and gruesome murders of the two innocent girls to wreak their personal vengeance over the dispute they had with regard to property with their mother Smt. Bulakan is nothing but death. As a measure of social necessity and also as a means of deterring other potential offenders the sentence of death on the two appellants Asharfi Lal and Babu is confirmed.”*

The President rejected the mercy petition.<sup>222</sup>

### **Case 5: Raj Gopal Nayar, Jammu and Kashmir<sup>223</sup>**

The death row convict, Raj Gopal Nayar, was tried for offence under Section 302 IPC for having killed his father and step brother.

The Sessions Judge by his judgment and order dated 24.04.1986 convicted Raj Gopal Nayar and awarded sentence of death. The High Court confirmed the death penalty and dismissed Raj Gopal’s appeal against the order of the Sessions Judge. Thereafter, the death-row convict filed a special leave petition

222. Please refer to Annexure-I, Serial No. 53 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

223. See Smt. Sashi Nayar v. Union of India 1992 AIR 395

before the Supreme Court challenging the judgment and order of the Sessions Judge and the High Court, but the special leave petition was dismissed. Review petition filed by him was also dismissed.

He filed mercy petitions before the Governor of Jammu & Kashmir and the President of India, but the same were rejected.<sup>224</sup>

**Case 6: Surja Ram, Rajasthan<sup>225</sup>**

The accused and his two brothers Dalip Ram and the deceased Raji Ram was living in one compound (Ahata) in their respective residential unit. There had been partition of joint property amongst the brothers. On such partition, the accused and Dalip Ram each got 13 killa of land and the deceased Raji Ram got 14 killa. There was some land dispute amongst the brothers about 6 to 7 months prior to the incident of murder but such dispute was stated to have been sorted out at the intervention of Sarpanch Chandra Pal. About 5 or 6 days prior to the incident, the accused expressed the desire to erect wire fencing in the compound but the deceased Raji Ram protested against such proposal.

According to the prosecution, on 07.08.1990 at about 9.00 P.M., the members of the family of the deceased Raji Ram retired after taking their dinner. The informant Dalip Ram, who is the other brother of the deceased and the wife of Dalip Ram were sleeping in their courtyard. Raji Ram and his two sons Naresh and Ramesh were sleeping in the outer room of his residential unit. Raji Ram's wife Phoola Devi, her daughter Sudesh and Raji Ram's father's sister Niko Bai were sleeping in their courtyard. In the courtyard of Surja Ram the wife of the accused Imarti was also sleeping. After taking meal, the appellant went out of the house. At about 12.30 A.M., Dalip Ram heard the cries of Sudesh, when he came out, he saw in the light that the accused Surja Ram was standing with a kassi in his hand and was assaulting Sudesh. Dalip Ram and the wife of the accused Imarti challenged the accused and he had run away. Sudesh has suffered severe injuries on her neck and she fell down in the courtyard and Niko and Phoola were also found lying seriously injured.

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224. 1992()ACR110(SC)

225. Surja Ram v. State of Rajasthan, AIR1997SC18

Niko was, however, found dead and Phoola was gasping for life. When Dalip Ram went inside the room, he found that Raji Ram and his son Naresh were lying dead and the other son Ramesh though alive, was critically injured. The said Ramesh, however, died shortly thereafter and Sudesh and Phoola were taken in a jeep and admitted in the hospital at Sangaria. On being treated in the hospital both of them survived.

The accused Surja Ram was convicted by the Additional Sessions Judge, Hanumangarh in Sessions Trial No. 28 of 1991 for the offence under Section 302 IPC for murdering his real brother Raji Ram's two sons Naresh and Ramesh and Niko Bai their Bua, and for an offence under Section 307 IPC for attempting to murder Sudesh, the daughter of Raji Ram and Phoola Devi the wife of Raji Ram. The Additional Sessions Judge awarded death sentence to Surja Ram for the offence of murder. He was also sentenced to suffer imprisonment for life.

Against the convictions and sentences, accused Surja Ram preferred appeals before the Rajasthan High Court (Jodhour Bench). The said appeals were heard along with D.B. Criminal Murder Reference No. 1 of 1995 and by the impugned common judgment dated 18.01.1996 the High Court dismissed both the appeals and confirmed the death sentence passed against him.

Aggrieved by the judgment of the High Court, the accused/convict filed a SLP before the Supreme Court. He also sent another special leave petition from Jail to the Registry of the Supreme Court which was numbered as D. No. 1007 of 1996. His SLP was dismissed by the apex Court. The Supreme Court held that the crime committed by the accused falls in the category of rarest of rare cases for which extreme penalty of death was fully justified. The court therefore declined to interfere with the sentence of death awarded by the trial against the appellant since confirmed by the High Court.

The President rejected the mercy petition.<sup>226</sup> The convict was hanged in 1997 and later the Supreme Court admitted that the convict was wrongly sentenced!<sup>227</sup>

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226. Please refer to Annexure-I, Serial No. 72 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

227. See '477 on death row, 14 pleas with Prez', The Tribune, 25 November 2012, at: <http://www.tribuneindia.com>.

**Case 7: Suresh and another, Uttar Pradesh<sup>228</sup>**

On the night of 05.10.1996 Suresh (A-1) along with his brother-in-law Ramji (A-2) brutally murdered his brother Ramesh, his sister-in-law Ganga Devi, and their three minor children. One of the four children, seven year old Jitender who witnessed the whole incident, survived the bloody attack. The accused duo allegedly attacked the five deceased with axe and choppers one after another and killed them on the spot. The lone survivor Jitendra had three incised wounds on the scapular region. The motive for the carnage was the greed for a bit of land lying adjacent to the house compound of the deceased which A-1 Suresh claimed to be his. But deceased Ramesh clung to that land and it resulted in burgeoning animosity in the mind of Suresh which eventually grew alarmingly wild.

The accused were convicted under Section 302 IPC and sentenced to death. The conviction was based on testimony of eye-witness and corroboration by other witnesses and evidences on record.

The Allahabad High Court confirmed their conviction and death sentence. Aggrieved by the impugned judgment of the High Court, both accused preferred appeals in the Supreme Court. The Supreme Court upheld the confirmation of conviction of A-1 and A-2. Responding to the appeal for commutation of the death sentence, the Supreme Court held as under-

“..... Even after bestowing our anxious consideration we cannot persuade ourselves to hold that this is not a rarest of rare cases in which the lesser alternative is unquestionably foreclosed.”

Both accused filed mercy petitions to the Governor and President of India and the same were rejected. The death-row convicts authorized their family members, viz. Shatrughan Chauhan and Mahinder Chauhan to file an urgent writ petition in the Supreme Court, which was ultimately numbered as Writ Petition (Crl.) No. 55 of 2013. By order dated 06.04.2013, the Supreme Court stayed the execution of the petitioners. A three-judge Bench of the Supreme Court comprising Chief Justice P. Sathasivam and Justices Ranjan

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com/2012/20121125/kal.htm#3

228. Suresh and Anr. v. State of U.P., AIR2001SC1344

Gogoi and Shiva Kirti Singh commuted the death sentence of both death-row convicts into life imprisonment holding that undue and unexplained delay in execution is one of the supervening circumstances. The Court held that there was a delay of 12 years in disposal of their mercy petitions.<sup>229</sup>

## **ii. Cases of murder by relatives commuted by the President**

### **Case 1: Atbir, Delhi<sup>230</sup>**

Atbir, son of Jaswant Singh, is a resident of Delhi. Jaswant Singh had married accused Chandra @ Chandrawati and from the said wedlock, three children, namely, Satbir, Atbir and Anju were born to them. Thereafter, Jaswant Singh married Sheela Devi, the deceased and from their wedlock, one daughter Sonu @ Savita and one son Manish @ Mannu - the deceased, were born. Sheela Devi - the 2nd wife of Jaswant Singh was staying at Mukherjee Nagar, Delhi, with her children. They were having dispute over the division of their properties.

As per statement of Savita, who succumbed to her injuries at Hindu Rao Hospital, on 22.01.1996 Chandra @ Chandrawati her step-mother, along with her son Atbir, one Ashok, an accused and another person whose name she did not know entered their house and demanded money from her mother Sheela Devi but she refused. Accused persons bolted the doors from inside and Atbir took out a knife and stabbed Manish @ Mannu, who was held by Chandra @ Chandrawati, Ashok and another. Thereafter, Atbir stabbed Sheela Devi and then Sonu @ Savita with knife. On the above statement, a case under Sections 307 and 302 of the Indian Penal Code was registered at Mukherjee Nagar Police Station and investigation started. On 24.01.1996, Sonu @ Savita succumbed to her injuries and died at Hindu Rao Hospital.

On 12.08.1997, a charge under Section 302 IPC read with Section 34 IPC was framed against accused Atbir, Ashok and Chandra @ Chandrawati. On 24.08.1999, on filing a supplementary challan against accused Arvind, the charge was re-framed against all the accused persons, namely, Atbir, Ashok, Arvind and Chandra @ Chandrawati by the Court of Additional Sessions

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

230. Atbir v. Govt. of NCT of Delhi, AIR2010SC3477



Judge, to which they pleaded not guilty and claimed trial. Prosecution examined as many as 41 witnesses and their statements were recorded. The Additional Sessions Judge, vide order dated 27.09.2004, convicted Atbir with death penalty and Ashok with life imprisonment but acquitted Arvind. The accused Chandra @ Chandrawati remained absconding. Their conviction was based on oral and documentary evidence

Being aggrieved by the order of the Additional Sessions Judge, Delhi, the accused-convicts filed appeals before the High Court. The Sessions Court also sent Death References to the High Court. The High Court, by the impugned judgment and order dated 13.01.2006, confirmed the conviction and sentence as awarded by the Additional Sessions Judge.

