SUPREME COURT OF INDIA

Devender Pal Singh Bhullar

Vs.

State of N.C.T. of Delhi

Writ Petition (Crl.) D.No.16039 of 2011

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

12.04.2013

JUDGMENT

G. S. SINGHVI, J.

1. Human life is perhaps the most precious gift of the nature, which many describe as the Almighty. This is the reason why it is argued that if you cannot give life, you do not have the right to take it. Many believe that capital punishment should not be imposed irrespective of the nature and magnitude of the crime. Others think that death penalty operates as a strong deterrent against heinous crimes and there is nothing wrong in legislative prescription of the same as one of the punishments. The debate on this issue became more intense in the second part of the 20th century and those belonging to the first school of thought succeeded in convincing the governments of about 140 countries to abolish death penalty.

2. In India, death was prescribed as one of the punishments in the Indian Penal Code, 1860 (IPC) and the same was retained after independence. However, keeping in view the old adage that man should be merciful to all living creatures, the framers of the Constitution enacted Articles 72 and 161 under which the President or the Governor, as the case may be, can grant pardons, reprieves, respites or remission of punishment or suspend, remit or commute the sentence of any person convicted of any offence and as will be seen hereinafter, the President has exercised power under Article 72 in large number of cases for commutation of death sentence into life imprisonment except when the accused was found guilty of committing gruesome and/or socially abhorrent crime.

3. The campaign for the abolition of capital punishment led to the introduction of a Bill in the Lok Sabha in 1956 but the same was rejected on 23.11.1956. After two years, a similar resolution was introduced in the Rajya Sabha but, after considerable debate, the same was withdrawn. Another attempt was made in this regard in 1961 but the resolution moved in the Rajya Sabha was rejected in 1962. Notwithstanding these reversals, the votaries of 'no capital punishment' persisted with their demand. The Law Commission of India examined the issue from various angles and recommended that death penalty should be retained in the statute book. This is evinced from the 35th Report of the Law Commission, the relevant portions of which are extracted below:

> "The issue of abolition or retention has to be decided on a balancing of the various arguments for and against retention. No single argument for abolition or retention can decide the issue. In arriving at any conclusion on the subject, the need for protecting society in general and individual human beings must be borne in mind.
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> It is difficult to rule out the validity of, or the strength behind, many of the arguments for abolition nor does, the commission treat lightly the argument based on the irrevocability of the sentence of death, the need for a modern approach, the severity of capital punishment and the strong feeling shown by certain sections of public opinion in stressing deeper questions of human values.
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> Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment."

4. The constitutionality of capital punishment was examined by the Constitution Bench inJagmohan Singh v. State of U.P. (1973) 1 SCC 20. The facts of that case were that appellant Jagmohan Singh was convicted for the murder of Chhote Singh and was sentenced to death by the trial Court. The High Court confirmed the death sentence. Before this Court, the counsel for the appellant relied upon the judgment of the U.S. Supreme Court in Furman v. State of Georgia, 408 US 238 and argued that death penalty was per se unconstitutional. This Court distinguished that judgment by observing that even though the sentence of death was set aside by a

majority of 5:4, only two of the five Judges, namely, Mr. Justice Brennan and Mr. Justice Marshall were of the opinion that in view of Eighth Amendment to the American Constitution, which forbade 'cruel and unusual punishments', the imposition of death penalty was unwarranted and the opinion of the third Judge, namely, Mr. Justice Douglas could not be read as advocating total abolition of capital punishment. The Constitution Bench then observed:

> "So far as we are concerned in this country, we do not have, in our constitution any provision like the Eighth Amendment nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. Indeed what is cruel and unusual may, in conceivable circumstances, be regarded as unreasonable. But when we are dealing with punishments for crimes as prescribed by law we are confronted with a serious problem. Not a few are found to hold that life imprisonment, especially, as it is understood in USA is cruel. On the other hand, capital punishment cannot be described as unusual because that kind of punishment has been with us from ancient times right up to the present day though the number of offences for which it can be imposed has continuously dwindled. The framers of our Constitution were well aware of the existence of capital punishment as a permissible punishment under the law. For example, Article 72(1)(c) provides that the President shall have 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 "in all cases where the sentence is a sentence of death". Article 72(3) further provides that "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". The obvious reference is to Sections 401 and 402 of the Criminal Procedure Code. Then again Entries 1 and 2 in List III of the Seventh Schedule refer to Criminal Law and Criminal Procedure. In Entry No. 1 the entry Criminal Law is extended by specifically including therein "all matters included in the Indian Penal Code at the commencement of this Constitution". All matters not only referred to offences but also punishments—one of which is the death sentence. Article 134 gives a right of appeal to the Supreme Court where the High Court reverses an order of acquittal and sentences a person to death. All these provisions clearly go to show that the Constitution- makers had recognised the death sentence as a permissible punishment and had made constitutional provisions for appeal, reprieve and the like. But more important than these provisions in the

Constitution is Article 21 which provides that no person shall be deprived of his life except according to procedure established by law. The implication is very clear. Deprivation of life is constitutionally permissible if that is done according to procedure established by law. In the face of these indications of constitutional postulates it will be very difficult to hold that capital sentence was regarded per se unreasonable or not in the public interest."

(emphasis supplied)

5. The constitutional validity of Section 302 IPC, which prescribes death as one of the punishments, was considered by the Constitution Bench in Bachan Singh v. State of Punjab (1980) 2 SCC 684. By a majority of 4:1, the Constitution Bench declared that Section 302 IPC was constitutionally valid. Speaking for the majority, Sarkaria, J. referred to the judgments of several countries, including India, opinions of Jurists and recorded his conclusion in the following words:

"To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302 of the Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware — as we shall presently show they

were — of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302 of the Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19."

While dealing with the argument that Section 302 violates Article 21 of the Constitution, Sarkaria, J. referred to the judgment in Maneka Gandhi v. Union of India (1978) 1 SCC 248 and observed:

"Thus expanded and read for interpretative purposes, Article 21 clearly brings out the implication, that the founding fathers recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law. There are several other indications, also, in the Constitution which show that the Constitution-makers were fully cognizant of the existence of death penalty for murder and certain other offences in the Indian Penal Code. Entries 1 and 2 in List III — Concurrent List — of the Seventh Schedule, specifically refer to the Indian Penal Code and the Code of Criminal Procedure as in force at the commencement of the Constitution. Article 72(1)(c) specifically invests the President with power to suspend, remit or commute the sentence of any person convicted of any offence, and also "in all cases where the sentence is a sentence of death". Likewise, under Article 161, the Governor of a State has been given power to suspend, remit or commute, inter alia, the sentence of death of any person convicted of murder or other capital offence relating to a matter to which the executive power of the State extends. Article 134, in terms, gives a right of appeal to the Supreme Court to a person who, on appeal, is sentenced to death by the High Court, after reversal of his acquittal by the trial court. Under the successive Criminal Procedure Codes which have been in force for about 100 years, a sentence of death is to be carried out by hanging. In view of the aforesaid constitutional postulates, by no

stretch of imagination can it be said that death penalty under Section 302 of the Penal Code, either per se or because of its execution by hanging, constitutes an unreasonable, cruel or unusual punishment. By reason of the same constitutional postulates, it cannot be said that the framers of the Constitution considered death sentence for murder or the prescribed traditional mode of its execution as a degrading punishment which would defile "the dignity of the individual" within the contemplation of the preamble to the Constitution. On parity of reasoning, it cannot be said that death penalty for the offence of murder violates the basic structure of the Constitution." (emphasis supplied)

Sarkaria, J. then considered the question whether the Court should lay down standards or norms for sentencing and answered the same in the negative by giving the following reasons:

"Firstly, there is little agreement among penologists and jurists as to what information about the crime and criminal is relevant and what is not relevant for fixing the dose of punishment for a person convicted of a particular offence. According to Cessare Beccaria, who is supposed to be the intellectual progenitor of today's fixed sentencing movement, "crimes are only to be measured by the injury done to society". But the 20th Century sociologists do not wholly agree with this view. In the opinion of Von Hirsch, the "seriousness of a crime depends both on the harm done (or risked) by the act and degree of actor's culpability". But how is the degree of that culpability to be measured. Can any thermometer be devised to measure its degree? This is a very baffling, difficult and intricate problem.

Secondly, criminal cases do not fall into set behavioristic patterns. Even within a single-category offence there are infinite, unpredictable and unforeseeable variations. No two cases are exactly identical. There are countless permutations and combinations which are beyond the anticipatory capacity of the human calculus. Each case presents its own distinctive features, its peculiar combinations of events and its unique configuration of facts. "Simply in terms of blameworthiness or desert criminal cases are different from one another in ways that legislatures cannot anticipate, and limitations of language prevent the precise description of differences that can be anticipated." This is particularly true of murder. "There is probably no offence", observed Sir Ernest Cowers, Chairman of the Royal Commission, "that varies so widely both in character and in moral guilt as

that which falls within the legal definition of murder". The futility of attempting to lay down exhaustive standards was demonstrated by this court in Jagmohan by citing the instance of the Model Penal Code which was presented to the American Supreme Court in McGoutha (1971) 402 US 183.

Thirdly, a standardisation of the sentencing process which leaves little room for judicial discretion to take account of variations in culpability within single-offence category ceases to be judicial. It tends to sacrifice justice at the altar of blind uniformity. Indeed, there is a real danger of such mechanical standardisation degenerating into a bed of procrustean cruelty.

Fourthly, standardisation or sentencing discretion is a policy matter which belongs to the sphere of legislation. When Parliament as a matter of sound legislative policy, did not deliberately restrict, control or standardise the sentencing discretion any further than that is encompassed by the broad contours delineated in Section 354(3), the court would not by overleaping its bounds rush to do what Parliament, in its wisdom, warily did not do."

The learned Judge also referred to the judgment in Jagmohan Singh's case and observed:

"In Jagmohan, this Court had held that this sentencing discretion is to be exercised on well recognised principles, after balancing all the aggravating and mitigating circumstances of the crime. By "well recognised principles" the court obviously meant the principles crystallised by judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases. The legislative changes since Jagmohan — as we have discussed already — do not have the effect of abrogating or nullifying those principles. The only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely: (1) The extreme penalty can be inflicted only in gravest cases of extreme culpability; (2) In making choice of the sentence, in addition to the circumstances, of the offence, due regard must be paid to the circumstances of the offender, also.

