

Justification of Imposing A Death Sentence Due To Delay In Life Imprisonment

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Introduction

A jurist is expected to possess expertise in the "art of law making," which mostly entails balancing opposing arguments to create a sound argument that promotes stability in society. The Supreme Court of India has ruled and upheld that the "prolonged waiting" that a convict witnesses is inherently painful, miserable, and agonizing, and that this violates his rights. Therefore, the court has advocated for "Mercy Jurisprudence," holding that the delay in carrying out the death sentence or in the resolution of the death convicts' mercy petitions should be commuted into life imprisonment. The theory is beneficial to those who fit the description of Rajiv Gandhi assassins, terrorists who target Maninder Singh Bitta, and many others with comparable levels of ferocity. The idea put forth by the highest court must be carefully considered in terms of how well it strikes a balance between the rights of the convicted person and the victim, who suffered irreversibly as a result of the convicted person's actions but are now overlooked or overshadowed. It is necessary to evaluate the proposal made by the Indian Supreme Court in light of the fundamental ideas of criminal justice and punishment philosophies. The question of whether the victim's rights—against whom the "mercy petitioner," whose crime has passed the "rarest of rare" test, committed a heinous crime—have been infringed in the zealous defense of the death sentence must be carefully considered.

The Supreme Court of India has, once again, in its high spirit, ruled¹ if the government delays in making a decision regarding a mercy plea, a prisoner's death sentence may be reduced to life in prison. The death penalty has a "dehumanizing effect," according to the court, on condemned individuals who must endure the "agony" of waiting for years under the threat of death while

¹ V. Sriharan alias Murugan V. Union of India AIR 2014 SC1368

their mercy plea is pending. The review petition challenging the Supreme Court's ruling was also denied, making it the national law that excessive delay on the part of the concerned constitutional officials in processing mercy petitions could be grounds for commuting death sentences to life in prison. The issue's factual and legal background make it abundantly clear that the death penalty recipient will receive "life" in exchange for the government's "compensation" for its inaction or slow response, losing sight of the "rarest of rare" degree of the crime for which he was charged as well as the victim(s) who had suffered irreversible injuries as a result of the infraction. Admittedly, the exorbitant delay ranging into years in processing a Mercy Petition² by the President is uncalled for, unjustifiable, and constitutes one of the worst cases of gross negligence in the performance of a high-level constitutional duty. The question that remains unanswered at this point is whether the death convict should be considered a "beneficiary" as a result of the Constitutional functionary's inaction or delay, and whether he should be "compensated" in this way for the functionary's negligence. If such a proposition is developed and put forth, will it appeal to the general public's sense of "justice"?³ The pertinent question to be critically appreciated and cautiously answered is that as long as the death punishment is conspicuously present⁴ in the Indian Statute books⁵, as long as the apex court goes on to find no constitutional invalidity in punishment by death⁶ and as long as the same continues to be sparingly⁷ employed by the courts should the administration's delays, while slight, be permitted to overshadow the compelling arguments for the punishment's continued application despite protests from all sides calling for its abolition. It is imperative to acknowledge the fact that, despite extensive debate over whether the death penalty should remain legal in India, and despite a substantial body of scholarly and intellectual discourse advocating for its abolition, public opinion has shifted in favour of keeping it in place following the horrific and horrific incident that resulted in the brutal

² Under Article 72 of the Constitution of India

³ Indian Penal Code, lately amended in 2013, talks of awarding of death in cases of repeat offences of rape Against women under Section 376 E

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⁵ Additionally, The Indian Penal Code talks of Death Punishment in the specific sections

And many other special legislations such as the Air Force Act, 1950, the Army Act, 1950, the Navy Act, 1950, Commission of Sati (Prevention) Act, 1987 [section 4(1)], Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [section 3(2)(i)], Explosive Substances Act, 1908 [section 3(b)], Unlawful Activities Prevention Act, 1967 [section 16(1)] also provide for the death penalty.

⁶ Jag Mohan Singh v. State of UP AIR 1973 SC 947 and Rajendra Prasad V. State of UP AIR 1979 SC 916: "Death Penalty, in itself, is not violative (of Article 19), as the right to live is taken away in public interest.

⁷ Doctrine of 'Rarest of Rare' Category evolved in Bachan Singh V. State of Punjab (1980) 2 SCC 684

rape and murder of a physiotherapy student in Delhi, which became known as the "Nirbhaya Case." Therefore, in light of the difficulties associated with putting an execution sentence into effect after it has been granted, affirmed, and ratified, the right of the public to respond naturally to the severity of the act should not be overlooked in the name of "mercy jurisprudence."