Against the said judgment, the accused-appellants preferred appeals by way of special leave before the Supreme Court. The Supreme dismissed the appeals and confirmed the convictions and sentences as imposed by the trial court and confirmed by the High Court. The Supreme Court judgment, inter alia, stated –

*“33. After analyzing all the relevant materials let in by the prosecution and in the light of the well established principles including aggravating and mitigating circumstances as laid by the Constitution Bench in Bachan Singh’s case (supra) and explained in Machhi Singh’s case (supra), we conclude the murders committed by Atbir is extremely brutal and diabolical one. The cold blooded murder is committed with deliberate design in order to inherit the entire property of Jaswant Singh without waiting for his death. The magnitude of the crime is also enormous in proportion since Atbir, with the assistance of his mother and brother, committed multiple murders of all the members of the family. Apart from this, the victims are none else than his step-mother, brother and sister. The victims are innocent who could not have or has not provided even an excuse much less a provocation for murder. Further, the victims were unaware of the sudden entry of Atbir and others and after bolting the door from inside, they have no other way to go out or resist except subjecting themselves to the wishes of Atbir. Though the accused Atbir was also at the age of 25 at the relevant point of time considering his hunger and lust for property killing his own family members when they had no occasion to provoke or resist and causing 37 knife blows on vital parts of all the three persons, we conclude that it is a gravest case of extreme*

*culpability and rarest of rare case and death sentence alone would be proper and adequate. We have already noted that the accused had no justifiable ground for his action. We are also satisfied that the victims were helpless and undefended. Taking into consideration of all the facts and materials, it is crystal clear that the entire act of Atbir amounts to a barbaric and inhuman behaviour of the highest order. The manner in which the murder was carried out in the present case is extremely brutal, gruesome, diabolical, and revolting as to shock the collective conscience of the community.”*

The President commuted the death sentence to life imprisonment on 15.11.2012.<sup>231</sup>

### **Case 2: Jai Kumar, Madhya Pradesh<sup>232</sup>**

At about 11.00 pm during the night of 07.01.1997, at village Rakri Tola, Tikuri, District Rewa, Madhya Pradesh, the accused entered the house and bolted from outside his mother's room and thereafter removed certain bricks from the wall and 'choukat' to enter into the room where his sister-in-law (deceased) was sleeping along with her daughter and allegedly tried to rape her. On resistance by the sister-in-law, the accused murdered his sister-in-law and her 8 years-old daughter. The evidence on record depicted that the accused committed the murder of his sister-in-law at about 11.00 p.m. by *Parsul* blows and then kulhari (tanga) blows on her neck by severing her head from the body and taking away her 8 years old daughter Renu and killing her in a jungle by axe blows and said to have offered sacrifice to Mahuva Maharaj and burying her in the sand covered with stones and thereafter that the accused comes back home and carry the body of the deceased sister-in-law tied in a cloth to the jungle and hung the head being tied on a branch with the hairs and put the body, on the trunk of a Mahua tree.

The trial court convicted the accused for murder and awarded death sentence to him. His conviction was based on oral and documentary evidence. A Division Bench of the Madhya Pradesh High Court at Jabalpur confirmed the conviction and the death sentence on the accused.

231. Please refer to Annexure-II, Serial No. 1, "Statement of Mercy Petition Cases-Commuted" by the President of India

232. Jai Kumar v. State of M.P. AIR1999SC1860

Aggrieved by the High Court decision, the accused-convict preferred an appeal in the Supreme Court. The Supreme Court dismissed the appeal of the accused and declined to interfere with the judgment and order of the High Court which confirmed the conviction and death sentence awarded by the Trial court. Dismissing the appeal of the accused-appellant, the Supreme Court made the following observations-

*“25. The facts establish the depravity and criminality of the accused in no uncertain terms. - No regard being had for precious life of the young child also. The compassionate ground of the accused being of 22 years of age cannot in the facts of the matter be termed to be at all relevant. The reasons put forth by the learned Sessions Judge cannot but be termed to be unassailable. The learned Judge has considered the matter from all its aspects and there is no infirmity under Section 235(2) or under 354(3) of Code ....*

*26. In the present case, the savage nature of the crime has shocked our judicial conscience. The murder was cold-blooded and brutal without any provocation. It certainly makes it a rarest of the rare cases in which there are no extenuating or mitigating circumstances.”*

The President commuted the death sentence to life imprisonment.<sup>233</sup>

### **7.2.5. Cases of rape and murder of minor girls**

The decisions of the President differed in mercy petitions by the death-row prisoners convicted in cases of rape and murder of girls. The President commuted the death penalty of Santosh and Molai Ram<sup>234</sup> in *Molai and Anr. v. State of Madhya Pradesh*, Satish<sup>235</sup> in *State of U.P. v. Satish*, and Bantu<sup>236</sup> in *Bantu v. State of U.P.*

Whereas in similar cases of rape followed by murder, the President declined

233. Please refer to Annexure-I, Serial No. 85 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

234. Please refer to Annexure-I, Serial No. 83 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

235. Please refer to Annexure-I, Serial No. 93 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

236. Please refer to Annexure-I, Serial No. 98 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

to commute the death penalty of Jumman Khan<sup>237</sup> in *Jumman Khan v. State of UP*, Laxman Naik<sup>238</sup> in *Laxman Naik v. State of Orissa* and Shivu and Jadeswamy<sup>239</sup> in *Shivu and Anr. v. R.G. High Court of Karnataka and Anr.*

### **i. Cases of rape and murder of minor girls commuted by the President**

#### **Case 1: Molai and another, Madhya Pradesh<sup>240</sup>**

The incident in question took place on 20.02.1996 between 10 and 11 am Santosh (Accused-1), a prisoner who was undergoing an imprisonment term and Molai Ram (Accused-2) who was posted as a guard in the central jail allegedly committed rape and murder of the deceased Naveen, 16-year-old daughter of Mr. R.S. Somvanshi (PW 6) who was posted as an Assistant Jailor at Central Jail, Reeva in Madhya Pradesh at his official quarter inside the jail complex. At the time of the crime the deceased was alone at home while other family members went out for their respective work. The Accused-2 was deputed by the deceased's father to do some domestic work at his quarter while Accused-1 was asked to work at the garden near the quarter. It was alleged that finding the deceased alone at home the two accused persons committed rape on her and then killed her.

The Additional Sessions Judge, Reeva convicted the accused-appellants for offences punishable under Sections 376(2)(g), 302/34 and 201 of the Indian Penal Code and sentenced both of them to death. Their conviction was based on circumstantial evidence and recovery of dead body and other incriminating articles at the instance of the accused-appellants.

The High Court of Madhya Pradesh vide its judgment and order dated 09.12.98 upheld the conviction and confirmed death sentence of both the accused. The Supreme Court upheld the conviction of the appellants on all counts as well as the death sentence as awarded by the trial court and confirmed by the High Court. The Supreme Court judgment stated-

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237. Please refer to Annexure-I, Serial No. 47 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

238. Please refer to Annexure-I, Serial No. 65 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

239. Please refer to Annexure-II, Serial No. 14, "Statement of Mercy Petition Cases-Rejected" by the President of India

240. *Molai and Anr. v. State of Madhya Pradesh* (1999) 9 SCC 581

*“We have very carefully considered the contentions raised on behalf of the parties. We have also gone through various decisions of this Court relied upon by the parties in the courts below as well as before us and in our opinion the present case squarely falls in the category of one of the rarest of rare cases, and if this be so, the courts below have committed no error in awarding capital punishment to each of the accused. It cannot be overlooked that Naveen, a 16 year old girl, was preparing for her 10<sup>th</sup> examination at her house and suddenly both the accused took advantage of she being alone in the house and committed a most shameful act of rape. The accused did not stop there but they strangled her by using her under-garment and thereafter took her to the septic tank along with the cycle and caused injuries with a sharp edged weapon. The accused did not even stop there but they exhibited the criminality in their conduct by throwing the dead body into the septic tank totally disregarding the respect for a human dead body. Learned Counsel for the accused (appellants) could not point any mitigating circumstances from the record of the case to justify the reduction of sentence of either of the accused. In a case of this nature, in our considered view, the capital punishment to both the accused is the only proper punishment and we see no reason to take a different view than the one taken by the courts below.”*

The President commuted the death sentence.<sup>241</sup>

### **Case 2: Satish, Uttar Pradesh<sup>242</sup>**

On 16.08.2001 the victim who was little above five years had gone to school and did not return at the usual time. On the next morning her dead body was found in the Sugarcane field of one Moolchand around 6.00 am. She was lying dead and blood was oozing from her private parts and there were marks of pressing on her neck. Report was lodged at the nearby Police Station and the dead body was sent for post mortem examination.

Three persons claimed to have seen the accused near the place of occurrence between 1.00 pm to 2.00 pm on the date of occurrence. Two of them claimed

241. Please refer to Annexure-I, Serial No. 83 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

242. State of U.P. v. Satish (2005) 3 SCC 114

to have seen the deceased being carried on a bicycle by the accused. One of the two witnesses further stated about seeing the accused in perplexed state around 2.00 p.m. near the place from where the dead body of deceased was found.

The trial Court convicted the accused under Sections 363, 366, 376(2), 302 and 201 of the IPC and held that crime committed by the accused fell under rarest of rare category. Death sentence was imposed for the offence under Section 302 IPC along with various custodial sentences and fines for other offences. His conviction was based on circumstantial evidence

The trial court made reference to the High Court for confirmation in terms of Section 366 of CrPC while the accused also preferred an appeal before the High Court. Both the capital sentence reference and the criminal appeal were heard together. By the impugned judgment the High Court set aside the judgment of conviction. It was held that the case rested on circumstantial evidence and the circumstances highlighted by the prosecution did not inspire confidence.