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Pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind. In Jagmohan, it was reiterated by this Court that

if a murder is "diabolically conceived and cruelly executed", it would justify the imposition of the death penalty on the murderer. The same principle was substantially reiterated by V.R. Krishna Iyer, J., speaking for the Bench in Ediga Anamma (1974) 4 SCC 443, in these terms:

"The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence.""

The learned Judge then noted that in Rajendra Prasad v. State of U.P. (1979) 3 SCC 646, the majority judgment of the three-Judge Bench had completely reversed the view taken in Ediga Anamma v. State of A.P. (1974) 4 SCC 443 and observed:

"It may be noted that this indicator for imposing the death sentence was crystallised in that case after paying due regard to the shift in legislative policy embodied in Section 354(3) of the Code of Criminal Procedure, 1973, although on the date of that decision (February 11, 1974), this provision had not come into force. In Paras Ram case (SLP(Crl.) Nos. 698 and 678 of 1953, decided on October, 1973) also, to which a reference has been made earlier, it was emphatically stated that a person who in a fit of anti-social piety commits "blood- curdling butchery" of his child, fully deserves to be punished with death. In Rajendra Prasad, however, the majority (of 2:l) has completely reversed the view that had been taken in Ediga Anamma regarding the application of Section 354(3) on this point. According to it, after the enactment of Section 354(3), "murder most foul" is not the test. The shocking nature of the crime or the number of murders committed is also not the criterion. It was said that the focus has now completely shifted from the crime to the criminal. "Special reasons" necessary for imposing death penalty "must relate not to the crime as such but to the criminal".

With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a

separate treatment to each of them. This is so because "style is the man". In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist.

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In Rajendra Prasad, the majority said: "It is constitutionally permissible to swing a criminal out of corporeal existence only if the security of State and Society, public order and the interests of the general public compel that course as provided in Article 19(2) to (6)". Our objection is only to the word "only". While it may be conceded that a murder which directly threatens, or has an extreme potentiality to harm or endanger the security of State and Society, public order and the interests of the general public, may provide "special reasons" to justify the imposition of the extreme penalty on the person convicted of such a heinous murder, it is not possible to agree that imposition of death penalty on murderers who do not fall within this narrow category is constitutionally impermissible. We have discussed and held above that the impugned provisions in Section 302 of the Penal Code, being reasonable and in the general public interest, do not offend Article 19, or its "ethos" nor do they in any manner violate Articles 21 and 14. All the reasons given by us for upholding the validity of Section 302 of the Penal Code, fully apply to the case of Section 354(3), Code of Criminal Procedure, also. The same criticism applies to the view taken in Bishnu Deo Shaw v. State of W.B. (1979) 3 SCC 714 which follows the dictum in Rajendra Prasad."

6. Although, in Bachan Singh's case, the Constitution Bench upheld the constitutional validity of Section 302 IPC, it did not enumerate the types of cases in which death penalty should be awarded instead of life imprisonment. A three-Judge Bench considered this issue in Machhi Singh v. State of Punjab (1983) 3 SCC 470. M.P. Thakkar, J. wrote the judgment on behalf of the Bench with the following prelude:

"Protagonists of the "an eye for an eye" philosophy demand "death-for-death". The "Humanists" on the other hand press for the other extreme viz. "death-in-no-case". A synthesis has emerged inBachan Singh v. State of Punjab wherein the "rarest-of-rare-cases" formula for imposing death sentence in a murder case has been evolved by this Court. Identification of the guidelines spelled out in Bachan Singh in order to determine whether or not death sentence should be imposed is one of the problems engaging our attention, to which we will address ourselves in due course."

Thakkar, J. then noted that a feud between two families triggered five incidents in quick succession in five different villages resulting in death of 17 persons and approved the views expressed by the Sessions Court and the High Court that the appellants were guilty of committing heinous crimes. He then proceeded to observe:

"The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent of those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of

the crime, or the anti- social or abhorrent nature of the crime, such as for instance:

I. Manner of commission of murder

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of “bride burning” and what are known as “dowry deaths” or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

The learned Judge then culled out the following propositions from the majority judgment in Bachan Singh's case:

"(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded

full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

7. The discussion on the subject would remain incomplete without a reference to the concurring judgment of Fazal Ali, J, who was a member of the Constitution Bench in Maru Ram v. Union of India (1981) 1 SCC 107. The main question considered in that case was whether Section 433A of the Code of Criminal Procedure, 1973 (Cr.P.C.) was violative of Article 14 of the Constitution and whether the provisions contained therein impinge upon the power vested in the President and the Governor under Articles 72 and 161 of the Constitution. While expressing his agreement with the main judgment authored by Krishna Iyer, J. on the scope of Section 433A Cr.P.C., Fazal Ali, J. spelt out the following reasons for imposing deterrent sentences:

"(1) to protect the community against callous criminals for a long time,

(2) to administer as clearly as possible to others tempted to follow them into lawlessness on a war scale if they are brought to and convicted, deterrent punishment will follow, and

(3) to deter criminals who are forced to undergo long-term imprisonment from repeating their criminal acts in future. Even from the point of view of reformative form of punishment "prolonged and indefinite detention is justified not only in the name of prevention but cure. The offender has been regarded in one sense as a patient to be discharged only when he responds to the treatment and can be regarded as safe" for the society."

The learned Judge then referred to the judgment in Bachan Singh's case and observed:

"Taking into account the modern trends in penology there are very rare cases where the courts impose a sentence of death and even if in some cases where such sentences are given, by the time the case reaches this Court, a bare minimum of the cases are left where death sentences are upheld. Such cases are only those in which imposition of a death sentence becomes an imperative necessity having regard to the nature and character of the offences, the antecedents of the offender and other factors referred to in the Constitution Bench judgment of this Court in Bachan Singh v. State of Punjab. In these circumstances, I am of the opinion that the Parliament in its

wisdom chose to act in order to prevent criminals committing heinous crimes from being released through easy remissions or substituted form of punishments without undergoing at least a minimum period of imprisonment of fourteen years which may in fact act as a sufficient deterrent which may prevent criminals from committing offences. In most parts of our country, particularly in the north, cases are not uncommon where even a person sentenced to imprisonment for life and having come back after earning a number of remissions has committed repeated offences. The mere fact that a long-term sentence or for that matter a sentence of death has not produced useful results cannot support the argument either for abolition of death sentence or for reducing the sentence of life imprisonment from 14 years to something less. The question is not what has happened because of the provisions of the Penal Code but what would have happened if deterrent punishments were not given. In the present distressed and disturbed atmosphere we feel that if deterrent punishment is not resorted to, there will be complete chaos in the entire country and criminals will be let loose endangering the lives of thousands of innocent people of our country. In spite of all the resources at its hands, it will be difficult for the State to protect or guarantee the life and liberty of all the citizens, if criminals are let loose and deterrent punishment is either abolished or mitigated. Secondly, while reformation of the criminal is only one side of the picture, rehabilitation of the victims and granting relief from the tortures and sufferings which are caused to them as a result of the offences committed by the criminals is a factor which seems to have been completely overlooked while defending the cause of the criminals for abolishing deterrent sentences. Where one person commits three murders it is illogical to plead for the criminal and to argue that his life should be spared, without at all considering what has happened to the victims and their family. A person who has deprived another person completely of his liberty for ever and has endangered the liberty of his family has no right to ask the court to uphold his liberty. Liberty is not a one-sided concept, nor does Article 21 of the Constitution contemplate such a concept. If a person commits a criminal offence and punishment has been given to him by a procedure established by law which is free and fair and where the accused has been fully heard, no question of violation of Article 21 arises when the question of punishment is being considered. Even so, the provisions of the Code of Criminal Procedure of 1973 do provide an opportunity to the offender, after his guilt is proved, to show circumstances under which an appropriate sentence could be imposed on him. These guarantees sufficiently comply with the provisions

of Article 21. Thus, it seems to me that while considering the problem of penology we should not overlook the plight of victimology and the sufferings of the people who die, suffer or are maimed at the hands of criminals."

(emphasis supplied)

8. Even after the judgments in Bachan Singh's case and Machhi Singh's case, Jurists and human rights activists have persisted with their demand for the abolition of death penalty and several attempts have been made to persuade the Central Government to take concrete steps in this regard. It is a different story that they have not succeeded because in recent years the crime scenario has changed all over the world. While there is no abatement in the crimes committed due to personal animosity and property disputes, people across the world have suffered on account of new forms of crimes. The monster of terrorism has spread its tentacles in most of the countries. India is one of the worst victims of internal and external terrorism. In the last three decades, hundreds of innocent lives have been lost on account of the activities of terrorists, who have mercilessly killed people by using bullets, bombs and other modern weapons. While upholding the constitutional validity of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) inKartar Singh v. State of Punjab (1994) 3 SCC 569, this Court took cognizance of the spread of terrorism in the world in general and in India in particular, in the following words:

"From the recent past, in many parts of the world, terrorism and disruption are spearheading for one reason or another and resultantly great leaders have been assassinated by suicide bombers and many dastardly murders have been committed. Deplorably, determined youths lured by hard-core criminals and underground extremists and attracted by the ideology of terrorism are indulging in committing serious crimes against the humanity. In spite of the drastic actions taken and intense vigilance activated, the terrorists and militants do not desist from triggering lawlessness if it suits their purpose. In short, they are waging a domestic war against the sovereignty of their respective nations or against a race or community in order to create an embryonic imbalance and nervous disorder in the society either on being stimulated or instigated by the national, transnational or international hard-core criminals or secessionists etc. Resultantly, the security and integrity of the countries concerned are at peril and the law and order in many countries is disrupted. To say differently, the logic of the cult

of the bullet is hovering the globe completely robbing off the reasons and rhymes. Therefore, every country has now felt the need to strengthen vigilance against the spurt in the illegal and criminal activities of the militants and terrorists so that the danger to its sovereignty is averted and the community is protected.