The Hon'ble Supreme Court of India, prior to the ruling in *V. Sriharan*⁸ had in *Shatrughan Chauhan V. Union of India*⁹ through its full Bench¹⁰ commuted the death sentence of fifteen death convicts¹¹ into life imprisonment, holding¹² the delay caused in the disposal of mercy petition(s) to be unreasonable, unexplained and exorbitant and strongly advocated 'Mercy Jurisprudence' in such cases. Similarly, the apex court, in *Navneet Kaur Dhillon v. State of National Capital Territory of Delhi and another*¹³ had commuted the death sentence of Devender Pal Singh Bhullar¹⁴ into life imprisonment on the pretext of a delay of eight years coupled with ill health of the convict.

It is important to highlight the seriousness of the crime in the first instance, where the former Indian Prime Minister Rajiv Gandhi's killer is attempting to get his death sentence revoked. Rajiv Gandhi was killed during an Election Rally by a Human Bomb by the LTTE¹⁵ to avenge the sending of Indian Peace Keeping Force to Sri Lanka by him in the capacity of the Prime Minister of India, to counter the LTTE led intermittent insurgency against the Lankan government. The tragedy claimed lives of fifteen innocent people, injuring several others. The TADA court sentenced all 26 of the defendants to death during the trial; however, the Supreme Court only upheld the death penalty in the cases of Murugan, Santhan, A. G. Perarivalan, and Murugan's wife, Nalini. A decision by the Tamil Nadu Cabinet spared Nalini too from execution. The President denied the other three's requests for clemency. On February 18, 2014, however, the

⁸ Transferred Case(Criminal) No. 1 of 2012 available at <https://lawtimesjournal.in/shatrughan-chauhan-anr-vs-union-of-india-ors/> last assessed on 19.12.2018
Writ Petition (Criminal) No.55 of 2013 available at <http://supremecourtfindia.nic.in/ottoday/wpc552013.pdf> last assessed on 19.12.2018

¹⁰ Justice P.Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh

¹¹ Suresh, Ramji, Bilavendran, Simon, Gnanprakasam, Madiah, Praveen Kumar, Gurmeet Singh, Sonia, Sanjeev, Sundar Singh, Jafar Ali, Magan Lal Berala, Shivu and Jadeswamy

¹² "The execution of the sentence must also be in consonance with the Constitutional mandate and not in violation of the constitutional principles."

¹³ Curative Petition (Criminal) no. 88 of 2013 available at <https://indiankanoon.org/doc/155962380/>

¹⁴ Convicted under TADA; awarded death sentence

¹⁵ <https://www.thehindu.com/news/national/rajiv-gandhis-assassination-and-the-downfall-of-lte/article34609851.ece>

defendants' death sentence was mitigated by the Supreme Court due to a delay in the processing of their requests for mercy. The court also gave the state administration the authority to decide whether to use those powers to consider the release of the prisoners. A day later, the State Cabinet agreed to forward its decision to the Center under Section 435 Cr.P.C., deciding to immediately release Santhan, Murugan, Perarivalan, Nalini, Robert Pious, Jayakumar, and Ravichandran. The State Government would have had its way and the prisoners would have been enjoying the "passionate" ruling of the "merciful" court if the Supreme Court hadn't intervened in a timely manner. Rahul Gandhi, the son of the late Prime Minister, commented, "If someone kills the Prime Minister and is freed, how will a common man get justice," in response to the ruling and the State Government's response. "In this country, even the Prime Minister does not get justice," he bemoaned. His attitude at that particular moment was quite appropriate given the punishment the Justice Delivery System had been giving to a man found guilty of a heinous crime. The circumstances leading up to Devender Pal Singh Bhullar's case are comparable. Under the Terrorist and Disruptive Activities Act, Bhullar was charged and ultimately found guilty of setting off a car explosion in Delhi in 1993 with the purpose to kill Maninder Singh Bitta, a youth Congress activist, which resulted in the deaths of nine bystanders and the injuries of 36 others.¹⁶At the Frankfurt Airport, he was apprehended and sent back to India. In January 1995, he was put on trial by the special court in Delhi under the Terrorist and Disruptive Activities Act on charges that he had taken part in the attack on Bitta. On August 25, 2001, the assigned judge sentenced him to death following a six-year trial. In a majority ruling, the Supreme Court Bench upheld the death penalty that was subsequently applied. The Indian President similarly turned down his request for mercy. Nevertheless, the Supreme Court eventually commuted the death sentence into life imprisonment "applying the principle that inordinate and unexplained delay in disposal of mercy petition by the President of India and mental illness are grounds for commutation," taking active cognizance of the curative petition filed by Bhullar's wife.¹⁷The Supreme Court's decision in this case increases the number of death sentences that have been commuted to life in prison due to delay to nineteen in just 2014. It is pertinent to note that India had executed Ajmal Kasab¹⁸ and Afzal Guru with partially closed eyes