The State of Uttar Pradesh preferred an appeal against the High Court decision. On appreciation of the evidence, the Supreme Court set aside the judgment of the High Court and restored the judgment of the trial court. The Supreme Court held as under:

*“32. Considering the view expressed by this Court in Bachan Singh’s case (supra) and Machhi Singh’s case (supra) we have no hesitation in holding that the case at hand falls in rarest of rare category and death sentence awarded by the trial Court was appropriate. The acquittal of the respondent-accused is clearly unsustainable and is set aside. In the ultimate result, the judgment of the High Court is set aside and that of the trial Court is restored.”*

The President commuted the death sentence to life imprisonment.<sup>243</sup>

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243. Please refer to Annexure-I, Serial No. 93 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

**Case 3: Bantu, Uttar Pradesh<sup>244</sup>**

The incident in this case dates back to 04.10.2003 which happened in Basao Khurd village under Tajganj Police station area of Agra District in Uttar Pradesh. The victim was a girl of about 5 years. According to the prosecution case, there was “Devi Jagran” at the house of Chandrasen alias Taplu (PW 3) in village Basai Khurd in the eventful night. A number of persons of the locality had assembled there. The informant - Naresh Kumar (PW2) along with his brother Vishal and niece Vaishali, the deceased, had also gone there. Around 9 pm the accused Bantu, a neighbour of the informant reached there. Exhibiting playful and friendly gestures with Vaishali with whom he was familiar before because of neighborhood, enticed her away on the pretext of giving her a balloon. Several persons including Naresh Kumar (PW 2) and Nand Kishore (PW 6) saw him going away with the girl from the place of “Devi Jagran”. When Vaishali did not return for a long time, a frantic search was made to trace her out by the members of the family. Chandrasen alias Taplu (PW 3) and Sanjiv son of Daulat Ram informed them that they had seen the accused Bantu going with Vaishali hoisted on his waist towards the pond. Around 9.30 PM they reached near the field of one Dharma in which grown up Dhaincha plants were there. With the help of torches they saw that the accused Bantu was thrusting a stem/stick of Dhaincha in the vagina of Vaishali having thrown her down. An alarm was raised by them and Bantu was caught red handed in completely naked state. Vaishali was lying on the ground unconscious with a part of stem of Dhaincha inserted in her vagina. She was bleeding profusely. She had other injuries also on her person and was not responding at all. She was instantly rushed to S.N. Medical College, Agra where the doctors pronounced her to be dead. Upon interrogation, the accused Bantu allegedly admitted that after committing the rape he inserted stem/stick in her vagina to murder her.

In the opinion of the doctor, the death was caused due to shock and hemorrhage as a result of ante mortem injuries due to insertion of the wooden stick into the vagina of the deceased.

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244. Bantu v. State of U.P. (2008)11SCC113

The Additional Sessions Judge, Agra convicted the accused and sentenced him to ten years rigorous imprisonment under Section 364 IPC; life imprisonment under Section 376 IPC and death penalty under section 302 IPC. His conviction was based on oral and documentary evidences.

The Allahabad High Court confirmed the death penalty and other sentences awarded by Additional Sessions Judge, Agra. The High Court also observed that in order to camouflage the serious kind of rape in a planned manner and after committing rape he mercilessly inserted wooden stick deep inside the fragile vagina of the girl to the extent of 33cms to cause her death, with a view to masquerade the crime as an accident.

The Supreme Court also affirmed the death penalty of the accused as confirmed by the High Court and awarded by the Trial Court. Dismissing the appeal of the accused-appellant, the apex held as under:

*“38. The case at hand falls in the rarest of rare category. The depraved acts of the accused call for only one sentence that is death sentence.”*

The President commuted the death sentence to life imprisonment.<sup>245</sup>

## **ii. Cases of rape and murder of minor girls rejected by the President**

### **Case 1: Jumman Khan, Uttar Pradesh<sup>246</sup>**

According to the First Information Report (FIR) lodged by Ausaf Khan, father of the deceased, the accused Jumman Khan went to the house of Ausaf Khan while he was away and requested his wife Dulhey Khan Begum to allow their six years old daughter, Sakina, the unfortunate victim in this case, on the pretext that he wanted her to bring some ice from the market. Dulhey Khan Begum allowed her daughter to accompany the petitioner and fell asleep. When she woke up after about an hour, she found that her daughter had not returned. Though at first, she thought that Sakina might be playing along with other children in the neighbourhood outside the house, as time passed-by she became panicky. Finding the child had not returned, she made a futile

245. Please refer to Annexure-I, Serial No. 98 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

246. Jumman Khan v. State of UP (1991) 1 SCC 752



search. When she went to the petitioner's house, it was found locked. After her husband returned from work at 7.00 pm an unsuccessful incisive and frantic search for the child was made in the neighbourhood. Hearing the information of the missing of the child, a crowd gathered. When Ausaf Khan again went to the petitioner's house in search of his daughter, he was told by a neighbour that at about 4.30 pm when he was passing by the petitioner's house he noticed Sakina entering that house with ice wrapped in a cloth and the petitioner taking her inside holding her hands. One of the persons of the locality further informed Ausaf Khan that while he was passing the petitioner's house, he heard the screaming of a child emanating from the house of the petitioner. The irate crowd went to the petitioner's house and flashed a torch through the crevice in the door and found a dead body lying on a cot wrapped in a veil (burka). Then the public effected entry and shockingly found that it was the dead body of Sakina with extensive marks of injuries on her body. Ausaf Khan made a written report on the basis of which a case was registered under Sections 302 and 376 IPC. The accused was arrested at Aligarh on 25.06.1983. The post-mortem examination of Sakina revealed that she had been brutally raped and strangulated to death. The police after completing the investigation filed the charge sheet.

The accused was charged under Sections 376 (rape) and 302 (murder) IPC. The trial court found him guilty under both the charges and sentenced him to life imprisonment under Section 376 IPC and awarded death sentence under Section 302 IPC.

On appeal, the High Court confirmed the conviction and sentences passed by the trial Court. The High Court held-

*“Considering the nature and most gruesome and beastly act perpetrated by the appellant, the appellant deserves no leniency. He had committed premeditated rape on a helpless child aged about six years and he had gone to the extent of strangulating her to death.”*

Aggrieved with the judgment of the High Court, the accused filed a Special Leave Petition (Criminal) No. 558/86 in the Supreme Court. Vide its Order dated 20.03.1986 the apex court dismissed the SLP.<sup>247</sup>

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247. Jumman Khan v. State of UP AIR 1991 SC 345

The President rejected the mercy petition.<sup>248</sup>

**Case 2: Laxman Naik, Orissa<sup>249</sup>**

Sometime in the afternoon of 17.02.1990, Laxman Naik, paternal uncle of the deceased victim Nitma, a girl of the tender age of 7 years committed rape and murder on her. He was charged and tried under Sections 376 and 302 IPC for committing rape and soon after murder of the victim inside the forest known as Chhotsima Jungle, situated on the way between the villages Patkadihi and Tangarjoda. Sessions Judge, Mayurbhanj, Baripada, relying on the circumstantial evidence found to be established against the appellant, convicted him for offence under Section 376 as well as under Section 302 IPC and having regard to the peculiar facts and circumstances of the present case found it to be rarest of the rare cases and, therefore sentenced him to death.

The Sessions Judge made a reference to the High Court of Orissa for confirmation of the death Sentence. The accused also preferred an appeal in the High Court of Orissa challenging his conviction and sentence. After a scrutiny of the evidence on record the High Court dismissed the appeal of the accused and confirmed the death sentence awarded to him.

The Supreme Court confirmed the death sentence as awarded by the trial court and confirmed by the High Court. The court made the following observations-

*“The evidence of Dr. Pushp Lata, PW 12, who conducted the postmortem over the dead body of the victim, goes to show that she had several external and internal injuries on her person including a serious injury in her private parts showing the brutality with which she was subjected to while committing rape on her. The victim of the age of Nitma could not have ever resisted the act with which she was subjected to. The appellant seems to have acted in a beastly manner as after satisfying his lust he thought that the victim might expose him for the commission of the offence of forcible rape*

248. Please refer to Annexure-I, Serial No. 47 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

249. Laxman Naik v. State of Orissa, AIR1995SC1387

*on her to the family members and other, the appellant with a view to screen the evidence of his crime also put an end to the life of innocent girl who had seen only seven summers. The evidence on record is indicative of the fact as to how diabolically the appellant had conceived of his plan and brutally executed it and such a calculated, cold blooded and brutal murder of a girl of a very tender age after committing rape on her would undoubtedly fall in the category of rarest of the rare case attracting no punishment other than the capital punishment”.*

The President rejected the clemency petition of the convict.<sup>250</sup>

### **Case 3: Shivu and Jadeswamy, Karnataka<sup>251</sup>**

The accused – Shivu and Jadeswamy – resided in the same village in Karnataka as the deceased. Both respectively aged 20 years and 22 years were sexually obsessed youngsters and attempted to commit rape on village girls on previous occasions. However, as they were never handed over to the police they escaped punishment. This emboldened them and on 15.10.2001, they committed rape on the deceased, a young girl of hardly 18 years and to avoid detection, murdered her.

The Trial Court convicted both the accused for an offence under Sections 302, 376 read with Section 34 IPC and were sentenced to death. Their conviction was based on circumstantial evidence. On 07.11.2005, the Karnataka High Court confirmed the death sentence on the accused. On 13.02.2007, the Supreme Court dismissed their appeal and upheld the death sentence awarded to them.

On 27.02.2007, both accused filed separate mercy petitions addressed to the Governor of Karnataka and the President through the Prison Superintendent. On 21.03.2007, the Union of India (Ministry of Home Affairs) wrote to State of Karnataka requesting to consider petitioners’ mercy petitions by the Governor under Article 161 of the Constitution and, in the event of rejection, to send the mercy petition along with the recommendations, copies of the

250. Please refer to Annexure-I, Serial No. 65 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

251. Shivu and Anr. v. R.G. High Court of Karnataka 2007(2)ACR1387(SC)

judgments, copies of the records of the case, etc. to the Ministry of Home Affairs for consideration by the President under Article 72 of the Constitution.