Thus, terrorism and disruptive activities are a worldwide phenomenon and India is not an exception. Unfortunately in the recent past this country has fallen in the firm grip of spiralling terrorists' violence and is caught between the deadly pangs of disruptive activities. As seen from the Objects and Reasons of the Act 31 of 1985, "Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh" and then slowly they expanded their activities to other parts of the country i.e. Delhi, Haryana, U.P. and Rajasthan. At present they have outstretched their activities by spreading their wings far and wide almost bringing the major part of the country under the extreme violence and terrorism by letting loose unprecedented and unprovoked repression and disruption unmindful of the security of the nation, personal liberty and right, inclusive of the right to live with human dignity of the innocent citizens of this country and destroying the image of many glitzy cities like Chandigarh, Srinagar, Delhi and Bombay by strangulating the normal life of the citizens. Apart from many skirmishes in various parts of the country, there were countless serious and horrendous events engulfing many cities with blood-bath, firing, looting, mad killing even without sparing women and children and reducing those areas into a graveyard, which brutal atrocities have rocked and shocked the whole nation.

Everyday, there are jarring pieces of information through electronic and print media that many innocent, defenceless people particularly poor, politicians, statesmen, government officials, police officials, army personnel inclusive of the jawans belonging to Border Security Force have been mercilessly gunned down. No one can deny these stark facts and naked truth by adopting an ostrich like attitude completely ignoring the impending danger. Whatever may be the reasons, indeed there is none to deny that."

THE FACTS:

9. We shall now advert to the facts necessary for disposing the above noted writ petitions, one of which was jointly filed by Shri Devender Pal Singh Bhullar

(hereinafter referred to as 'the petitioner'), who was convicted by the designated Court, Delhi for various offences under TADA and IPC and Delhi Sikh Gurdwara Management Committee. Later on, the Court accepted the oral request made by learned senior counsel for the petitioners and deleted the name of petitioner No.2 from the array of parties. The other writ petition has been filed by the wife of the petitioner and the third has been filed by Justice on Trial Trust, a non- Government organization registered under the Bombay Public Trusts Act, 1950.

9.1 After obtaining the degree of Bachelor of Engineering from Guru Nanak Engineering College, Ludhiana in 1990, the petitioner joined as a teacher in the same college. He was suspected to be involved in the terrorist activities in Punjab and it is said that he was responsible for an attempt made on the life of Shri Sumedh Singh Saini, the then Senior Superintendent of Police, Chandigarh on 29.8.1991. Shri Saini's car was blasted by remote control resulting in the death of some of his security guards. The petitioner was also suspected to be responsible for an attack on the car cavalcade of the then President of Youth Congress Maninderjit Singh Bitta, in Delhi on 10.9.1993. As a result of the blast caused by using 40 kgs. RDX, 9 persons were killed and 17 were injured. Apprehending his arrest and possible elimination by the police as is alleged to have been done in the case of his father, uncle and friend Balwant Singh Multani, the petitioner decided to go to Canada. However, on the basis of information supplied by the Indian authorities, he was taken into custody at Frankfurt Airport and deported to India. He was charged with offences under Sections 419, 420, 468 and 471 IPC, Section 12 of the Passports Act, 1967 and Sections 2, 3 and 4 TADA. The designated Court, Delhi found him guilty and sentenced him to death. The appeal filed by him was dismissed by this Court vide judgment titled Devender Pal Singh v. State (NCT of Delhi), (2002) 5 SCC 234. The review petition filed by the petitioner was also dismissed by this Court vide order dated 17.12.2002.

9.2 Soon after dismissal of the review petition, the petitioner submitted petition dated 14.1.2003 to the President under Article 72 of the Constitution and prayed for commutation of his sentence. Delhi Sikh Gurdwara Management Committee sent letters dated 28.1.2003 to the then President, Dr. A.P.J. Abdul Kalam; the then Prime Minister, Shri Atal Bihari Bajpai and the former Prime Minister, Shri H.D. Deve Gowda asking for a meeting with them in connection with commutation of the death sentence awarded to the petitioner. After three years, Delhi Sikh Gurdwara Management Committee submitted representations dated 6.4.2006 and 29.9.2006 to Dr.

A.P.J. Abdul Kalam and the Prime Minister Dr. Manmohan Singh and reiterated their demand for a meeting. In the letter sent to Dr. Manmohan Singh, it was mentioned that the Governments of Germany and Canada had made strong representation for clemency. It was also pointed out that Germany has already abolished death penalty and in terms of Section 34C of the Extradition Act, 1962, death penalty cannot be imposed if the laws of the State which surrenders or returns the accused do not provide for imposition of death penalty for such crime. The Committee also made a mention of large number of representations made by the Sikh community, particularly those settled in Canada, for grant of clemency to the petitioner.

9.3 During the pendency of the petition filed under Article 72, the petitioner filed Curative Petition (Crl.) No. 5 of 2003, which was dismissed by this Court on 12.3.2003.

9.4 The files produced by the learned Additional Solicitor General show that even before the petition filed by the petitioner could be processed by the Ministry of Home Affairs, Government of India, the President's Secretariat forwarded letter dated 25.12.2002 sent by Justice A.S. Bains (Retd.), Chairman, Punjab Human Rights Organization and others in the name of 'Movement Against State Repression, Chandigarh', for commutation of death sentence awarded to the petitioner on the ground that in the case of Abu Salem, the Government of India had given an assurance to the Government of Portugal that on his deportation, Abu Salem will not be awarded death penalty.

9.5 In April 2003, the President's Secretariat forwarded to the Ministry of Home Affairs, the petitions received from the following personalities for showing clemency to the petitioner:

(1) Mr. David Kilgour, Secretary of State (Asia Pacific);

(2) Department of Foreign Affairs and International Trade, Canada;

(3) Congress of the United States, Washington;

(4) Mr. Tony Baldry, MP, House of Commons, London;

(5) Shri Ram Jethmalani, M.P. (Rajya Sabha);

(6) Shri Justice A.S. Bains, former Judge and Convenor, Devinderpal Singh Bhullar Defence Committee; and

(7) Shri Simranjit Singh Mann, M.P. (Lok Sabha).

9.6 On 3.6.2003, the Ministry of External Affairs forwarded two communications received by it from the Greek Ambassador, in his capacity as President of the European Union Ambassador in New Delhi, who conveyed the European Union's strong conviction against the death sentence and pleaded for clemency in favour of the petitioner. Similar communications were sent by Mr. Jean Lamberti, Member European Parliament, Brussels, and various Sikh forums/organizations from Punjab and U.K.

9.7 After the matter was processed at different levels of the Government, in the backdrop of internal and external pressures, the case was finally submitted to the President on 11.7.2005 with the recommendation that the mercy petition of the petitioner be rejected. It is not borne out from the record as to what happened for the next five years and nine months, but this much is evident that no decision was taken by the President.

9.8 On 29.4.2011, the Ministry of Home Affairs sent a request to the President's Secretariat to return the file of the petitioner. On 6.5.2011, the file was withdrawn from the President's Secretariat for reviewing the petitioner's case. The matter was again examined in the Ministry of Home Affairs and on 10.5.2011, the then Home Minister opined that those convicted in the cases of terrorism do not deserve any mercy or compassion and accordingly recommended that the sentence of death be confirmed. The President accepted the advice of the Home Minister and rejected the mercy petition. The petitioner was informed about this vide letter dated 13.6.2011 sent by Deputy Secretary (Home) to the Jail Authorities. The relevant portion of the decision taken by the President, which was incorporated in letter dated 30.5.2011 sent by Joint Secretary (Judicial), Ministry of Home Affairs, Government of India to the Principal Secretary, Home Department, Government of NCT of Delhi, reads as under:

"The President of India has, in exercise of the powers under Article 72 of the Constitution of India, been pleased to reject the mercy petition submitted by

the condemned prisoner Devender Pal Singh and petitions on his behalf from others. The prisoner may be informed of the orders of the President act accordingly."

9.9 After rejection of his petition by the President, the petitioner sought leave of the Court and was allowed to amend the writ petition and make a prayer for quashing communication dated 13.6.2011.

9.10 While issuing notice of Writ Petition (Criminal) D. No.16039 of 2011 (unamended), this Court directed the respondent to clarify why the petitions made by the petitioner had not been disposed of for more than 8 years. In compliance of the Court's directive, Shri B.M. Jain, Deputy Secretary (Home) filed short affidavit dated 19/21.7.2011. Subsequently, Shri J. L. Chugh, Joint Secretary, Ministry of Home Affairs, filed detailed affidavit, paragraphs 7 and 8 of which are extracted below:

"7. Since the Mercy Petitions remained pending consideration of the President's Secretariat a request was made by the Ministry of Home Affairs on 20.04.2011 for withdrawal of the file of the mercy petition from President's Secretariat for review of this case for consideration of the Hon'ble President of India. The file was received by the Ministry of Home Affairs on 03.05.2011 from the President's Secretariat and after reexamination of the case the file was again submitted on 10.05.2011 to the President's Secretariat for decision of the Hon'ble President of India. Finally the Hon'ble President was pleased to reject the Mercy Petition of the petitioner on 25.05.2011. It is submitted that the file of the Mercy Petition along with decision of the Hon'ble President was received by the M/o Home Affairs on 27.05.2011 and the M/o Home Affairs communicated the decision of the Hon'ble President to the GNCT of Delhi on 30.05.2011. The details of cases of mercy petitions submitted to President's Secretariat and decided are as under:

| |Tenure |Cases submitted/ |Decision | | | |resubmitted to the |Arrived | | | |President's Secretariat | | |NDA |(March 1998 |14 |0 | | |to May 2004) | | | |UPA I |(May 2004 to |28 |2 | | |April 2009) | | | |UPA II |(May 2009 to |25 |13 | | |30.9.2011) | | |

8. With reference to the above figure, it is submitted that there were 28 Mercy petitions of death convicts pending under Article 72 of the Constitution in October

2009. Two cases were received in November 2009 and two new Mercy Petition cases have been received in 2011 (till 30th September, 2011). This makes the total number of Mercy Petitions 32 as on 30.09.2011. After the new Government was formed in May 2009, in September 2009 it was decided to recall the cases pending with the President's Secretariat for review in the Ministry of Home Affairs, to assist in expediting a decision by the President of India in each case. The cases were recalled from President's Secretariat one-by-one, on the basis of the date of trial court judgment and were resubmitted to the President's Secretariat after review. Recalling of the cases was not under a Constitutional provision but an administrative decision to ensure a fair and equal treatment of all cases and to assist in expediting a decision by the Hon'ble President. Till 30.09.2011, 25 Mercy Petition were resubmitted/submitted to the President's Secretariat. The Hon'ble President decided one Mercy Petition in November 2009, four Mercy Petitions in 2010 and eight Mercy Petitions in 2011 (till 30th September, 2011). Therefore, a total of 13 Mercy Petitions have been decided by the President since November 2009. Presently, 19 Mercy Petitions are pending under Article 72 of the Constitution; out of which 14 are pending with President's Secretariat and five are pending with Ministry of Home Affairs (including the two new mercy petitions which have been received in 2011).”