¹⁶<https://indianlawportal.co.in/devender-pal-singh-bhullar-v-nct-delhi/>

¹⁷Available at <http://www.thehindu.com/news/national/supreme-court-commutes-bhullars-death-sentence/article5853765.ece>

¹⁸In August, the Supreme Court upheld Kasab's 2010 death sentence over the attacks. President Pranab Mukherjee

to the 'procedure established by law', The Supreme Court is now promoting "Mercy Jurisprudence" under the garb of that era. A thorough examination and evaluation of the care given to Afzal Guru in India at this period is necessary. Guru's pivotal participation in the Parliament Attack led to his conviction. It is well known that Guru was secretly hanged in 2013 for his critical involvement in the December 2001 Parliament Attack. Eight security guards and a gardener were killed when Afzal Guru and five of his accomplices drove into the Indian Parliament and began fire. Before being executed by hanging, Guru had to spend a total of twelve years in captivity. It is notable how long the trial took, from the special court's decision to the President's court's final ruling. Afzal Guru was given the death penalty by the special POTA court on December 18, 2002. The Supreme Court upheld the death penalty on August 4, 2005, and it took the Home Ministry six long years to decide to recommend the death punishment to the President on August 10, 2011. Once more, the President only denied the mercy petition on February 3, 2013, nearly two years later. This decision allowed Guru to be hanged six days later on February 9, 2013, delaying his death for a minimum of eight years, during which the "authorities" needed to process the petition. It is important to remember that his family was only notified by registered and expedited mail, possibly without making the effort to properly notify them. It was not until then that the Supreme Court awoke with its Mercy Jurisprudence, which it developed within a year.

At this point in the discussion, the hanging of Ajmal Kasab is another case that warrants attention. The Hindu¹⁹ had expressed on the occasion that, "The hurried and secretive hanging of Mohammad Ajmal Amir Kasab is both an administrative wrong and a constitutional impropriety. The administration must provide an explanation for why its Home Minister suggested that the President reject Kasab's request for mercy. This is due to the entire globe as well as the country. The newspaper correctly highlights the administrative irregularities in the execution of the death sentence by raising the question of why Kasab was not apprised of his constitutional right to request a reexamination of the President of India's rejection of his mercy plea. The newspaper further argues that the government's failure to inform Kasab of this right remains unexplained

rejected his plea for clemency on November 5, 2012 although this was not made public until Tuesday (6th) night.; Executed on 21st November, 2012 Available at <http://in.reuters.com/article/2012/11/21/india-kasab-death-execution-idINDEE8AK01N201211214>

¹⁹<http://www.thehindu.com/todays-paper/tp-opinion/an-act-of-constitutional-impropriety/article4125092.ece> last assessed on 04.12.2018

and potentially unconstitutional. The judiciary has a wide range of authority²⁰ to closely examine the President's decision to reject the mercy petition and nullify it if it determines that the denial was made for unrelated grounds or if it was based on preconceived notions or biases. However, Kasab was denied the opportunity to do so, which clearly frustrates the protection of 'procedure established by law' under Article 21²¹ of the Constitution of India and as interpreted by the apex court in *Maneka Gandhi V. Union of India*.²² Another News Magazine, *Frontline*, has reacted to the situation speaking that "The President's non-reasoned secret rejection of Kasab's mercy petition, leading to his hasty hanging, raises questions about the government's understanding of the mercy power under the Constitution."²³ If the interpretation of "procedure established by law" under Article 21 of the Constitution determines the jurisprudence of fairness, then Kasab's hanging is profoundly offensive to the essence of that jurisprudence.