On 10.08.2007, State of Karnataka informed the MHA that the Governor has rejected the mercy petitions and forwarded the copy of the trial court judgment, the Supreme Court judgment and mercy petitions. 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 the petitioners would be executed at 6 am on 22.08.2013 at Belgaum Central Prison.

Both accused filed separate writ petitions in the Supreme Court praying for commutation of their death sentences, among others, on the ground of undue delay for consideration of their mercy petitions. Vide judgment and Order dated 21.01.2014 a three-judge Bench of Chief Justice P. Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh commuted the death penalty of the accused to life imprisonment on the ground of undue delay in disposal of their mercy petitions by the President.<sup>252</sup>

#### **7.2.6. Cases of kidnapping followed by murder for gains**

It is found that in cases of murder after kidnapping, the decision of the President was not uniform. The President's decision on mercy petitions by accused convicted in such cases differed from case to case.

#### **i. Cases of kidnapping followed by murder for gains rejected by the President**

##### **Case 1: Henry Westmuller Roberts, Assam**

In *Henry Westmuller Roberts v. State of Assam*<sup>253</sup>, the President rejected the mercy petition of condemned prisoner, Henry Westmuller Roberts who had been convicted for kidnapping and murder of a 10-year-old boy. The condemned prisoner along with Sunil and Naresh who were employees of the Oil and Natural Gas Corporation (ONGC) at Sibsagar and one Anil, a Mohurrir under a contractor of the ONGC at Sibsagar, entered into a conspiracy to kidnap minor children at Sibsagar, Dibrugarh and Tinsukia districts with a

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

253. (1985) 3 SCC 291

view to extract ransom. In pursuance of such conspiracy, on 26.03.1975, the accused kidnapped the deceased, a 10-year-old boy namely, Sanjay, son of Chabil Prasad Agarwala, a food grains trader in Tinsukia.

The accused killed the boy soon after kidnapping but kept on negotiating the ransom amount with the deceased's father through telephone and telegram etc. Police finally succeeded in apprehending all the accused who confessed to the murder of the deceased. Henry also led the police to the site where the skeletal remains of the deceased were buried and police recovered the same and sent it for forensic test. Forensic tests have confirmed that the skeletal remains were that of the deceased. Twelve witnesses identified Henry while six witnesses identified Sunil and two witnesses identified Anil during Test Identification Parade.

The Sessions Judge, Dibrugarh in Sessions Case No. 33 (TSK) of 1978, convicted and sentenced Henry Westmuller Roberts and Sunil Chandra Biswas to death under Section 302 read with Section 34 IPC for the murder of the deceased and to imprisonment for life under Section 364 read with Section 34 IPC and rigorous imprisonment for seven years under Section 201 read with Section 34 IPC and those two accused Anil Chandra Barua and Naresh Chandra Ghatani to rigorous imprisonment for five years each under Section 120B and Section 387 read with Section 34 IPC. Their convictions were based on oral and documentary evidences.

All four convicts preferred appeals before the Gauhati High Court. Allowing appeals by Anil, Naresh and Sunil, the High Court acquitted them but confirmed the death penalty on Henry. The Supreme Court held as under:

*“We are of the opinion that the offences committed by Henry, the originator of the idea of kidnapping children of rich people for extracting ransom are very heinous and pre-planned. He had been attempting to extract money from the unfortunate boy's father, P.W.23 even after the boy had been murdered by making the father to believe that the boy was alive and would be returned to him if he paid the ransom. In our opinion, this is one of the rarest of rare cases in which the extreme penalty of death is called for the murder of the innocent young boy, Sanjay in cold blood after he had been kidnapped with promise to be given sweets. We, therefore, confirm the*

*sentence of death and the other sentences awarded to Henry by the High Court, under Ss. 302, 364, 201 and 387 I.P.C. and dismiss Criminal Appeal No. 545 of 1982 filed by him. We allow Criminal Appeal No. 209 of 1983 filed by Chabil Prasad Agarwala, P.W.23 against the acquittal of Sunil, Anil and Naresh in part and convict only Sunil under S. 365 I.P.C. for having kidnapped Sanjay in order to secretly and wrongfully confine him and sentence him to undergo rigorous imprisonment for seven years and dismiss that appeal in other respects. We reject Criminal Appeal No. 210 of 1983 filed by the State of Assam against the rejection of the death sentence reference in regard to Sunil and dismiss Criminal Appeals Nos. 212 and 213 of 1983 filed by the State of Assam against the acquittal of Naresh in Criminal Appeal No. 25 of 1981 and of Anil in Criminal Appeal No. 24 of 1981, both on the file of the High Court, and allow Criminal Appeal No. 211 of 1983 filed by the State of Assam against the acquittal of Sunil in Criminal Appeal No. 19 of 1981 on the file of the High Court as indicated in Criminal Appeal No. 209 of 1983 and dismiss it in other respects. The sentences of imprisonment awarded to Henry by the trial court and confirmed by the High Court and by us shall run concurrently and merge with the sentence of death.”*

The President rejected the mercy petition of Henry.<sup>254</sup>

## **ii. Cases of kidnapping followed by murder for gains commuted by the President**

The President however commuted the death penalty on a death row convict in *Mohan and Ors. v. State of Tamil Nadu*<sup>255</sup> and another death row convict in *Sushil Murmu v. State of Jharkhand*<sup>256</sup>.

### **Case 1: Mohan and Gopi, Tamil Nadu**<sup>257</sup>

As per the prosecution, the accused persons entered into a conspiracy to get Rs. 5 lakhs as ransom from the father of the deceased by kidnapping the

254. Please refer to Annexure-I, Serial No. 33 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

255. AIR1998SC2238

256. AIR2004SC394

257. Mohan and Ors v. State of Tamil Nadu, AIR1998SC2238

deceased a young boy of 10 years old. In accordance with the plan accused Pushparaj who was the driver of the car belonging to Singaravelu went to the school on 28.06.1993, at 12 noon where the deceased was studying and as soon as he met the deceased told him that his father was waiting for him at Meenambakkam and sent the car to take him. As Pushparaj was their driver the deceased relied upon his words and got into the Maruti Van which had been parked nearby. In the car accused Mohan, accused Gopi, accused Chandrasekaran, since dead, and accused Sampath were there and all of them took the deceased to a place in Moovarasanpettai Main Road and kept him detained there. They contacted the father of the deceased and demanded Rs. 5 lakhs so that the boy would be released otherwise they would kill the boy. On 29.06.1993, the accused persons mixed some copper sulphate in a glass of cold drink and offered the same to the deceased while they had already tied the legs and hands of the deceased. The accused persons began killing the boy by tying the boy's neck with a rope and pulling its both ends and closing the mouth of the deceased with a piece of cloth. By this process they killed the deceased by strangulation. Thereafter the dead body of the deceased was kept in the empty TV box and the box was dropped into an un-used well near a temple. Even after killing the boy they contacted the father of the deceased Singaravelu to get the ransom of Rs. 5 lakhs and ultimately succeeded in extracting a sum of Rs. 5 lakhs from him on 04.07.1993 and divided the amount among themselves.

The trial court convicted the accused appellants under Sections 120-B, 201, 365, 386 and 302 IPC and awarded rigorous imprisonment for term of 7-10 years and death penalty to each of them. Their conviction was based on oral and documentary evidence.

Vide its judgment dated 27.05.1997, the High Court of Madras confirmed the conviction and sentence passed by the trial court. Aggrieved by the judgment of the Madras High Court, the accused appellants preferred appeals before the Supreme Court. The apex court dismissed the appeals of Mohan (Accused-1) and Gopi (Accused-2) who are also real brothers. The court however allowed the appeals of Muthu (Accused-3) and Puspharaj (Accused-4) and substituted their death sentence with life imprisonment.

The apex court judgment stated as under-

*“After carefully scrutinising the materials on record and the arguments advanced by the learned counsel for the appellants though we find sufficient force in the arguments so far as appellant Muthu @ Muthuraman and Pushparaj are concerned, we do not find any substance in the contention advanced so far as appellants Mohan and Gopi are concerned. It may be noticed that immediately after the boy was brought from the school by accused Pushparaj, Mohan took him in the van and kept him in confinement at a solitary place. It is he who conceived the idea of taking the life of the young boy. It is he who did not accede to the request of co-accused Muthu who persuaded him not to kill the boy and, on the other hand, Mohan threatened Muthu that unless the boy is killed he would divulge the entire episode and then not only Muthu but his parents will also be in trouble. It is Mohan’s master-mind which was responsible for the ultimate act of brutal killing of the boy and it is he who directed Muthu to catch hold of the legs of the boy so that he could easily strangulate the boy with the rope. It is he who mixed some poison with Rasna and gave it to the boy and the boy also drank it having full faith on him and became almost motionless. Even after the boy vomited twice and became tired it is Mohan and his brother Gopi who persuaded the boy to play the game of teeing and untying the hands and legs and when the boy agreed to play the game they not only tied the hands and legs of the boy but also tied the rope around his neck and pulled the rope from both ends. At 11.00 p.m. of the fateful night it is Mohan who told the other accused persons that the time is running fast and they should complete the work. It is at that point of time Gopi, brother of Mohan tied the right hand of the boy and when the boy could not untie the rope Mohan stood on the left hand side and suddenly encircled the rope around the neck of the boy. Gopi pulled one end of the rope by standing on the right hand side of the boy while Mohan pulled the other end of the rope by standing on the left hand side and at the same time Mohan took out a kerchief from his pant pocket and gagged the boy with the kerchief. When the boy struggled for breath by jerking his hands and legs, Mohan folded his left leg and with the knee pressed the kerchief which was put in the mouth. In a couple of minutes the body became motionless.*



15. So far as appellant Gopi is concerned, he not only did participate by pulling the rope around the neck of the boy, as already narrated, but went to his house and brought a coir rope. After removing the rope from the neck of the boy he encircled the coir rope again around the boy's neck and pulled the said rope for about 1/2 a minute and the boy stopped breathing. Thereafter he took out one Keltron T.V. Box from underneath the cot and packed the boy in the box. These aggravating circumstances on the part of accused Mohan and Gopi clearly demonstrate their depraved state of mind and the brutality with which they took the life of a young boy. It further transpires that after killing the boy and disposing of the dead body of the boy, Mohan also did not lose his lust for money and got the ransom of 5 lakhs.