ARGUMENTS:

10. Shri K.T.S. Tulsi, learned senior counsel for the petitioner relied upon the judgments in T.V. Vatheeswaran v. State of Tamil Nadu (1983) 2 SCC 68, K.P. Mohd. v. State of Kerala 1984 Supp. SCC 684 and Javed Ahmed v. State of Maharashtra (1985) 1 SCC 275 and argued that 8 years’ delay in the disposal of mercy petition should be treated as sufficient for commutation of death sentence into life imprisonment. Shri Tulsi also referred to the judgments in Peter Bradshaw v. Attorney General Privy Council Appeal Nos. 36 of 1993, Court of Appeal, Barbados, Henfield v. Attorney General (1996) UKPK 36, Catholic Commission v. Attorney General (2001) AHRLR (ZWSC 1993), Commonwealth v. O’Neal (1975) 339 NE 2d 676 and De Freitas v. Benny (1976) AC 239 and argued that even though the judgments of other jurisdictions are not binding on this Court, the propositions laid down therein can provide useful guidance for proper understanding of the ambit and scope of the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution. Shri Tulsi then referred to the judgments in Vivian Rodrick v. State of Bengal (1971) 1 SCC 468, State of U.P. v. Suresh (1981) 3 SCC 635, Neiti Sreeramulu v. State of Andhra Pradesh (1974) 3 SCC 314, State of U.P. v. Lala Singh (1978) 1 SCC 142

and Sadhu Singh v. State (1978) 4 SCC 428 to show that this Court has ordered commutation of death sentence where the delay was between one and seven years. Learned senior counsel invited our attention to the information obtained from Rashtrapati Bhawan under the Right to Information Act, 2005 and argued that long delay on the President's part in deciding the mercy petitions is inexplicable. He emphasized that 8 years' delay has seriously affected the petitioner's health, who has become mentally sick and this should be treated as an additional factor for commutation of death sentence awarded to him. In support of this submission, Shri Tulsi relied upon the records of Deen Dayal Upadhyay Hospital, Hari Nagar, New Delhi and the Institute of Human Behaviors And Allied Sciences, Delhi as also certificate dated 2.9.2011 issued by Dr. Rajesh Kumar, Associate Professor in Psychiatry at the Institute. In the end, Shri Tulsi made an appeal that the Court should take a sympathetic view in the petitioner's case because there is a sea change in the situation in Punjab.

11. Shri Ram Jethmalani, learned senior counsel, who assisted the Court as an Amicus extensively referred to the judgments in Vatheeswaran's case, K.P. Mohd.'s case and Javed Ahmed's case and argued that the rejection of the petition filed by the petitioner should be quashed because there was unexplained delay of 8 years. Learned senior counsel forcefully argued that the judgment inTriveniben v. State of Gujarat (1989) 1 SCC 678 does not lay down correct law because the Bench which decided the matter did not notice the judgment of another Constitution Bench in Kehar Singh v. Union of India (1989) 1 SCC 204. Learned senior counsel pointed out that while deciding the petition filed under Article 72 of the Constitution, the President can independently consider the issue of guilt of the accused and accept the mercy petition without disturbing the finding recorded by the Court. Shri Jethmalani submitted that attention of the Bench which decided Triveniben's case does not appear to have been drawn to the views expressed in other judgments that in cases where the accused is convicted for murder, life imprisonment is the normal punishment and death penalty can be inflicted only in the rarest of rare cases, which involve extraordinary brutality in the commission of the crime or other aspects of heinousness. Learned senior counsel then argued that delay in deciding a mercy petition filed under Article 72 or Article 161 of the Constitution due to executive indifference or callousness or other extraneous reasons should always be treated as sufficient for commutation of death sentence into life imprisonment.

12. Shri Andhyarujina, learned senior counsel, who also assisted the Court as an Amicus commenced his submissions by pointing out that the power reposed in the

President under Article 72 and the Governor under Article 161 of the Constitution is not a matter of grace or mercy, but is a constitutional duty of great significance and the same has to be exercised with great care and circumspection keeping in view the larger public interest. He referred to the judgment of the U.S. Supreme Court in Biddle v. Perovoch 274 US 480 as also the judgments of this Court in Kehar Singh's case and Epuru Sudhakar v. Government of A.P. (2006) 8 SCC 161 and submitted that the power to grant pardon etc. is to be exercised by the President not only for the benefit of the convict, but also for the welfare of the people. Learned senior counsel submitted that inordinate delay in disposal of a petition filed under Article 72 or 161 is cruel, inhuman and degrading. He relied upon a passage from the book titled "The Death Penalty" A Worldwide Perspective by Roger Hood Carolyne Hoyle 4th Ed. Pages 175-186 and submitted that keeping a convict in suspense for years together is totally unjustified because it creates adverse physical conditions and psychological stress on the convict under sentence of death. Shri Andhyarujina relied on Riley v. Attorney General of Jamaica (1983) 1 AC 719, Pratt v. Attorney General of Jamaica (1994) 2 AC 1 and argued that except in cases involving delay by or on behalf of the convict, the Court should always lean in favour of commutation of death sentence. Learned senior counsel lamented that in a large number of cases, the President did not decide the petitions filed under Article 72 and, therefore, the Court should consider the desirability of ordering commutation of death sentence in all such cases.

13. Shri Shyam Divan, Senior Advocate, who appeared for the petitioner in SLP(Crl.) No.1105 of 2012 submitted that if delay in completion of the proceedings is considered as a relevant factor by the High Courts and this Court for converting the death sentence into life imprisonment, delay in the execution of the death sentence should be treated by the President as sufficient for invoking the power vested in him under Article 72 of the Constitution for grant of pardon. In support of his submissions, Shri Divan relied upon the judgments in Vivian Rodrick' case, Madhu Mehta v. Union of India (1989) 3 SCR 775, Daya Singh v. Union of India (1991) 3 SCC 61 and Shivaji Jaising Babar v. State of Maharashtra (1991) 4 SCC 375.

14. Shri K.V. Vishwanathan, learned senior counsel, who argued on behalf of the intervenor, PUDR, submitted that the attempt made by the respondent to equate the delay in judicial processes and the delay in executive processes should be rejected in view of the judgment in Triveniben's case because there is a marked qualitative difference between the judicial and executive processes. Learned senior counsel submitted that when a matter remains pending before the Court, the State and the

accused take adversarial positions and submit their dispute before the judiciary for resolution whereas under the clemency jurisdiction, the accused pleads for mercy before the same party that prosecuted him. Learned senior counsel emphasized that there is an element of total submissiveness and surrender when mercy/pardon is sought by the accused and there is no adversarial role at this stage. Shri Vishwanathan relied upon the minority judgment of the Privy Council in Noel Riley v. Attorney General (supra) and argued that the prolonged incarceration of a death row convict under the guise that the mercy petitions are pending disposal or due to gross delay in disposal of mercy petitions renders the sentence of death in-executable. Learned senior counsel pointed out that India is a signatory to a number of International Covenants and Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenants on Civil and Political Rights state that no-one should be subjected to cruel, inhuman or degrading treatment or punishment and submitted that long incarceration awaiting a verdict on a condemned prisoner's mercy petition amounts to cruel and inhuman treatment of such prisoner, which amounts to violation of these Covenants. Learned senior counsel also referred to the memorandum of the Ministry of Home Affairs relating to "Procedure regarding petitions for mercy in death sentence cases" and submitted that various clauses thereof recognise the need for handling the disposal of mercy petitions with utmost expedition and speed. In support of his argument that delay should be treated as sufficient for commutation of death sentence into life imprisonment, Shri Vishwanathan relied upon the judgments of this Court in Madhu Mehta's case and Jagdish v. State of Madhya Pradesh (2009) 9 SCC 495 and a judgment from Zimbabwe being Catholic Commission for Justice and Peace in Zimbabwe v. Attorney General, Zimbabwe Ors. 1993 (4) SA 239 (ZS).

15. Shri Harin P. Raval, learned Additional Solicitor General emphasized that the disposal of petitions filed under Articles 72 and 161 of the Constitution requires consideration of various factors, i.e., the nature of crime, the manner in which the crime is committed and its impact on the society and that the time consumed in this process cannot be characterised as delay. Shri Raval pointed out that the petitions filed by and on behalf of the petitioner were considered at various levels of the Government in the light of the representations made by various individuals including public representatives from within and outside the country apart from different organizations all of whom had espoused his cause and, therefore, it cannot be said that there was undue delay in the disposal of the petition. Learned Additional Solicitor General then submitted that no time frame can be fixed for the President to decide the petitions filed under Article 72 and delay cannot be a ground for commuting the death sentence imposed on the petitioner ignoring that

he was convicted for a heinous crime of killing nine innocent persons. He relied upon the proposition laid down by the Constitution Bench in Triveniben's case that no fixed period of delay in the disposal of petitions filed under Article 72 or 161 can be judicially prescribed to make the sentence of death in-executable and argued that the contrary views expressed by smaller Benches in Vatheeswaran's case and Javed Ahmed's case should be declared as not laying down correct law.

16. The arguments of the learned counsel for the parties/intervenor and the learned Amicus have given rise to the following questions:

> (a) What is the nature of power vested in the President under Article 72 and the Governor under Article 161 of the Constitution?
>
> (b) Whether delay in deciding a petition filed under Article 72 or 161 of the Constitution is, by itself, sufficient for issue of a judicial fiat for commutation of the sentence of death into life imprisonment irrespective of the nature and magnitude of the crime committed by the convict and the fact that the delay may have been occasioned due to direct or indirect pressure brought upon the Government by the convict through individuals, groups of people and organizations from within or outside the country or failure of the concerned public authorities to perform their duty?
>
> (c) Whether the parameters laid down by the Constitution Bench in Triveniben's case for judging the issue of delay in the disposal of a petition filed under Article 72 or 161 of the Constitution can be applied to the cases in which an accused has been found guilty of committing offences under TADA and other similar statutes?
>
> (d) What is the scope of the Court's power of judicial review of the decision taken by the President under Article 72 and the Governor under Article 161 of the Constitution, as the case may be?