Nonetheless, the general public accepted the treatment given to the prisoners in both cases, with only a small percentage of the populace finding fault with it. This demonstrates how the death penalty is received, which is advantageous from a practical standpoint and gives people a sense of revenge when they receive such a reward. *"All the police officers and personnel who lost their life in the battle against the terrorists have today been served justice," Home Minister Sushil Kumar Shinde said after Kasab was hanged in a jail in Pune, southeast of Mumbai.*²⁴ The comment captures the spirit and intensity of the public's outrage against the death penalty. Less severe penalties would not have been accepted by the populace. As is natural to human nature, the natural reaction to such circumstances is for the perpetrator to suffer just as much as he did the victim in order to appease the victim's and the community's resentment. Sir James Stephen has asserted that there is a similar relationship between marriage and sexual desire and criminal law and the desire for vengeance. In a similar vein, Lord Denning said, "The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime," during his testimony to the Royal Commission on Capital penalty, 1949–1953. The New York psychologist and author Dr. Earnest Van den Haag's assertion that

²⁰Settled in *Kehar Singh v Union of India* AIR 1989 SC 653

²¹ Article 21, the Constitution of India: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

²² AIR 1978 SC 597

²³<http://www.frontline.in/static/html/fl2924/stories/20121214292412800.htm>

²⁴<http://in.reuters.com/article/2012/11/21/india-kasab-death-execution-idINDEE8AK01N20121121> last assessed on 04.12.2018

"the motives for the death penalty may include vengeance" should serve as the cornerstone for evaluating the logic of commuting a death sentence into life imprisonment due to a delay in execution. Legal retaliation strengthens social cohesion against lawbreakers and is arguably the only viable option to the disruptive private retaliation of people who have been wronged."²⁵

The Law Commission of India has also observed in its thirty fifth Report²⁶ on Capital Punishment, "The reality is that society still feels negatively affected by significant crimes. If the current administration of the law contains any element of retribution, it is not the instinct of the man of the jungle but rather a refined evolution of that instinct; the public's prevailing sentiment is a reality that should be noted. It is not promoted or used by the law for any nefarious purposes. Rather, the law helps the elements of revenge and deterrence blend by saving the death sentence for murder and assigning the gravest punishment to this most serious crime."

James Fitzjames, Sr. Stephen has also noted that there is a difference between the necessity to apply the "death penalty" in practice and the theoretical and academic debate surrounding it. The death penalty is the only punishment that may successfully prevent males from committing crimes. This is one of those claims that is hard to establish just because it is more evident on its own than it can be made to be by any proof. You can be clever and argue against it, but that's about it. Humanity's entire experience has been in the other way. When achieving a certain outcome has become absolutely necessary, people have always turned to the threat of sudden death. Was there ever a criminal who would turn down the chance to have his death sentence commuted in exchange for the harshest possible secondary penalty after being found guilty and brought to justice? For sure not. For what reason is this the case? Only because "a man will give all that he has for his life" can it be the reason. Even with the most horrific secondary punishment, there is always hope, but death is death, and its horrors cannot be adequately conveyed.

Before enacting legislation limiting the execution of death sentences, it is important to keep in mind the reasoning for the previously stated judgments and the greater good of justice. ²⁷The

²⁵ Quoted in *Bachan Singh v. State of Punjab*

²⁶ LCI 35th Report available at <http://lawcommissionofindia.nic.in/1-50/Report35Vol1and3.pdf> last assessed on 10.01.2018

²⁷The fluctuation in 'justice delivery' system in India, noticeably, in the comparable cases of Afzal Guru, Ajmal Kasab, Rajiv Gandhi Assassination and Devender Pal Singh Bhullar does not go well in the name of fairness

news column in India is ripe with the news of execution²⁸ of two female death row inmates from Kolhapur, Maharashtra, who were given the death penalty in 2001 for abducting thirteen children and murdering nine of them. Renuka Kiran Shinde and her sister Seema Mohan Gavit's July 2014 mercy appeals were denied by the Indian president. The two women, along with their mother Anjanabai Gavit, were found guilty of abducting the children, forcing them into begging, and killing some of them as their productivity declined. The trial judge had called the women's act "the most heinous" and said that the two sisters appeared to have taken pleasure in murdering the youngsters. In every case, the women slaughtered the defenseless youngsters in the most heinous way possible. Under the Supreme Court's ruling analogy, in this case, if it is assumed that the two convicts' execution was again delayed for some reason, the death sentence should once more be commuted to life in prison in order to spare the prisoners from the "agony" and "dehumanizing effect" of having to wait for years under the threat of death. Once more, the question that demands an answer is whether these two women—convicted of the most heinous and barbarous crime, unworthy of a woman—need to be treated leniently by the legal system.