16. In view of the aforesaid aggravating circumstances appearing as against appellant Mohan and appellant Gopi who happened to be the brother we cannot but confirm the death sentence awarded against them which was affirmed by the High Court. Accordingly the appeals of appellants Mohan and Gopi are dismissed.

17. So far as appellants Muthu and Pushparaj are concerned, we are of the considered opinion that the mitigating circumstances, as already narrated clearly do not bring their case to be the rarest of rare case and do not bring their activities to be either diabolical or act of depraved mind warranting the extreme penalty of death sentence. We would accordingly hold that the death sentence awarded against appellant Muthu @ Muthuraman and appellant Pushparaj is not warranted and we commute the same to imprisonment for life.”

The President commuted the death sentence of appellants Mohan and Gopi to life imprisonment.<sup>258</sup>

## Case 2: Sushil Murmu, Jharkhand<sup>259</sup>

In the evening of 11.12.1996 Master Chirku Besra, s/o of Somlal Bersa went missing from the house. The father searched for his son making inquiries

258. Please refer to Annexure-I, Serial No. 82 “List of mercy petition cases since 1981 dated 28.03.2013” obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

259. Sushil Murmu v. Sate of Jharkhand AIR2004SC394

from various persons. Information surfaced that he had been sacrificed before Goddess Kali by one Sushil Murmu. The appellant's wife and mother were also said to be parties to the gruesome killing. It was stated that the appellant had made an extra judicial confession before large number of persons about the murder of the deceased. An eye-witness also allegedly had seen the appellant carrying a bag on a bicycle and throwing the same to a pond from which the severed head of the deceased had been recovered. At the behest of the appellant the dead body of the deceased had also been recovered. All the three accused persons were tried for offences punishable under Sections 302 and 201 IPC.

The trial court convicted the accused under Sections 302 and 201 IPC and sentenced him to death while the other two were acquitted. His conviction was based on circumstantial evidence.

Reference was made by the First Additional Sessions Judge, Jamtara for confirmation of death sentence under Section 366 of the CrPC by the Jharkhand High Court which by the impugned judgment upheld both the convictions and sentence. The High Court held that the murder was gruesome and death sentence was most appropriate sentence. Against the said judgment the accused filed an appeal in the Supreme Court. The Supreme Court dismissed the appeal of the accused declining to interfere with the conviction and sentence passed by the trial court and confirmed by the High Court. The Supreme Court made the following observations-

*“22. A bare look at the fact situation of this case shows that the appellant was not possessed of the basic humanness and he completely lacks the psyche or mind set which can be amenable for any reformation. He had at the time of occurrence a child of same age as the victim and yet he diabolically designed in a most dastardly and revolting manner to sacrifice a very hapless and helpless child of another for personal gain and to promote his fortunes by pretending to appease the deity. The brutality of the act is amplified by the grotesque and revolting manner in which the helpless child's head was severed. Even if the helpless and imploring face and voice of the innocent child did not arouse any trace of kindness in the heart of the accused, the non-challant way in which he carried the severed head in a gunny bag and threw it in the pond unerringly shows that the act was diabolic of most*

*superlative degree in conception and cruel in execution. The tendency in the accused and for that matter in any one who entertains such revolting ideas cannot be placed on par with even an intention to kill some but really borders on a crime against humanity indicative of greatest depravity shocking the conscience of not only any right thinking person but of the Courts of law, as well. The socially abhorrent nature of the crime committed also ought not to be ignored in this case. If this act is not revolting or dastardly, it is beyond comprehension as to what other act can be so described is the question. Superstition is a belief or notion, not based on reason or knowledge, in or of the ominous significance of a particular thing or circumstance, occurrence or the like but mainly triggered by thoughts of self aggrandizement and barbaric at times as in the present case. Superstition cannot and does not provide justification for any killing, much less a planned and deliberate one. No amount of superstitious colour can wash away the sin and offence of an unprovoked killing, more so in the case of an innocent and defenceless child.*

*23. Criminal propensities of the accused are clearly spelt out from the fact that similar accusations involving human sacrifice existed at the time of trial. Though the result could not be brought on record, yet the fact that similar accusation was made against the accused-appellant for which he was facing trial cannot also be lost sight of. In view of the above position we do not think this to be a fit case where any interference is called for, looking to the background facts highlighted above. This in our view is an illustrative and most exemplary case to be treated as the 'rarest of rare cases' in which death sentence is and should be the rule, with no exception whatsoever. Appeal fails and is dismissed."*

The President commuted the death sentence of the accused appellant to life imprisonment.<sup>260</sup>

260. Please refer to Annexure-I, Serial No. 90 "List of mercy petition cases since 1981 dated 28.03.2013" obtained from Judicial Division, Ministry of Home Affairs by ACHR under the RTI Act

# ANNEX – I: LIST OF MERCY PETITION CASES SINCE 1981 AS PROVIDED BY THE MINISTRY OF HOME AFFAIRS ON 28.03.2013

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By Speed Post

F.No.16/01/2013-Judl. Cell  
Government of India  
Ministry of Home Affairs  
(Judicial Division)

4<sup>th</sup> Floor, NDCC-II Building,  
Jai Singh Road, New Delhi- 110001,  
Dated 28 March, 2013

To

Shri Tejang Chakma,  
C-3/441-C,  
Janakpuri,  
New Delhi- 110058

Subject: Information sought under RTI Act, 2005 -reg.

Sir,

I am directed to refer to your application dated 18.02.2013, received in Judicial Division of this Ministry on 01.03.2013 through President's Secretariat on the above subject and to furnish the point-wise information as available as under:-

**Reply to point 1:** List of the death row convicts of which the mercy petitions have been received since 1981 is enclosed as **Annexure**.

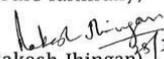
**Reply to points 2:** The requisite information is privileged under Article 74(2) of the Constitution and cannot be provided under RTI Act. In this regard you may see the order dated 11.07.2012 of Hon'ble Delhi High Court in WP(C) No 13090 of 2006.

**Reply to point 3:** No order is passed separately, the approval of the President has been received in the original file of mercy petition cases and the same is privileged under Article 74(2) of the Constitution. However, the decision, if any taken, has been given in the above **Annexure**.

2. Under the Right to Information Act, 2005, Shri Satpal Chouhan, Joint Secretary (C & PG), Ministry of Home Affairs, North Block, New Delhi (Tele. No. 23092392) is the Appellate Authority in respect of information furnished by me.

3. This issues with the approval & direction of Joint Secretary (Judl.) & CPIO.

Yours faithfully,

  
(Rakesh Jhingan) 28/3/13  
Under Secretary (J-II)  
Tele: 23438101

Encl: as above.

Annexure

List of mercy petition cases received since 1981

(As on 15.03.2013)

Sl. No.	Name of the condemned Prisoner(s)	Name of the State	Remarks
1.	V.Periasamy	Tamil Nadu	Rejected
2.	Bachan Singh	Punjab	Rejected
3.	Ajmail Singh	Punjab	Rejected
4.	Rajandra Yallappa Jakkal and 3 ors	Maharashtra	Rejected
5.	Kundasamy	Tamil Nadu	Commuted to Life imprisonment
6.	H.L. Mallayar	Karnataka	Rejected
7.	Guruswamy	Tamil Nadu	Rejected
8.	Raghunath Divtya and one other	Maharashtra	Rejected
9.	Amar Singh and other	Madhya Pd.	Rejected
10.	Joginder Singh	Punjab	Rejected
11.	Persuram Dhanak and other	Bihar	Rejected
12.	Marimuthu Thever	Tamil Nadu	Rejected
13.	Chandru	Tamil Nadu	Rejected
14.	S.K.Parmar	Gujarat	Rejected
15.	Meharchand	Rajasthan	Rejected
16.	Chinnaraj	Tamil Nadu	Commuted to Life Imprisonment
17.	Balbir Singh	Punjab	Rejected
18.	Mahali Nadar and two others	Tamil Nadu	Rejected
19.	Gurtej Singh	Punjab	Rejected
20.	Jagir Singh and two others	Punjab	Rejected
21.	Javad Ahmad Abdul Hamid Pawale	Maharashtra	Rejected
22.	Lal Chand Misra	Uttar Pradesh	Rejected
23.	C.K.Banker	Maharashtra	Commuted to Life Imprisonment
24.	Harbhajan Singh	Jammu & Kashmir	Commuted to Life Imprisonment
25.	Nana Bhai charmale	Maharashtra	Commuted to Life Imprisonment
26.	Raj Kumar	Chandigarh	Rejected
27.	Gurcharan Singh and other	Punjab	Rejected
28.	Bhagwan Patilba Palve	Maharashtra	Rejected
29.	Tukaram and other	Maharashtra	Rejected
30.	Shivaji Jaysing Babar	Maharashtra	Rejected
31.	Sukhvinder Singh and other	Haryana	Rejected
32.	Sawai Singh	Rajasthan	Rejected
33.	H.W.Roberts	Assam	Rejected
34.	Lok Pal Singh	Madhya Pd.	Commuted to Life Imprisonment
35.	Umaid Singh	Rajasthan	Rejected
36.	Ekambaran Chettiar	Tamil Nadu	Rejected
37.	Jayaprakash	Tamil Nadu	Rejected
38.	Haja Mohideen	Tamil Nadu	Rejected
39.	Bhajan Singh and other	Punjab	Rejected
40.	Samai Pal	Uttar Pd.	Rejected
41.	Subramani	Tamil Nadu	Rejected
42.	Balyogi Avdhoot	Rajasthan	Rejected
43.	Bhola Sao	Bihar	Rejected
44.	Lakhmi	Haryana	Rejected
45.	Paramhans Yadav	Bihar	Rejected
46.	Mahesh and other	Madhya Pd.	Rejected
47.	Jumman	Uttar Pd.	Rejected
48.	Natraya Gounder and other	Tamil Nadu	Rejected
49.	Darshan Singh	Punjab	Rejected
50.	Satwant Singh & Kehar Singh	Delhi	Rejected
51.	Gulab Singh	Haryana	Rejected
52.	Daya Ram	Uttar Pd..	Commuted to Life Imprisonment
53.	Asharfi Lal and Babu	Uttar Pd.	Rejected
54.	Krishna	Uttar Pd.	Rejected
55.	Balakrishnan	Kerala	Rejected
56.	Raj Gopal	Jammu & Kashmir	Rejected
57.	Konpai Buragohan	Assam	Rejected
58.	Muthukutty Chandran	Kerala	Rejected
59.	Sukumar Burman & Karthik	West Bengal	Rejected
60.	Sevakaperumal & Esakimuthu	Tamil Nadu	Rejected
61.	Ramjeet Singh & Shayolal	Rajasthan	Rejected
62.	Sukhdev Singh & Harjinder Singh	Maharashtra	Rejected
63.	Tayappa Yellappa Mallade	Maharashtra	Rejected