17. We can find abstract answers to each of the aforesaid questions in the judicial pronouncements of this Court and while doing so, we can also derive help from the judgments of other jurisdictions, but the most important issue which calls for indepth examination, elucidation and determination in these cases is whether delayed disposal of the petition filed under Article 72 can justify judicial review of the decision taken by the President not to grant pardon and whether the Court can ordain commutation of the sentence of death into life imprisonment ignoring the

nature and magnitude of the crime, the motive and manner of commission of the crime, the type of weapon used for committing the crime and overall impact of crime on the society apart from the fact that substantial delay in the disposal of the petition filed under Article 72 can reasonably be attributed to the internal and external pressure brought upon the Government on behalf of the convict by filing a spate of petitions and by using other means.

Re: Question No. (a):

18. The nature of the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution was considered by the Constitution Bench in Maru Ram's case. The main question considered in that case was whether the power of remission vested in the Government under Section 433A Cr.P.C. is in conflict with Articles 72 and 162 of the Constitution. While answering the question in the negative, Krishna Iyer, J., who authored the main judgment, observed:

> "It is apparent that superficially viewed, the two powers, one constitutional and the other statutory, are coextensive. But two things may be similar but not the same. That is precisely the difference. We cannot agree that the power which is the creature of the Code can be equated with a high prerogative vested by the Constitution in the highest functionaries of the Union and the States. The source is different, the substance is different, the strength is different, although the stream may be flowing along the same bed. We see the two powers as far from being identical, and, obviously, the constitutional power is "untouchable" and "unapproachable" and cannot suffer the vicissitudes of simple legislative processes. Therefore, Section 433-A cannot be invalidated as indirectly violative of Articles 72 and 161. What the Code gives, it can take, and so, an embargo on Sections 432 and 433(a) is within the legislative power of Parliament.
>
> Even so, we must remember the constitutional status of Articles 72 and 161 and it is common ground that Section 433-A does not and cannot affect even a wee bit the pardon power of the Governor or the President. The necessary sequel to this logic is that notwithstanding Section 433-A the President and the Governor continue to exercise the power of commutation and release under the aforesaid articles.
>
> Are we back to square one? Has Parliament indulged in legislative futility with a formal victory but a real defeat? The answer is "yes" and "no". Why

"yes"? Because the President is symbolic, the Central Government is the reality even as the Governor is the formal head and sole repository of the executive power but is incapable of acting except on, and according to, the advice of his Council of Ministers. The upshot is that the State Government, whether the Governor likes it or not, can advice and act under Article 161, the Governor being bound by that advice. The action of commutation and release can thus be pursuant to a governmental decision and the order may issue even without the Governor's approval although, under the Rules of Business and as a matter of constitutional courtesy, it is obligatory that the signature of the Governor should authorise the pardon, commutation or release. The position is substantially the same regarding the President. It is not open either to the President or the Governor to take independent decision or direct release or refuse release of anyone of their own choice. It is fundamental to the Westminster system that the Cabinet rules and the Queen reigns being too deeply rooted as foundational to our system no serious encounter was met from the learned Solicitor-General whose sure grasp of fundamentals did not permit him to controvert the proposition, that the President and the Governor, be they ever so high in textual terminology, are but functional euphemisms promptly acting on and only on the advice of the Council of Ministers have in a narrow area of power. The subject is now beyond controversy, this Court having authoritatively laid down the law in Shamsher Singh case (1974) 2 SCC 831. So, we agree, even without reference to Article 367(1) and Sections 3(8)(b) and 3(60)(b) of the General Clauses Act, 1897, that, in the matter of exercise of the powers under Articles 72 and 161, the two highest dignitaries in our constitutional scheme act and must act not on their own judgment but in accordance with the aid and advice of the ministers. Article 74, after the 42nd Amendment silences speculation and obligates compliance. The Governor vis-à-vis his Cabinet is no higher than the President save in a narrow area which does not include Article 161. The constitutional conclusion is that the Governor is but a shorthand expression for the State Government and the President is an abbreviation for the Central Government."

(emphasis supplied)

19. The proposition laid down in Maru Ram's case was reiterated by another Constitution Bench in Kehar Singh's case in the following words:

"The Constitution of India, in keeping with modern constitutional practice, is a constitutive document, fundamental to the governance of the country, whereby, according to accepted political theory, the people of India have provided a constitutional polity consisting of certain primary organs, institutions and functionaries to exercise the powers provided in the Constitution. All power belongs to the people, and it is entrusted by them to specified institutions and functionaries with the intention of working out, maintaining and operating a constitutional order. The Preambular statement of the Constitution begins with the significant recital:

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic ... do hereby adopt, enact and give to ourselves this Constitution."

To any civilised society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order, and consequently, the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. The deprivation of personal liberty and the threat of the deprivation of life by the action of the State is in most civilised societies regarded seriously and, recourse, either under express constitutional provision or through legislative enactment is provided to the judicial organ. But, the fallibility of human judgment being undeniable even in the most trained mind, a mind resourced by a harvest of experience, it has been considered appropriate that in the matter of life and personal liberty, the protection should be extended by entrusting power further to some high authority to scrutinise the validity of the threatened denial of life or the threatened or continued denial of personal liberty. The power so entrusted is a power belonging to the people and reposed in the highest dignitary of the State. In England, the power is regarded as the royal prerogative of pardon exercised by the Sovereign, generally through the Home Secretary. It is a power which is capable of exercise on a variety of grounds, for reasons of State as well as the desire to safeguard against judicial error. It is an act of grace issuing from the Sovereign. In the United States, however, after the founding of the Republic, a pardon by the President has been regarded not as a private act of grace but as a part of the constitutional scheme. In an opinion, remarkable for its erudition and clarity, Mr Justice Holmes,

speaking for the Court in W.I. Biddle v. Vuco Perovich (71 L Ed 1161) enunciated this view, and it has since been affirmed in other decisions. The power to pardon is a part of the constitutional scheme, and we have no doubt, in our mind, that it should be so treated also in the Indian Republic. It has been reposed by the people through the Constitution in the Head of the State, and enjoys high status. It is a constitutional responsibility of great significance, to be exercised when occasion arises in accordance with the discretion contemplated by the context. It is not denied, and indeed it has been repeatedly affirmed in the course of argument by learned counsel, Shri Ram Jethmalani and Shri Shanti Bhushan, appearing for the petitioners that the power to pardon rests on the advice tendered by the Executive to the President, who subject to the provisions of Article 74(1) of the Constitution, must act in accordance with such advice."

(emphasis supplied)

In that case, the Constitution Bench also considered whether the President can, in exercise of the power vested in him under Article 72 of the Constitution, scrutinize the evidence on record and come to a different conclusion than the one arrived at by the Court and held: "We are of the view that it is open to the President in the exercise of the power vested in him by Article 72 of the Constitution to scrutinise the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of, and sentence imposed on, the accused. In doing so, the President does not amend or modify or supersede the judicial record. The judicial record remains intact, and undisturbed. The President acts in a wholly different plane from that in which the Court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it. And this is so, notwithstanding that the practical effect of the Presidential act is to remove the stigma of guilt from the accused or to remit the sentence imposed on him. ....

The legal effect of a pardon is wholly different from a judicial supersession of the original sentence. It is the nature of the power which is determinative. ...

It is apparent that the power under Article 72 entitles the President to examine the record of evidence of the criminal case and to determine for

himself whether the case is one deserving the grant of the relief falling within that power. We are of opinion that the President is entitled to go into the merits of the case notwithstanding that it has been judicially concluded by the consideration given to it by this Court.

....the power under Article 72 is of the widest amplitude, can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case, in which the merits and reasons of State may be profoundly assisted by prevailing occasion and passing time. And it is of great significance that the function itself enjoys high status in the constitutional scheme."

20. In State (Govt. of NCT of Delhi) v. Prem Raj (2003) 7 SCC 121, this Court was called upon to consider whether in a case involving conviction under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, the High Court could commute the sentence of imprisonment on deposit of a specified amount by the convict and direct the State Government to pass appropriate order under Section 433(c) Cr.P.C. The two- Judge Bench referred to some of the provisions of the Cr.P.C. as also Articles 72 and 161 of the Constitution and observed:

"A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It affects both the punishment prescribed for the offence and the guilt of the offender; in other words, a full pardon may blot out the guilt itself. It does not amount to an acquittal unless the court otherwise directs. Pardon is to be distinguished from "amnesty" which is defined as "general pardon of political prisoners; an act of oblivion". As understood in common parlance, the word "amnesty" is appropriate only where political prisoners are released and not in cases where those who have committed felonies and murders are pardoned.

xxxx xxxx xxxx

"Pardon is one of the many prerogatives which have been recognized since time immemorial as being vested in the Sovereign, wherever the sovereignty might lie." This sovereign power to grant a pardon has been recognized in our Constitution in Articles 72 and 161, and also in Sections 432 and 433 of

the Code. Grant of pardon to an accomplice under certain conditions as contemplated by Section 306 of the Code is a variation of this very power. The grant of pardon, whether it is under Article 161 or 72 of the Constitution or under Sections 306, 432 and 433 is the exercise of sovereign power."

21. In Epuru Sudhakar v. Government of A.P. (supra), which was also decided by a two-Judge Bench, Arijit Pasayat, J. referred to Section 295 of the Government of India Act, 1935, Articles 72 and 161 of the Constitution, 59 American Jurisprudence (2nd Edition), Corpus Juris Secundum Vol. 67-A, Wade Administrative Law (9th Edition), Maru Ram's case, Kehar Singh's case and reiterated the views expressed by him in Prem Raj's case on the nature of the power vested in the President and the Governor under Articles 72 and 161 of the Constitution. In his concurring judgment, S. H. Kapadia, J (as he then was) observed:

"Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment has fixed.

The power to grant pardons and reprieves was traditionally a royal prerogative and was regarded as an absolute power. At the same time, even in the earlier days, there was a general rule that if the king is deceived, the pardon is void, therefore, any separation of truth or suggestion of falsehood vitiated the pardon. Over the years, the manifestation of this power got diluted.

Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public considerations alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of exclusive cognizance would not apply when and if the decision impugned is in

derogation of a constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutations.

Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence. The controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject- matter. It can no longer be said that prerogative power is ipso facto immune from judicial review. An undue exercise of this power is to be deplored. Considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination. These are prohibited grounds. The Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty. Therefore, the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future.

The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case. The exercise of power depends upon the facts and circumstances of each case and the necessity or justification for exercise of that power has to be judged from case to case. It is important to bear in mind that every aspect of the exercise of the power under Article 72 as also under Article 161 does not fall in the judicial domain. In certain cases, a particular aspect may not be justiciable. However, even in such cases there has to exist requisite material on the basis of which the power is exercised under Article 72 or under Article 161 of the

Constitution, as the case may be. In the circumstances, one cannot draw the guidelines for regulating the exercise of the power."

22. The propositions which can be culled out from the ratio of the above noted judgments are:

(i) the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution is manifestation of prerogative of the State. It is neither a matter of grace nor a matter of privilege, but is an important constitutional responsibility to be discharged by the highest executive keeping in view the considerations of larger public interest and welfare of the people.

(ii) while exercising power under Article 72, the President is required to act on the aid and advice of the Council of Ministers. In tendering its advice to the President, the Central Government is duty bound to objectively place the case of the convict with a clear indication about the nature and magnitude of the crime committed by him, its impact on the society and all incriminating and extenuating circumstances. The same is true about the State Government, which is required to give advice to the Governor to enable him to exercise power under Article 161 of the Constitution. On receipt of the advice of the Government, the President or the Governor, as the case may be, has to take a final decision in the matter. Although, he/she cannot overturn the final verdict of the Court, but in appropriate case, the President or the Governor, as the case may be, can after scanning the record of the case, form his/her independent opinion whether a case is made out for grant of pardon, reprieve, etc.. In any case, the President or the Governor, as the case may be, has to take cognizance of the relevant facts and then decide whether a case is made out for exercise of power under Article 72 or 161 of the Constitution.

Re: Question Nos. (b) and (c):

23. These questions merit simultaneous consideration. But, before doing that, we may take cognizance of paragraphs I to VII of the instructions issued by the Government of India regarding the procedure to be observed by the States for dealing with the petitions for mercy from or on behalf of the convicts under sentence of death, which are extracted below:

"INSTRUCTIONS REGARDING PROCEDURE TO BE OBSERVED BY THE STATES FOR DEALING WITH PETITIONS FOR MERCY FROM OR ON BEHALF OF CONVICTS UNDER SENTENCE OF DEATII AND WITH APPEALS TO THE SUPREME COURT AND APPLICATIONS FOR SPECIAL LEAVE TO APPEAL TO THAT COURT BY SUCH CONVICTS.

———————————

A. PETITIONS 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 a 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 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 next 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 States to the Governor of the State (Sadar-i- Riyasat in the case of Jammu and Kashmir) and the President of India: and

(b) in the case of Union Territories to the President of India.

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

III The petition shall in the first instance: —

(a) in the case of 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 petitioner;

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 power 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 Union Territories, be sent to the Lieut.-Governor/ Chief Commissioner/Administrator 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 Chief Commissioner 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 an 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 Lieut.-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 cases 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 Lieut.- 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 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 orders 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 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 Lieut.-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."

24. The above reproduced instructions give a clear indication of the seriousness with which the authorities entrusted with the task of accepting the mercy petitions are required to process the same without any delay.

25. The question whether delay in the judicial process constitutes a ground for alteration of death sentence into life imprisonment has been considered in several

cases. In Piare Dusadh v. Emperor AIR 1944 FC 1, the Federal Court of India altered the death sentence into one of transportation for life on the ground that the appellant had been awaiting the execution of death sentence for over one year. While vacating the death penalty, similar approach was adopted in Vivian Rodrick's case, Neiti Sreeramulu's case, Ediga Anamma's case, State of U.P. v. Suresh (supra), State of U.P. v. Lalla Singh (1978) 1 SCC 142, Bhagwan Bux Singh v. State of U.P. (1978) 1 SCC 214, Sadhu Singh v. State of U.P. (supra) and State of U.P. v. Sahai (1982) 1 SCC 352.

26. In Ediga Anamma's case, the appellant was found guilty of killing his own wife and a two year old child. After approving the reasons recorded by the trial Court and the High Court for holding the appellant guilty, this Court referred to Section 354(3) Cr.P.C., which casts a duty upon the Court to give special reasons for awarding death penalty as also the judgment in Jagmohan Singh's case and observed:

> "Jagmohan Singh has adjudged capital sentence constitutional and whatever our view of the social invalidity of the death penalty, personal predilections must bow to the law as by this Court declared, adopting the noble words of Justice Stanley Mosk of California uttered in a death sentence case: "As a judge, I am bound to the law as I find it to be and not as I fervently wish it to be". (The Yale Law Journal, Vol. 82, No. 6, p. 1138.)
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> Where the murderer is too young or too old the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the Court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under Section 302, read with Section 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the Court may humanly opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the

crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life."

(emphasis supplied)

27. In T.V. Vatheeswaran's case, on which learned senior counsel for the petitioner and the learned Amicus Shri Ram Jethmalani placed heavy reliance, the two Judge Bench considered whether the appellant, who was convicted for an offence of murder and sentenced to death in January, 1975 and was kept in solitary confinement for about 8 years was entitled to commutation of death sentence. The Court prefaced consideration of the appellant's plea by making the following observations:

"Let us examine his claim. First, let us get rid of the cobwebs of prejudice. Sure, the murders were wicked and diabolic. The appellant and his friends showed no mercy to their victims Why should any mercy be shown to them? But, gently, we must remind ourselves it is not Shylock's pound of flesh that we seek, nor a chilling of the human spirit. It is justice to the killer too and not justice untempered by mercy that we dispense. Of course, we cannot refuse to pass the sentence of death where the circumstances cry for it. But, the question is whether in a case where after the sentence of death is given, the accused person is made to undergo inhuman and degrading punishment or where the execution of the sentence is endlessly delayed and the accused is made to suffer the most excruciating agony and anguish, is it not open to a Court of appeal or a court exercising writ jurisdiction, in an appropriate proceeding, to take note of the circumstance when it is brought to its notice and give relief where necessary?"

The Bench then referred to the judgments noted hereinabove, the minority view of Lord Scarman and Lord Brightman in Noel Riley v. Attorney General (supra) and observed:

"While we entirely agree with Lord Scarman and Lord Brightman about the dehumanising effect of prolonged delay after the sentence of death, we enter a little caveat, but only that we may go further. We think that the cause of the delay is immaterial when the sentence is death. Be the cause for the delay, the time necessary for appeal and consideration of reprieve or some other cause for which the accused himself may be responsible, it would not alter the dehumanising character of the delay."

After noticing some more judgments, the Bench observed:

"So, what do we have now? Articles 14, 19 and 21 are not mutually exclusive. They sustain, strengthen and nourish each other. They are available to prisoners as well as free men. Prison walls do not keep out Fundamental Rights. A person under sentence of death may also claim Fundamental Rights. The fiat of Article 21, as explained, is that any procedure which deprives a person of his life or liberty must be just, fair and reasonable. Just, fair and reasonable procedure implies a right to free legal services where he cannot avail them. It implies a right to a speedy trial. It implies humane conditions of detention, preventive or punitive. "Procedure established by law" does not end with the pronouncement of sentence; it includes the carrying out of sentence. That is as far as we have gone so far. It seems to us but a short step, but a step in the right direction, to hold that prolonged detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death. In the United States of America where the right to a speedy trial is a Constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictment or the vacation of the sentence (vide Strunk v. United States). Analogy of American law is not permissible, but interpreting our Constitution sui generis, as we are bound to do, we find no impediment in holding that the dehumanising factor of prolonged delay in the execution of a sentence of death has the Constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way as to offend the Constitutional guarantee that no person shall be deprived of his life or personal liberty except according to procedure established by law. The appropriate relief in such a case is to vacate the sentence of death."

(emphasis supplied)

28. In K.P. Mohd.'s case, a Bench headed by the then Chief Justice Y.V. Chandrachud noted that the petitioner who was sentenced to death had filed a petition under Article 72 of the Constitution in 1978 but the same was not decided for the next four and half years. The writ petition filed by the petitioner for commutation of death sentence into life imprisonment was adjourned by the Court from time to time with the hope that the Government will expedite its process and dispose of the mercy petition at an early date. Notwithstanding this, the mercy petition was not decided. After waiting for a sufficiently long period, the Court commuted the death sentence into life imprisonment by recording the following observations:

> ".... It is perhaps time for accepting a self-imposed rule of discipline that mercy petitions shall be disposed of within, say, three months. These delays are gradually creating serious social problems by driving the courts to reduce death sentences even in those rarest of rare cases in which, on the most careful, dispassionate and humane considerations death sentence was found to be the only sentence called for. The expectation of persons condemned to death that they still have a chance to live is surely not of lesser, social significance than the expectation of contestants to an election petition that they will one day vote on the passing of a bill.
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> Considering all the circumstances of the case, including those concerning the background and motivation of the crime in the instant case, we are of the opinion that the death sentence imposed upon the petitioner should be set aside and in its place the sentence of life imprisonment should be passed. We direct accordingly. It is needless to add that the death sentence imposed upon the petitioner shall not be executed. It is however necessary to add that we are not setting aside the death sentence merely for the reason that a certain number of years have passed after the imposition of the death sentence. We do not hold or share the view that a sentence of death becomes inexecutable after the lapse of any particular number of years."
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> (emphasis supplied)

29. After 13 days, a three-Judge Bench headed by the Chief Justice delivered the judgment titledSher Singh v. State of Punjab (1983) 2 SCC 344. The petitioners in that case were convicted under Section 302 read with Section 34 IPC and were sentenced to death by the trial Court. The High Court reduced the sentence

imposed on one of them to life imprisonment but upheld the sentence of death imposed on the remaining two accused. The petitioners then challenged the constitutional validity of Section 302 IPC. Their petition was dismissed by this Court. Soon thereafter, they filed writ petition for commutation of death sentence by relying upon the judgment in T. V. Vatheeswaran's case. The three-Judge Bench broadly agreed with the ratio of the judgment in T.V. Vatheeswaran's case, but refused to lay down any hard and fast rule for commutation of death sentence into life imprisonment on the ground of delay in the Court processes. Some of the passages of the judgment in Sher Singh's case are extracted below:

> "Like our learned Brethren, we too consider that the view expressed in this behalf by Lord Scarman and Lord Brightman in the Privy Council decision of Noel Riley is, with respect, correct. The majority in that case did not pronounce upon this matter. The minority expressed the opinion that the jurisprudence of the civilized world has recognized and acknowledged that prolonged delay in executing a sentence of death can make the punishment when it comes inhuman and degrading: Sentence of death is one thing; sentence of death followed by lengthy imprisonment prior to execution is another. The prolonged anguish of alternating hope and despair, the agony of uncertainty, the consequences of such suffering on the mental, emotional, and physical integrity and health of the individual can render the decision to execute the sentence of death an inhuman and degrading punishment in the circumstances of a given case.
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> The fact that it is permissible to impose the death sentence in appropriate cases does not, however, lead to the conclusion that the sentence must be executed in every case in which it is upheld, regardless of the events which have happened since the imposition or the upholding of that sentence. The inordinate delay in the execution of the sentence is one circumstance which has to be taken into account while deciding whether the death sentence ought to be allowed to be executed in a given case."
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> (emphasis supplied)
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> The area of disagreement between the two-Judge Bench, which decided T.V. Vatheeswaran's case and the three-Judge Bench, which decided Sher Singh's case is reflected in the following observations made in the latter judgment:

"What we have said above delineates the broad area of agreement between ourselves and our learned Brethren who decided Vatheeswaran. We must now indicate with precision the narrow area wherein we feel constrained to differ from them and the reasons why. Prolonged delay in the execution of a death sentence is unquestionably an important consideration for determining whether the sentence should be allowed to be executed. But, according to us, no hard and fast rule can be laid down as our learned Brethren have done that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence to death to invoke Article 21 and demand the quashing of the sentence of death". This period of two years purports to have been fixed in Vatheeswaran after making "all reasonable allowance for the time necessary for appeal and consideration of reprieve". With great respect, we find it impossible to agree with this part of the judgment. One has only to turn to the statistics of the disposal of cases in the High Court and the Supreme Court to appreciate that a period far exceeding two years is generally taken by those Courts together for the disposal of matters involving even the death sentence. Very often, four or five years elapse between the imposition of death sentence by the Sessions Court and the disposal of the special leave petition or an appeal by the Supreme Court in that matter. This is apart from the time which the President or the Governor, as the case may be, takes to consider petitions filed under Article 72 or Article 161 of the Constitution or the time which the Government takes to dispose of applications filed under Sections 432 and 433 of the Code of Criminal Procedure. It has been the sad experience of this Court that no priority whatsoever is given by the Government of India to the disposal of petitions filed to the President under Article 72 of the Constitution. Frequent reminders are issued by this Court for an expeditious disposal of such petitions but even then the petitions remain undisposed of for a long time. Seeing that the petition for reprieve or commutation is not being attended to and no reason is forthcoming as to why the delay is caused, this Court is driven to commute the death sentence into life imprisonment out of a sheer sense of helplessness and frustration. Therefore, with respect, the fixation of the time limit of two years does not seem to us to accord with the common experience of the time normally consumed by the litigative process and the proceedings before the executive.

Apart from the fact that the rule of two years runs in the teeth of common experience as regards the time generally occupied by proceedings in the High Court, the Supreme Court and before the executive authorities, we are

of the opinion that no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of a death sentence, the sentence must be substituted by the sentence of life imprisonment. There are several other factors which must be taken into account while considering the question as to whether the death sentence should be vacated. A convict is undoubtedly entitled to pursue all remedies lawfully open to him to get rid of the sentence of death imposed upon him and indeed, there is no one, be he blind, lame, starving or suffering from a terminal illness, who does not want to live. The Vinoba Bhaves, who undertake the "Prayopaveshana" do not belong to the world of ordinary mortals. Therefore, it is understandable that a convict sentenced to death will take recourse to every remedy which is available to him under the law to ask for the commutation of his sentence, even after the death sentence is finally confirmed by this Court by dismissing his special leave petition or appeal. But, it is, at least, relevant to consider whether the delay in the execution of the death sentence is attributable to the fact that he has resorted to a series of untenable proceedings which have the effect of defeating the ends of justice. It is not uncommon that a series of review petitions and writ petitions are filed in this Court to challenge judgments and orders which have assumed finality, without any seeming justification. Stay orders are obtained in those proceedings and then, at the end of it all, comes the argument that there has been prolonged delay in implementing the judgment or order. We believe that the Court called upon to vacate a death sentence on the ground of delay caused in executing that sentence must find why the delay was caused and who is responsible for it. If this is not done, the law laid down by this Court will become an object of ridicule by permitting a person to defeat it by resorting to frivolous proceedings in order to delay its implementation. And then, the rule of two years will become a handy tool for defeating justice. The death sentence should not, as far as possible, be imposed. But, in that rare and exceptional class of cases wherein that sentence is upheld by this Court, the judgment or order of this Court ought not to be allowed to be defeated by applying any rule of thumb.

Finally, and that is no less important, the nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the question whether the motivation and pattern of the crime are such as are likely to lead to its repetition, if the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed. The substitution of the

death sentence by a sentence of life imprisonment cannot follow by the application of the two years' formula, as a matter of quod erat demonstrandum."

(emphasis supplied)

30. In Javed Ahmed v. State of Maharashtra (supra), a two-Judge Bench presided over by O. Chinnappa Reddy, J., who had authored the judgment in T.V. Vatheeswaran's case, while reiterating the proposition laid down in T.V. Vatheeswaran's case, the learned Judge proceeded to doubt the competence of the larger Bench to what he termed as overruling of the two- Judge Bench judgment.

31. Although, the question whether delay in disposal of the petitions filed under Articles 72 and 161 of the Constitution constitutes a valid ground for commutation of sentence of death into life imprisonment did not arise for consideration in T.V. Vatheeswaran's case, Sher Singh's case or Javed Ahmed's case and only a passing reference was made in the last paragraph of the judgment in T.V. Vatheeswaran's case, the conflicting opinions expressed in those cases on the Court's power to commute the sentence of death into life imprisonment on the ground of delay simpliciter resulted in a reference to the Constitution Bench in Triveniben's case which related to the exercise of power by the President under Article 72 and by the Governor under Article 161 of the Constitution. After hearing the arguments, the Constitution Bench expressed its opinion in the following words:

"Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 but this Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in Vatheeswaran case cannot be said to lay down the correct law and therefore to that extent stands overruled."

(This order is reported in (1988) 4 SCC 574)

32. In paragraph 13 of the main judgment G.L. Oza, J., noted the argument made on behalf of the petitioners that delay causes immense mental torture to a condemned prisoner and observed:

> ".....It is no doubt true that sometimes in these procedures some time is taken and sometimes even long time is spent. May be for unavoidable circumstances and sometimes even at the instance of the accused but it was contended and rightly so that all this delay up to the final judicial process is taken care of while the judgment is finally pronounced and it could not be doubted that in number of cases considering (sic) the time that has elapsed from the date of the offence till the final decision has weighed with the courts and lesser sentence awarded only on this account."
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> The learned Judge then observed that while considering the question of delay after the final verdict is pronounced, the time spent on petitions for review and repeated mercy petitions at the instance of the convicted person himself shall not be considered and the only delay which would be material for consideration will be the delay in disposal of the mercy petitions or delay occurring at the instance of the executive.

33. While rejecting the argument that keeping a condemned prisoner in jail amounts to double jeopardy, Oza, J., referred to Section 366 Cr.P.C. and held that when a person is committed to jail awaiting the execution of the sentence of death, it is not an imprisonment but the prisoner has to be kept secured till the sentence awarded by the Court is executed. The learned Judge also rejected the argument that delay in execution of the sentence entitles a prisoner to approach this Court because his right under Article 21 is infringed and observed:

> "……..the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the

sentence of death will not be just and proper. The nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court while finally passing the verdict. It may also be open to the court to examine or consider any circumstances after the final verdict was pronounced if it is considered relevant……."

34. K. Jagannatha Shetty, J., who delivered a concurring opinion referred to the jurisprudential development in other countries on the issue of execution of the sentence of death and observed:

"Under Article 72 of the Constitution, 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". Under Article 161 of the Constitution, similar is the power of the Governor to give relief to any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. The time taken by the executive for disposal of mercy petitions may depend upon the nature of the case and the scope of enquiry to be made. It may also depend upon the number of mercy petitions submitted by or on behalf of the accused. The court, therefore, cannot prescribe a time-limit for disposal of even for mercy petitions.

It is, however, necessary to point out that Article 21 is relevant at all stages. This Court has emphasised that "the speedy trial in criminal cases though not a specific fundamental right, is implicit in the broad sweep and content of Article 21". Speedy trial is a part of one's fundamental right to life and liberty. This principle, in my opinion, is no less important for disposal of mercy petition. It has been universally recognised that a condemned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture. He may be provided with amenities of ordinary inmates in the prison as stated in Sunil Batra v. Delhi Admn.,but nobody could succeed in giving him peace of mind.

[pic]Chita Chinta Dwayoormadhya,

[pic]Chinta Tatra Gariyasi,

[pic]Chita Dahati Nirjivam,

[pic]Chinta Dahati Sajeevakam.

As between funeral fire and mental worry, it is the latter which is more devastating, for, funeral fire burns only the dead body while the mental worry burns the living one. This mental torment may become acute when the judicial verdict is finally set against the accused. Earlier to it, there is every reason for him to hope for acquittal. That hope is extinguished after the final verdict. If, therefore, there is inordinate delay in execution, the condemned prisoner is entitled to come to the court requesting to examine whether it is just and fair to allow the sentence of death to be executed.

..... The court while examining the matter, for the reasons already stated, cannot take into account the time utilised in the judicial proceedings up to the final verdict. The court also cannot take into consideration the time taken for disposal of any petition filed by or on behalf of the accused either under Article 226 or under Article 32 of the Constitution after the final judgment affirming the conviction and sentence. The court may only consider whether there was undue long delay in disposing of mercy petition ; whether the State was guilty of dilatory conduct and whether the delay was for no reason at all. The inordinate delay, may be a significant factor, but that by itself cannot render the execution unconstitutional. Nor it can be divorced from the dastardly and diabolical circumstances of the crime itself.....”