It is important to recognize that society disapproves of some horrifying acts, and that the ease with which those convicted of such crimes are released will inevitably have a detrimental effect on the effectiveness of the legal system. The recent terrible incidence of "Nirbhaya's" rape in Delhi has shown the widespread outrage of the people against such heinous crimes. By adding the death penalty to the Indian Penal Code in 2013 for specific types of "rape," the Union Parliament effectively addressed the widespread public sentiment. Even though, from an academic perspective, the whole idea of vengeance in the justice system smells ugly, barbarous, and outdated, the evolution of criminal law is a powerful indicator of its impact. The "rarest of rare" crimes would undoubtedly damage the legitimacy of our justice system if they are permitted to go unpunished for any reasonable cause and have the ability to stir up controversy among the general public. Since criminal law views crime as an offense against society as a whole, the public expects the state to respond to crimes in a specific way. As such, the state

and justice. The fluctuations reflect us in a bad figure before the world community of harboring different standards of treatment to different categories of people. It is noteworthy that the Supreme Court overruled its own stand within a short span of time, rigidly adopted in Khalistani terrorist Devinderpal Singh Bhullar's case in which it had clearly held that delay in deciding mercy plea cannot be a ground for commutation of death sentence.

²⁸ Times of India 14th August, 2018 available at <http://timesofindia.indiatimes.com/city/pune/Two-sisters-from-Maharashtras-Kolhapur-may-become-the-first-women-to-be-hanged-in-India/articleshow/40249975.cms> last assessed on 08.12.2014

cannot create new laws masquerading as "right to life" or "human rights" law and undermine the confidence of the general public in the administration of justice. In addition, given the length of time spent on the court trials and investigation, the State will have clearly failed to provide the victim of the "rarest of the rare" crime with justice if it records only the death convict's "life" at the time of the action. This is because the victim's memories of the torture she endured have already faded. The Criminal Justice System should not operate as a one-sided transaction where the State solely prioritizes the rights of the accused, disregarding the victim's rights and the fundamental principles of punishment. Furthermore, the massacre in Peshawar that claimed hundreds of lives, many of them children, compelled Pakistan²⁹ to lift the ban on the death penalty that had been in place since 2008. "Who will punish terrorists if they are not punished?" asked Prime Minister Nawaj Sharif in a jesting statement.³⁰ It is important to remember that the majority of the kids who perished in the terrorist attack were younger than sixteen. Terrorists killed a five-year-old child who was attending her first day of school. The majority of the kids had been shot in the head and chest, killing them.³¹ The terrorists' crime was one of pure cruelty, targeting defenseless children of Army personnel enrolled in the Army School with the intention of making them experience "pain."

In light of this, the Indian Supreme Court's decision to allow the commuting of death sentences into life sentences for reasons of delay in sentence execution—regardless of the severity of the offence in question—raises serious concerns. It is noteworthy that the Supreme Court of India overruled its own stand within a short span of time, rigidly adopted in Khalistani terrorist Devinderpal Singh Bhullar's case³² wherein it was unequivocally decided that, in cases involving convictions under TADA or comparable statutes, the failure to act promptly on a mercy plea could not serve as a basis for the reduction of a death sentence. It is respectfully argued that the Supreme Court's ruling in the previous case was a fair and impartial analysis. The Bench had observed, that 'time and again, it has been held that while imposing punishment for murder and similar types 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*

²⁹ Available at <http://www.dawn.com/news/1151408> last assessed on 10.01.2018

³⁰ Available at <http://www.mid-day.com/articles/peshawar-attack-aftermath-pakistan-prepares-to-execute-terrorists-facing-gallows/15852153> last assessed on 19.12.2014

³¹ Available at <http://www.bbc.com/news/world-asia-30491435> last assessed on 10.01.2018