64.	R. C. Jadhav, V. R. Jadhav C.R.Jadhav	Maharashtra	Rejected
65.	Laxman Nayak	Orissa	Rejected.
66.	Bheru Singh	Rajasthan	Rejected
67.	A.S.Joshi	Maharashtra	Rejected.
68.	T.G.Shankar	Tamil Nadu	Rejected.
69.	Suresh Bahri	Bihar	Rejected.
70.	Ravji @ Ram Chander	Rajasthan	Rejected
71.	Uma Shankar	Madhya Pd.	Rejected
72.	Surja Ram	Rajasthan	Rejected
73.	Kanta Tiwari	Madhya Pd.	Rejected
74.	G.V. Rao & S.C.Rao	Andhra Pd.	Committed to life Imprisonment
75.	Dhananjoy Chatterjee	West Bengal	Rejected
76.	Kheraj Ram	Rajasthan	Committed to Life Imprisonment
77.	R. Govindasamy	Tamil Nadu	Committed to Life Imprisonment
78.	Shyam Manohar,Sheo Ram, Prakash, Suresh,Ravinder and Harish	Uttar Pradesh	Committed to life imprisonment
79.	Dharmender Kumar and Narendra Yadav	Uttar Pradesh	Committed to life imprisonment.
80.	Piara Singh,Sarabjit Singh, Gurdev Singh and Satnam Singh	Punjab	Committed to life imprisonment
81.	Shobhit Chamar	Bihar	Committed to life imprisonment
82.	Mohan & Gopi	Tamil Nadu	Committed to life imprisonment
83.	Molai Ram and Santosh Yadav	Madhya Pradesh	Committed to life imprisonment
84.	S. B. Pingale	Maharashtra	Committed to life imprisonment
85.	Jaikumar	Madhya Pradesh	Committed to life imprisonment
86.	Mahendra Nath Das	Assam	Rejected
87.	Devender Pal Singh	Delhi	Rejected
88.	Sattan & Guddu	Uttar Pradesh	Committed to life imprisonment
89.	Santhan, Murugan and Arivu	Tamil Nadu	Rejected
90.	Sushil Murmu	Jharkhand	Committed to life imprisonment
91.	Shiek Meeran, Selvam and Radhakrishnan	Tamil Nadu	Committed to life imprisonment
92.	Om Prakash	Uttarakhand	Committed to life imprisonment
93.	Satish	Uttar Pradesh	Committed to life imprisonment
94.	Karan Singh & Kunwar Bahadur Singh	Uttar Pradesh	Committed to life imprisonment
95.	Prajeet Kumar Singh	Bihar	Committed to life imprisonment
96.	Laliya Doom and Shivilal	Rajasthan	Committed to life imprisonment
97.	Bandu Baburao Tidake	Karnataka	Committed to life imprisonment
98.	Bantu	Uttar Pradesh	Committed to life imprisonment
99.	Mohd. Ajmal Mohd. Amir Kasab	Maharashtra	Rejected
100.	Atbir	Delhi	Committed to life imprisonment
101.	Saibanna	Karnataka	Rejected
102.	Mohd. Afzal Guru	Delhi	Rejected
103.	Simon,GnanaPrakash, Madaiah & Bilavendra	Karnataka	Rejected
104.	Suresh & Ramji	Uttar Pradesh	Rejected
105.	Gurmeet Singh	Uttar Pradesh	Rejected
106.	Jafar Ali	Uttar Pradesh	Pending
107.	Dharam Pal	Haryana	Pending
108.	Praveen Kumar	Karnataka	Pending
109.	Sonia and Sanjeev	Haryana	Pending
110.	Sunder Singh	Uttarakhand	Pending
111.	Shivu and Jadeswamy	Karnataka	Pending
112.	B.A.Umesh	Karnataka	Pending
113.	Balwant Singh Rajoana	Chandigarh	Pending
114.	Maganlal	Madhya Pradesh	Pending

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# ANNEX – II: STATEMENT ON MERCY PETITION CASES OF THE PRESIDENT’S SECRETARIAT DATED 07.09.2015

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## STATEMENT OF MERCY PETITION CASES – REJECTED

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment/ Review/ Curative	Date of recommendation received in President’s Secretariat from MHA	Date of Disposal	Remarks
1.	Md. Ajmal Kasab	29.08.2012	17.10.2012	05.11.2012	The mercy petition was rejected by the President.
2.	Saibanna Ningappa Natikar	21.04.2005	03.10.2007 08.09.2011 05.11.2012	04.01.2013	The mercy petition was rejected by the President.
3.	Mohd. Afzal Guru	04.08.2005	04.08.2011 24.01.2013	03.02.2013	The mercy petition was rejected by the President.
4.	Simon, Gnanaprakash, Madaiah and Bilavandra	29.01.2004	03.05.2005 30.05.2011 16.01.2013	08.02.2013	The mercy petition was rejected by the President.
5.	Suresh and Ramji	02.03.2001	12.04.2004 22.06.2005 24.02.2011 16.01.2013	08.02.2013	The mercy petition was rejected by the President.
6.	Gurmeet Singh	28.09.2005	22.05.2007 11.12.2009 16.01.2013	01.03.2013	The mercy petition was rejected by the President
7.	Jafar Ali	05.04.2004	21.08.2006 03.11.2011 25.01.2013	14.03.2013	The mercy petition was rejected by the President
8.	Dharampal	18.03.1999	09.02.2000 14.07.2005 15.09.2010 16.01.2013	25.03.2013	The mercy petition was rejected by the President

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment/ Review/ Curative	Date of recommendation received in President's Secretariat from MHA	Date of Disposal	Remarks
9.	Praveen Kumar	15.10.2003	12.09.2005 18.07.2011 16.01.2013	26.03.2013	The mercy petition was rejected by the President
10.	Sundar Singh	16.09.2010	07.02.2012 05.02.2013	31.03.2013	The mercy petition was rejected by the President
11.	B.A. Umesh	01.02.2011	04.04.2013	12.05.2013	The mercy petition was rejected by the President
12.	Sonia and Sanjeev	15.02.2007	12.02.2008 22.05.2009 20.01.2012 29.01.2013 06.06.2013	29.06.2013	The mercy petition was rejected by the President
13.	Maganlal s/o Mangilal	09.01.2012	06.06.2013	16.07.2013	The mercy petition was rejected by the President
14.	Shivu and Jadeswamy	13.02.2007	04.04.2013 24.06.2013	27.07.2013	The mercy petition was rejected by the President
15.	Ajay Kumar Pal	16.03.2010	21.08.2013	27.10.2013	The mercy petition was rejected by the President
16.	Yakub Abdul Razak Memon	21.03.2013	14.03.2014	11.04.2014	The mercy petition was rejected by the President
	<b>Fresh Petition</b>	<b>29.07.2015</b>	<b>29.07.2015</b>	<b>29.07.2015</b>	The fresh petition was rejected by the President



Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment/ Review/ Curative	Date of recommendation received in President's Secretariat from MHA	Date of Disposal	Remarks
17.	Sonu Sardar	23.02.2012	27.03.2014	05.05.2014	The mercy petition was rejected by the President
18.	Holiram Bordoloi	08.04.2005	23.06.2014	05.07.2014	The mercy petition was rejected by the President
19.	Renukabei @ Rinku @ Ratan AND Seema @Devli Mohan Govit	31.08.2006	15.10.2013 26.06.2014	07.07.2014	The mercy petition was rejected by the President
20.	Jagdish	18.09.2009	30.03.2014 26.06.2014	07.07.2014	The mercy petition was rejected by the President
21.	Surender Koli	15.02.2011	26.06.2014	20.07.2014	The mercy petition was rejected by the President
22.	Rajendra Pralhadrao Wasnik	29.02.2012	23.06.2014	31.07.2014	The mercy petition was rejected by the President
23.	M. A. Antony @ Antappan	22.04.2009	27.01.2015	19.4.2015	The mercy petition was rejected by the President
24.	Shiwaji Shankar Alhat	05.09.2008 /02.09.2014	16.03.2015	19.4.2015	The mercy petition was rejected by the President

**STATEMENT OF MERCY PETITION CASES – COMMUTED**

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment	Date of recommendation received in President's Secretariat from MHA	Date of Disposal	Remarks
1.	Atbir	09.08.2010	19.06.2012	15.11.2012	Death Sentence commuted to life imprisonment.
2.	Tote Dewan @ Man Bahadur Dewan	08.08.2005	19.01.2015	19.03.2015	Death Sentence commuted to life imprisonment.