(emphasis supplied)

35. In Madhu Mehta v. Union of India (supra), this Court commuted the death sentence awarded to one Gyasi Ram, who had killed a Government servant, namely, Bhagwan Singh (Amin), who had attached his property for recovery of arrears of land revenue. After disposal of the criminal appeal by this Court, the wife of the convict filed a mercy petition in 1981. The same remained pending for 8 years. This Court considered the writ petition filed by the petitioner Madhu Mehta, who was the national convener of Hindustani Andolan, referred to the judgments in T.V. Vatheeswaran’s case, Sher Singh’s case and Triveniben’s case and held that in the absence of sufficient explanation, the death sentence should be converted into life imprisonment.

36. The facts of Daya Singh’s case were that the petitioner had been convicted and sentenced to death for murdering Sardar Pratap Singh Kairon. The sentence was

confirmed by the High Court and the special leave petition was dismissed by this Court. After rejection of the review petition, he filed mercy petitions before the Governor and the President of India, which were also rejected. The writ petition filed by his brother Lal Singh was dismissed along with Triveniben's case. Thereafter, he filed another mercy petition before the Governor of Haryana in November, 1988. The matter remained pending for next two years. Finally, he sent a letter from Alipore Central Jail, Calcutta to the Registry of this Court for commutation of the sentence of death into life imprisonment. This Court took cognizance of the fact that the petitioner was in jail since 1972 and substituted the sentence of imprisonment for life in place of the death sentence.

37. The judgments of other jurisdictions, i.e., Riley v. Attorney General of Jamaica, which has been cited in Rajendra Prasad's case, Ediga Anamma's case, T.V. Vatheeswaran's case and Sher Singh's case, as also the judgment in Pratt v. Attorney General of Jamaica, which has been referred to with approval in T.V. Vatheeswaran's case do not provide any assistance in deciding the questions framed by us. The principle laid down in those cases is that delay in executing a sentence of death makes the punishment inhuman and degrading and the prisoner is entitled to seek intervention of the Court for release on the ground that there was no explanation for inordinate delay. Similarly, the study conducted by Roger Hood and Carolyn Hoyle of the University of Oxford, which has been published with the title "The Death Penalty – A Worldwide Perspective" does not advance the cause of the petitioner.

38. In the light of the above, we shall now consider the argument of Shri K.T.S. Tulsi, learned senior counsel for the petitioner, and Shri Ram Jethmalani and Shri Andhyarujina, Senior Advocates, who assisted the Court as Amicus, that long delay of 8 years in disposal of the petition filed under Article 72 should be treated as sufficient for commutation of the sentence of death into life imprisonment, more so, because of prolonged detention, the petitioner has become mentally sick. The thrust of the argument of the learned senior counsel is that inordinate delay in disposal of mercy petition has rendered the sentence of death cruel, inhuman and degrading and this is nothing short of another punishment inflicted upon the condemned prisoner.

39. Though the argument appears attractive, on a deeper consideration of all the facts, we are convinced that the present case is not a fit one for exercise of the power of judicial review for quashing the decision taken by the President not to commute the sentence of death imposed on the petitioner. Time and again,

(Machhi Singh's case, Ediga Anamma's case, Sher Singh's case and Triveniben's case), it has been held that while imposing punishment for murder and similar type of offences, the Court is not only entitled, but is duty bound to take into consideration the nature of the crime, the motive for commission of the crime, the magnitude of the crime and its impact on the society, the nature of weapon used for commission of the crime, etc.. If the murder is committed in an extremely brutal or dastardly manner, which gives rise to intense and extreme indignation in the community, the Court may be fully justified in awarding the death penalty. If the murder is committed by burning the bride for the sake of money or satisfaction of other kinds of greed, there will be ample justification for awarding the death penalty. If the enormity of the crime is such that a large number of innocent people are killed without rhyme or reason, then too, award of extreme penalty of death will be justified. All these factors have to be taken into consideration by the President or the Governor, as the case may be, while deciding a petition filed under Article 72 or 161 of the Constitution and the exercise of power by the President or the Governor, as the case may be, not to entertain the prayer for mercy in such cases cannot be characterized as arbitrary or unreasonable and the Court cannot exercise power of judicial review only on the ground of undue delay.

40. We are also of the view that the rule enunciated in Sher Singh's case, Triveniben's case and some other judgments that long delay may be one of the grounds for commutation of the sentence of death into life imprisonment cannot be invoked in cases where a person is convicted for offence under TADA or similar statutes. Such cases stand on an altogether different plane and cannot be compared with murders committed due to personal animosity or over property and personal disputes. The seriousness of the crimes committed by the terrorists can be gauged from the fact that many hundred innocent civilians and men in uniform have lost their lives. At times, their objective is to annihilate their rivals including the political opponents. They use bullets, bombs and other weapons of mass killing for achieving their perverted political and other goals or wage war against the State. While doing so, they do not show any respect for human lives. Before killing the victims, they do not think even for a second about the parents, wives, children and other near and dear ones of the victims. The families of those killed suffer the agony for their entire life, apart from financial and other losses. It is paradoxical that the people who do not show any mercy or compassion for others plead for mercy and project delay in disposal of the petition filed under Article 72 or 161 of the Constitution as a ground for commutation of the sentence of death. Many others join the bandwagon to espouse the cause of terrorists involved in gruesome killing and mass murder of innocent civilians and raise the bogey of human rights.

Question No.(d):

41. While examining challenge to the decision taken by the President under Article 72 or the Governor under Article 161 of the Constitution, as the case may be, the Court's power of judicial review of such decision is very limited. The Court can neither sit in appeal nor exercise the power of review, but can interfere if it is found that the decision has been taken without application of mind to the relevant factors or the same is founded on the extraneous or irrelevant considerations or is vitiated due to malafides or patent arbitrariness – Maru Ram v. Union of India, (1981) 1 SCC 107, Kehar Singh v. Union of India (1989) 1 SCC 204, Swaran Singh v. State of U.P. (1998) 4 SCC 75,Satpal v. State of Haryana (2000) 5 SCC 170, Bikas Chatterjee v. Union of India (2004) 7 SCC 634,Epuru Sudhakar v. Government of A.P. (2006) 8 SCC 161 and Narayan Dutt v. State of Punjab (2011) 4 SCC 353.

42. So far as the petitioner is concerned, he was convicted for killing 9 innocent persons and injuring 17 others. The designated Court found that the petitioner and other members of Khalistan Liberation Front, namely, Kuldeep, Sukhdev Singh, Harnek and Daya Singh Lahoria were responsible for the blast. Their aim was to assassinate Shri M.S. Bitta, who was lucky and escaped with minor injuries. While upholding the judgment of the designated Court, the majority of this Court referred to the judgments in Bachan Singh's case and observed:

> "From Bachan Singh v. State of Punjab and Machhi Singh v. State of Punjab the principle culled out is that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, the same can be awarded. It was observed:
>
> The community may entertain such sentiment in the following circumstances:
>
> (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

43. The finding recorded by the majority on the issue of the petitioner's guilt is conclusive and, as held in Triveniben's case and other cases, while deciding the issue whether the sentence of death awarded to the accused should be converted into life imprisonment, the Court cannot review such finding.

44. It is true that there was considerable delay in disposal of the petition filed by the petitioner but, keeping in view the peculiar facts of the case, we are convinced that there is no valid ground to interfere with the ultimate decision taken by the President not to commute the sentence of death awarded to the petitioner into life imprisonment. We can take judicial notice of the fact that a substantial portion of the delay can well-nigh be attributed to the unending spate of the petitions on

behalf of the petitioner by various persons to which reference has been made hereinabove.

45. On their part, the Government of NCT of Delhi and the Central Government had made their respective recommendations within a period of just over two years. The files produced before the Court show that the concerned Ministries had, after threadbare examination of the factors like the nature, magnitude and intensity of crime committed by the petitioner, the findings recorded by the designated Court and this Court as also the plea put forward by the petitioner and his supporters recommended that no clemency should be shown to the person found guilty of killing 9 innocent persons and injuring 17 others by using 40 kgs. RDX. While making the recommendation, the Government had also considered the impact of such crimes on the public at large. Unfortunately, the petition filed by the petitioner remained pending with the President for almost 6 years, i.e., between May 2005 and May 2011. During this period, immense pressure was brought upon the Government in the form of representations made by various political and non-political functionaries, organizations and several individuals from other countries. This appears to be one of the reasons why the file remained pending in the President's Secretariat and no effort was made for deciding the petitioner's case. The figures made available through RTI inquiry reveal that during the particular period, a large number of mercy petitions remained pending with the President giving rise to unwarranted speculations. On its part, the Ministry of Home Affairs also failed to take appropriate steps for reminding the President's Secretariat about the dire necessity of the disposal of the pending petitions. What was done in April and May, 2011 could have been done in 2005 itself and that would have avoided unnecessary controversy. Be that as it may, we are of the considered view that delay in disposal of the petition filed by the petitioner under Article 72 does not justify review of the decision taken by the President in May 2011 not to entertain his plea for clemency.

46. Though the documents produced by Shri K.T.S. Tulsi do give an indication that on account of prolonged detention in jail after his conviction and sentence to death, the petitioner has suffered physically and mentally, the same cannot be relied upon for recording a finding that the petitioner's mental health has deteriorated to such an extent that the sentence awarded to him cannot be executed.

47. Before parting with the judgment, we consider it necessary to take cognizance of a rather disturbing phenomena. The statistics produced by the learned Additional Solicitor General show that between 1950 and 2009, over 300 mercy

petitions were filed of which 214 were accepted by the President and the sentence of death was commuted into life imprisonment. 69 petitions were rejected by the President. The result of one petition is obscure. However, about 18 petitions filed between 1999 and 2011 remained pending for a period ranging from 1 year to 13 years. A chart showing the details of such petitions is annexed with the Judgment as Schedule 'A'. The particulars contained in Schedule 'A' give an impression that the Government and the President's Secretariat have not dealt with these petitions with requisite seriousness. We hope and trust that in future such petitions will be disposed of without unreasonable delay.

48. For the reasons stated above, we hold that the petitioners have failed to make out a case for invalidation of the exercise of power by the President under Article 72 of the Constitution not to accept the prayer for commutation of the sentence of death into life imprisonment. The writ petitions are accordingly dismissed.