³² Writ Petition (Criminal) D.No. 16039 of 2011, Devender Pal Singh Bhullar v. State of NCT of Delhi

of the crime and its impact on the society, etc.,The death sentence will be appropriate in cases when the murder is carried out in a way that is so heinous as to provoke deep and widespread outrage in the community, or if the crime is so big that many innocent persons are killed needlessly. When making a decision under Article 72 or 161, the President or the Governor must take all of these criteria into account. The exercise of power by the President or the Governor not to entertain the prayer for mercy in such cases can't be characterized as arbitrary or unreasonable and the *Court cannot exercise power of judicial review only on the ground of undue delay*.The death sentence will be appropriate if the murder is carried out in a ruthless or exceptionally harsh manner that provokes strong public outrage and if the crime is so serious that many innocent people are killed needlessly. The President or the Governor shall consider each of these issues when making decisions pursuant to Article 72 or 161. *"it is quite paradoxical that the people who do not show any mercy or compassion for others plead for mercy and project delay in disposal of petition under Article 72 or 161 of the Constitution as a ground for commutation of death sentence. Many others join the bandwagon to espouse the cause of terrorists involved in gruesome killings and mass murders of innocent civilians and raise the bogey of human rights."*³³ The Bench had rigidly and defying all arguments from the petitioner on the issue of delay caused, strictly observed, "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."³⁴

Earlier also, the Supreme Court had been appreciably on the right track, which is well depicted by the approach of the court in laying down the criteria of awarding death penalty in 'rarest of rare' cases in *Bachan Singh v. State of Punjab*³⁵ and later on defining the parameters for such scrutiny in *Machi Singh*. Justice M.P.Thakkar, in *Machi Singh v, State of Punjab*³⁶ had correctly observed, "Protagonists of the 'an eye for an eye' philosophy demand 'death for death'. The Humanists, on the other hand pres for the other extreme, 'death in no case'....The reasons why the community as a whole does not endorse the humanistic approach reflected in 'death in

³³ Para 40 of the Judgment

³⁴ Para 45 of the Judgment

³⁵ (1980) 2 SCC 684

³⁶ (1983) 3 SCC 470

no case' are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of the principle, 'reverence for life'. When a community member murders another community member, the society may not feel constrained by this doctrine. However, the community may act in this way when its collective conscience is so shocked that it expects the holders of judicial power centers to impose the death penalty, regardless of their individual opinions regarding the desirability of keeping the death penalty in place. When the crime is evaluated from the perspective of its motivation, its method of commission, or its antisocial or repulsive aspect, the community may tolerate such a reaction.

It is, therefore, the urgent need of the hour to re-examine the scope of 'Mercy Jurisprudence' as propounded in India lest it causes miscarriage of justice in the perspective of the common man. Justice P.N. Bhagwati³⁷ has aptly analyzed that "there is a perpetual conflict between the human rights of the accused and the fundamental interest of the society...over emphasis on the protection of one interest is bound to have an adverse impact on the other and therefore an even balance has to be struck between the two." The judiciary, which happens to be the custodian of rule of law has, thus, to meticulously and cautiously cause a harmony between the two sides otherwise, the system shall backfire. It would be pertinent to refer to the story³⁸ of a horse-stealer which has been reproduced by Dr. Franklin, who, on being asked by his judge what he had to say why sentence of death should not be passed, replied, "it was hard to hang a man for only stealing a horse". The Judge replied, "Thou art not to be hanged only for stealing a horse, but that horses may not be stolen". Also, simultaneously punishment must involve pain and its consequences must normally be considered as unpleasant. The trilateral purpose of deterrence, prevention and retribution behind death penalty cannot be easily lost sight of in a Justice Delivery Mechanism.

³⁷ 'Human Rights in the Criminal Justice System' PN Bhagwati in K.D. Gaur's Criminal Law & Criminology, Deep & Deep Publications, New Delhi at p. 302

³⁸ Essays on the Punishment of Death, Charles Spear, Rothman & Co. Littleton, Colorado, 1994 at p. 29

Conclusion

The whole discussion culminates in the one observation that the Supreme Court's ruling in this case fails to strike a balance between the rights of the victim, who suffered irreversibly from the convict's horrific crime, and the convict, who was given the death penalty by the criminal justice system and went through several built-in safety valves at various levels of the court system. The convict also happens to be a beneficiary receiving "sufficient" and "exorbitant" compensation in the form of life in prison instead of death, all because of executive machinery. In the event that the trend continues, the general public will suffer a significant setback as they will lose faith in the legal system. The effectiveness of a punishment's deterrent will also be materially undermined, and the idea that has been established as a result may be easily abused and misused. It is imperative that the Supreme Court comes up with a plan to reverse the act before it destroys "justice."