**STATEMENT OF PENDING MERCY PETITION CASES**

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment	Date of recommendation received in President's Secretariat from MHA
1.	Mohan Anna Chavan	16.05.2008	13.07.2015

**STATEMENT OF MERCY PETITION CASE RETURNED TO MHA**

Sl. No.	Name of Convict(s)	Date of Supreme Court Judgment	Date of recommendation received in President's Secretariat from MHA	Sent back to MHA for clarification
1.	Jeetendra @Jitu Nainsingh Gehlot	05.09.2000	27.07.2015	06.08.2015

# ANNEX – III: EXPLANATION ON ACHR’S 10-POINT RECOMMENDATIONS ON CONSIDERATION OF MERCY PETITIONS FOR REDUCTION OF DEATH PENALTY IN INDIA

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**Principle 1. The consequences of inordinate and unexplained delay in the disposal of mercy petitions of condemned prisoners should be considered as grounds for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** Statutory limitations are a part of the administration of justice both in civil and criminal cases. The principle of limitation and inordinate delay in the consideration of mercy petitions by the President must be accepted as grounds to commute death sentences to life imprisonment. The Supreme Court of India has expressed this in a number of judgments, including in the case of *Shatrughan Chauhan v. Union of India*.<sup>261</sup>

The death penalty must not be considered only through the prism of the right to life,<sup>262</sup> but also through the absolute prohibition on torture, and other cruel, inhumane and degrading treatment. India has ratified the International Covenant on Civil and Political Rights (ICCPR), and Article 7 of the ICCPR states that, “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*” Further Article 4.2 of the ICCPR provides that “*No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made even in time of public emergency which threatens the life of the nation*”.<sup>263</sup>

The European Court of Human Rights (ECHR) in the case of *Soering v. the United Kingdom*<sup>264</sup> of 07.07.1989 held that “*the likelihood of the feared exposure of the death-row convict to the ‘death row phenomenon’*” is in breach of Article

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

262. Article 21 of the Constitution of India and Article 6 of the International Covenant on Civil and Political Rights

263. International Covenant on Civil and Political Rights available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

264. Case of *Soering v. the United Kingdom*, (Application no. 14038/88), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{“dmdocnumber”:\[“695496”\],”itemid”:\[“001-57619”\]”}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{“dmdocnumber”:[“695496”],”itemid”:[“001-57619”]”})

3 of the European Convention on Human Rights relating to prohibition of torture. The ECHR considered, among others, the (i) length of detention prior to execution, (ii) conditions on death row and (iii) age and mental state of the convicts. The ECHR held that that “*the very long period of time spent on death row (six years in Virginia in the United States) in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant’s extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3 (art. 3).*”

The Inter-American Court of Human Rights and Inter-American Commission on Human Rights in a number of judgments such as *Paul Lallion v Grenada*<sup>265</sup>, *Denton Aitken v Jamaica*<sup>266</sup> and *Hilaire v. Trinidad and Tobago*<sup>267</sup> held that prison conditions, together with the anxiety and psychological suffering caused by prolonged periods on death row, constitute a violation of the prohibition of torture and other cruel, inhuman and degrading treatment.

**Principle 2. Possibility of reform of the condemned prisoner should be considered as a ground for granting mercy and that the State must prove that the condemned prisoner cannot be reformed.**

**Explanation:** In the case of *Bachan Singh v. State of Punjab*<sup>268</sup>, the Supreme Court of India held that one of the principles of “*the rarest of rare*” doctrine is the requirement that “the State shall by evidence prove that the accused cannot be reformed and rehabilitated”.

In the adjudication of the cases and mercy petitions, the possibility of the convict reforming is seldom considered. For example, death-row convict Mahendra Nath Das<sup>269</sup> was being prosecuted for an offence under Section 302 of the IPC on the allegation that he had murdered Rajen Das, Secretary

265. *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 551 (2002) (Paras. 86-90) available at <http://www1.umn.edu/humanrts/cases/55-02.html>

266. *Denton Aitken v. Jamaica*, Case 12.275, Report No. 58/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 763 (2002) (paras. 133-134) available at <http://www1.umn.edu/humanrts/cases/58-02.html>

267. *Case of Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago* (paras.167,168) available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_94\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf)

268. *Bachan Singh v. State Of Punjab*, AIR 1980 SC 898

269. *Sri Mahendra Nath Das @ Sri Gobinda Das v. State of Assam*, AIR1999SC1926

of Assam Motor Workers Union, on 24.12.1990. While he was out on bail in the same case, Mr Das murdered Hare Kanta Das, a truck owner. He was convicted for both murders and awarded the death penalty. His mercy petition was dismissed by the President of India while the Supreme Court held the rejection of the mercy petition to be illegal and commuted the sentence to life imprisonment.

As Mr Das was a repeat offender of murder, it can be said that the possibility of Mr Das being reformed was less than those who have been convicted for the first time offence. Devender Pal Singh Bhullar<sup>270</sup> had no criminal record but was convicted for terrorism offences solely based on his confession made before a police officer without any corroborating evidence. Though Bhullar had a strong case for possibility of reform than Das, his mercy petition too was rejected.

**Principle 3. A dissenting judgment or difference of opinion of judges at any stage of the proceeding before the Court should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** The death penalty should be imposed only where there is unanimity among the judges adjudicating the case and considering the highest standards of proof.

There have been a number of instances where the death penalty was imposed despite dissenting judgments. These cases include:

- 1) In *Devender Pal Singh Bhullar v. State National Capital Territory of Delhi and Anr.*<sup>271</sup> Justice M.B. Shah of the Supreme Court of India dissented and acquitted Bhullar;
- 2) In *Gurmeet Singh v. State of Uttar Pradesh*,<sup>272</sup> one of the two judges in the Allahabad High Court were in favour of acquitting Gurmeet Singh contending that the evidence against him was insufficient to prove guilt;

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270. W.P. (Crl.) No. 993 of 2001 decided on 22.03.2002

271. Ibid

272. Criminal Appeal No. 1371 of 2004 decided on 28.09.2005

- 3) In *Saibanna Natikar v. State of Karnataka*,<sup>273</sup> where one of the Karnataka High Court judges was in favour of sentencing Saibanna to life imprisonment arguing that it was “*not a fit case to award death sentence*”,<sup>274</sup>
- 4) In *Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh v. State of Bihar*; Justice M B Shah of the Supreme Court held that the case was not a fit case to impose the death penalty on Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and commuted their sentences to life imprisonment and further acquitted Dharmendra Singh @ Dharu Singh;<sup>275</sup> and
- 5) In *Ram Deo Chowhan*<sup>276</sup> case, Justice K. T. Thomas questioned the death sentence on the ground that the accused’s age could not be established to be above 16 years old on the date of the commission of the crime.

**Principle 4. Denial of the right to appeal because of the enhancement of punishment by the Supreme Court in the form of death penalty should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** The right to appeal before the Higher Court is an inherent and integral part of a fair trial. The United Nations (UN) safeguards guaranteeing protection of the rights of those facing the death penalty specifically provide: “6. *Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.*”<sup>277</sup>

The right to appeal is denied if the Supreme Court enhances the lesser punishment or acquittal by the lower courts into the death penalty. The review petition or curative petition filed subsequently cannot be considered as an appeal before a court of higher jurisdiction.

273. *Saibanna v. State of Karnataka* (Criminal Appeal No.497 of 200]

274. *Saibanna v. State of Karnataka* (Criminal Appeal No.497 of 200]

275. *Krishna Mochi & Ors v. State of Bihar* (Appeal (CrL.) 761 of 2001)

276. *Ram Deo Chauhan @ Raj Nath Chauhan v. State of Assam* in Criminal Appeal No. 4 of 2000

277. Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984 and available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

There are a number of cases in which the Supreme Court has enhanced acquittal by the lower courts into death penalty.

Kheraj Ram was convicted for killing his wife Amru, two children and brother in law in 1992 and was sentenced to death by the trial court. On appeal, the Rajasthan High Court acquitted Kheraj Ram. However, the Supreme Court set aside the acquittal and restored the death sentence awarded by the Trial Court vide its order dated 22 August 2003.<sup>278</sup>

Similarly, on 8 February 2008, the Supreme Court restored the death sentence awarded by the trial court on Satish of Uttar Pradesh after convicting him in a rape and murder of a minor girl committed in 2001. Satish was acquitted by the High Court.<sup>279</sup>

The President of India had commuted death sentences of Kheraj Ram and Satish into life imprisonment in 2006 and 2012 respectively<sup>280</sup> but the condemned prisoners had to go through another procedure to file the mercy petitions following enhancement of sentence by the Supreme Court.

There are a number of cases in which the Supreme Court has enhanced lesser sentences into death penalty. For example, Simon, Gnanaprakasham, Meesekar Madaiah and Bilavendran were convicted in September 2001 by a special court set up under the TADA for their involvement in a land mine blast in 1993 that killed 22 people. The special court sentenced them to life imprisonment, but on appeal the Supreme Court *suo moto* enhanced their sentences to the death penalty in January 2004.

Similarly, Sonia Choudhary and Sanjeev Choudhary<sup>281</sup> were convicted in May 2004 of the murder of eight relatives in August 2001 and sentenced to death. On appeal, the Punjab and Haryana High Court commuted their sentences to life imprisonment in April 2005. However, the Supreme Court enhanced the life sentence into death penalty in February 2007.

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278. State of Rajasthan v. Kheraj Ram (Criminal Appeal No. 830 of 1996 decided on 22.08.2003)

279. State of U.P. v. Satish [Criminal Appeal Nos. 256-257 of 2005 (Arising out of S.L.P. (CrL.) Nos. 1666-1667 of 2004 decided on 08.02.2005]

280. See 'Kalam OKs mercy plea of Jaipur Death Row convict', The Indian Express, 19 October 2006, at: <http://archive.indianexpress.com/news/kalam-oks-mercy-plea-of-jaipur-death-row-convict/15009/>; and 'Angel of mercy' Pratibha Patil commutes 30 death row sentences, India Today, 4 June 2012, at: <http://indiatoday.intoday.in/story/pratibha-patil-commutes-30-death-row-sentences/1/198933.html>

281. Ram Singh v. Sonia and Ors (2007) 3 SCC 1

**Principle 5. Conviction based on self-incrimination should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** Article 14(g) of the ICCPR provides that in the determination of any criminal charge against him or her, each person shall, in full equality, “[n]ot to be compelled to testify against himself or to confess guilt”.<sup>282</sup> Section 25 of the Indian Evidence Act provides that any confession made to a police officer is inadmissible. However, the TADA provides for the admissibility of such confessions. Subsequently, the Unlawful Activities Prevention Act (UAPA) was enacted as the anti-terror legislation and this provision was not included. As a result, in cases where convictions are based solely on confessional statements, no death penalty shall be imposed.

Devender Pal Singh Bhullar’s trial fell far short of international standards for a fair trial. He had no access to a lawyer during his initial detention and trial. He was found guilty on the basis of an unsubstantiated confession made to the police, which he later retracted, claiming it was a false confession made under pressure.

**Principle 6. Inability to defend oneself by hiring own lawyer as reflected from appointment of amicus curiae or lawyers from legal aid services by the Courts in all stages of the proceedings should be a mitigating ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** The Supreme Court of India on more than one occasion has expressed concern that a large majority of those sentenced to death belong to economically and socially backward groups like Scheduled Castes, Scheduled Tribes, and religious minorities. This view can be found in a number cases, including in *Rajendra Prasad, Etc. v. State Of Uttar Pradesh* (1979), dissenting judgment in the *Bachan Singh* case<sup>283</sup> (1982), and more recently in *Mohd. Farooq Abdul Gafur and Anr. v. State of Maharashtra* (2009). In *Shatrughan*

282. International Covenant on Civil and Political Rights available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

283. The dissenting judgment of Justice P N Bhagwati in the *Bachan Singh* case is available at: <http://www.indiankanon.org/doc/1201493/>



*Chauhan v. Union of India*<sup>284</sup>, the Supreme Court of India stated, “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.”

**Principle 7. Conviction in cases declared as *per incuriam* should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** The Supreme Court has acknowledged that the death penalty had been imposed on the basis of precedents which were declared *per incuriam*, i.e. a decision, which a subsequent court found to be a mistake, occurring through ignorance or forgetfulness of some inconsistent statutory provision or of some binding judicial precedent.

In the case of *Sangeet & Anr v. State of Haryana*,<sup>285</sup> Justices Madan B. Lokur and K.S. Radhakrishnan recorded the latest admission of error. There are a number of *per incuriam* cases, including the following:

- 1) Dayanidhi Bisoi (*Dayanidhi Bisoi v. State of Orissa*)<sup>286</sup>;
- 2) Mohan Anna Chavan (*Mohan Anna Chavan v. State of Maharashtra*)<sup>287</sup>;
- 3) Shivaji @ Dadya Shankar Alhat v. State of Maharashtra<sup>288</sup>;
- 4) Bantu (*Bantu v. state of U.P.*)<sup>289</sup>;
- 5) Sattan @ Satyendra and Upendra (*State of U.P. v. Sattan @ Satyendra and Ors.*)<sup>290</sup>;

284. (2014) 3 SCC 1

285. *Sangeet v. State of Haryana*, (2013) 2 SCC 452

286. *Dayanidhi Bisoi v. State of Orissa*, AIR2003SC3915

287. *Mohan Anna Chavan v. State of Maharashtra* (CRIMINAL APPEAL NO. 680 OF 2007)

288. *Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra* [(2008) 15 SCC 269]

289. *Bantu vs. State of U.P.* (2008)11SCC113

290. *State of U.P. v. Sattan @ Satyendra and Ors.* (2009)4SCC736

- 6) Saibanna (Saibanna v. State of Karnataka)<sup>291</sup>; and
- 7) Ankush Maruti Shinde, Ambadas Laxman Shinde, Babu Appa Shinde, Raju Mashu Shinde, Rajya Appa Shinde and Surja @ Suresh Shinde (Ankush Maruti Shinde and Ors. v. State of Maharashtra)<sup>292</sup>.

**Principle 8. Imposition of mandatory death penalty should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** The Supreme Court of India held that a mandatory death penalty is illegal. However, judgments are delivered routinely, which tantamount to imposition of mandatory death penalty.

For example, Saibanna was sentenced to death by a trial court under Section 303 IPC in January 2003 for the murder of his second wife and daughter in 1994. At the time of the crime, he had been free on parole from a life sentence for the murder of his first wife. The Karnataka High Court upheld the sentence in October 2003, and the Supreme Court also upheld his sentence in April 2005.

In the case of *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*<sup>293</sup>, the Supreme Court observed that the underlying reasoning for the confirmation of Saibanna's death sentence in the 2005 Supreme Court judgment appeared to be that if a person was currently serving a life sentence and convicted of a second offence that merited a life sentence, then the death penalty was mandatory. The Supreme Court stated that such reasoning violated an earlier decision, which had ruled that mandatory death sentences were unconstitutional.

Even though mandatory death penalty had been held illegal by the Supreme Court, the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act (SUA), 2002<sup>294</sup>

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291. Saibanna v. State of Karnataka [2005(2)ACR1836(SC)], [2005(2)ALD(Cri)39]

292. Ankush Maruti Shinde and Ors. v. State of Maharashtra, AIR2009SC2609

293. (2009) 6 SCC 498

294. Section 3(1)(g)(i) of the SUA Act read as under: "3 Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.- (1) Whoever unlawfully and intentionally-.....(g) in the course of

and the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989<sup>295</sup> continue to provide mandatory death sentence to accused on conviction.

**Principle 9. Death penalty imposed solely based on circumstantial evidence should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** In *Bishnu Prasad Sinha & Anr v. State of Assam*,<sup>296</sup> a landmark judgment delivered on 16.01.2007, the Supreme Court held that death sentences should not be given if the conviction is based on circumstantial evidence. Justices S. B. Sinha and Markandey Katju delivered the two-bench judgment. The judgment commuted the death sentence to life imprisonment of two appellants, Bishnu Prasad Sinha and Putul Bora, who had been convicted of the rape and murder of a minor girl in Assam. The justices observed “[o]rdinarily, this Court, having regard to the nature of the offence, would not have differed with the opinion of the learned Sessions Judge as also the High Court in this behalf, but it must be borne in mind that the appellants are convicted only on the basis of the circumstantial evidence. There are authorities for the proposition that if the evidence is proved by circumstantial evidence, ordinarily, death penalty would not be awarded......” [Emphasis supplied]

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commission of or in attempt to commit, any of the offences specified in clauses (a) to (d) in connection with a fixed platform or clauses (a) to (f) in connection with a ship-

(i) causes death to any person shall be punished with death.” The SUA Act, 2002 can be accessed at: [http://www.nia.gov.in/acts/The\\_Suppression\\_of\\_Unlawful\\_Acts\\_Against\\_Safety\\_of\\_Maritime\\_Navigation\\_Act\\_2002.pdf](http://www.nia.gov.in/acts/The_Suppression_of_Unlawful_Acts_Against_Safety_of_Maritime_Navigation_Act_2002.pdf)

295. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 also provides mandatory death sentence. Section 3(2)(i) of the Act provides:

“3. (2). Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death.”

296. The judgment is available at: <http://indiankanoon.org/doc/1589218/>

**Principle 10. Making orphan should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.**

**Explanation:** The Governor of Tamil Nadu commuted death sentence of Ms Nalini, who had been convicted in the Rajiv Gandhi murder case on the ground that “*Nalini has a daughter who would become an orphan*” if both Nalini and her husband Murugan, who was convicted in the same case were to be executed.<sup>297</sup>

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297. Letter No. 406 dated 24.04.2000 from Tmt Santha Sheela Nair, Secretary, Home Department to Government of Tamilnadu to Tmt Nalini, Special Prison for Women, Vellor (through the Superintendent, Special Prison for Women, Vellor provided to the Asian Centre for Human Rights vide RTI reply dated 27.8.2013.

The National Campaign for Abolition of Death Penalty in India - a programme of the Asian Centre for Human Rights (ACHR) supported by the European Commission under the European Instrument for Democracy and Human Rights (EIDHR) - conducts research, analysis and advocacy on issues relating to death penalty with the aim for its eventual abolition.

The National Campaign for Abolition of Death Penalty in India has published the following reports relating to the issue of death penalty in India:

- The Status of Mercy Petitions in India
- Our Standards and Their Standards: India Vs Abolitionist Countries
- India: Not safe for extradition of those facing death sentences?
- The State of the Right to Life in India, August 2015
- India: Death Without Legal Sanction, June 2015
- India: Death despite dissenting judgements, 02 June 2015
- India: Death in the name of conscience, May 2015
- Arbitrary on all Counts: Consideration of mercy pleas by President of India, 10 December 2014
- Death Reserved for the Poor, November 2014
- Death penalty through self incrimination in India, October 2014
- India: Death Without the Right to Appeal, September 2014
- Award of enhanced punishment of death by the Supreme Court, 26 September 2014
- India: Death Penalty Has No Deterrence, August 2014
- India: Death Penalty Statistics, June 2014
- The Case for Abolition of Death Penalty in India - ACHR's submission to the Law Commission of India on Capital Punishment, May 2014
- Mercy on Trial in India, 22 October 2013
- The State of Death Penalty in India 2013, 14 February 2013

The following publications are expected:

- Right to life in the context of death penalty: Death Penalty and the UN Human Rights Committee
- Death Penalty in India: Issues and contentions

All the reports are available at [http://www.achrweb.org/death\\_penalty.html](http://www.achrweb.org/death_penalty.html)

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