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The Plight of Death Row Inmates: A Critical Analysis

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Abstract

Studies carried out all around the world have demonstrated the psychological suffering that death row inmates experience mainly due to the frequent extended periods of delay in execution, which has led to the emergence of the so-called "death row phenomenon." The question is not whether the death penalty should exist or not, but whether the agony and circumstances that the death row inmate is subjected to as a result of the delay in execution constitute a violation of the right to life. The circumstances on death row and the uncertainty around the execution date are mostly to blame for the trauma. A constant stressful environments and unfavourable ideas have an enduring impact on the mind that develops into a habit and has an impact on general health. Already, prisons portray a tense setting; however, the reality is considerably tougher. Even though it is not part of the penalty, solitary confinement, dim lighting, assault, and harassment are now so ingrained in the system that they are also seen as routine occurrences. The paper discusses the plight of death row inmates in India with reference to the Death Penalty India Report (2016) by the National Law University, Delhi. Furthermore, it discusses the death row phenomenon and its various approaches in the international human rights context.

Introduction

The uncertainty of the afterlife makes us fear death in itself. Even when it's an absolute truth, we tend to ignore it, but at some point the fear stays at the back of our mind. So what happens when a person's entire life has been altered to the point where he is now facing death?

In earlier times, executions took place a few days or even hours after the death sentence was passed. But now the time between these two has increased to the extent of many years.

The reasons for this trend are threefold. First, there are growing doubts about whether capital punishment is a moral and just way of punishing people. Statistics pertaining to state practice also show a tendency in favour of abolition. For instance, just 16 nations had done away with the death penalty in 1978. However, the number increased to 79 in 2004, while a total of 117 states abstained from capital punishment over the preceding 10 years¹. The second factor is the prisoner's unwillingness to accept the death penalty and his efforts to cause the delay. This primarily arises from the survival instincts in a human that are the same as those of an animal, which take their roots from natural body instincts. The instinct to do whatever is needed to stay alive That is, the condemned prisoner exercising his right to appeal. Thirdly, the increasing recognition of the protection of a prisoner's rights and, more importantly, human rights.

Human rights are the universal natural rights that pertain to living a life that is free, just, and fair. Article 3 of the Universal Declaration of Human Rights (the "Universal Declaration") mentions the right to life, but it does not specify any exceptions. Regarding the topic of the death penalty, it is likewise silent².

The right to life is outlined in further detail in Article 6 of the International Covenant on Civil and Political Rights (CCPR). According to Article 6, no one "shall be arbitrarily deprived of his life. The word "arbitrarily" is not defined in the CCPR, although it has been speculated that it was meant to signify both "illegally" and "unjustly."³ The text then specifically discusses the death penalty. But the CCPR explicitly permits the use of the death sentence. In fact, this has given rise to the belief that the death sentence in and of itself cannot be considered torture or cruel, inhuman, or degrading treatment, exactly because it is said to be an exception to the right to life⁴

¹ R Skilbeck, The death penalty in international law: Tools for abolition, unpublished paper presented at the Conference on the Application of the Death Penalty in Commonwealth Africa, Entebbe, Uganda, 10–11 May 2004.

² LE Launderer, Capital punishment as a human rights issue before the United Nations, *4 Harvard Law Journal* 511 (1971).

³ NS Rodley The treatment of prisoners under international law 220 (1999).

⁴ General Comment of the Human Rights Committee 20(44) UN Doc CCPR/C/21/Rev/1/Add 3.

The plight of death row inmates in India

A continuous stressful environments and negative thoughts create an everlasting impact on the mind that becomes habitual and, in turn, affects the overall health of a person. Prisons already portray a stressful environment. But in reality, the truth is even harsher. Solitary confinement, damp lighting, violence, and harassment are now so deeply rooted in the system that even though they are not part of the punishment, they are considered a regular part of it.

To further discuss the plight of death row inmates in prisons in India, I will be referring to The Death Penalty India Report (2016) by National Law University Delhi, which is a significant contribution to developing empirical research on the death penalty in India, the socioeconomic status of prisoners sentenced to death, and its impact on their interactions with the criminal justice system. It is based on interviews with all 373 prisoners sentenced to death and their families.

According to the report, convicts are kept in solitary, they spend the majority of the day confined to a small single cell, often 8 by 8 or 8 by 12, with the exception of a few hours for lunch, supper, and brief outings. Isolation can be psychologically harmful to any prisoner, with the nature and severity of the impact depending on the individual, the duration, and particular conditions (e.g., access to natural light, books, or radio)⁵. Psychological effects can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis⁶. Even so, suicides occur disproportionately more often in segregation units than elsewhere in prison⁷

Even though *Shatrughan Chauhan v. UOI*⁸ laid down guidelines for "safeguarding the interests of the death row convicts," which included reaffirming the unconstitutionality of solitary or single-cell confinement prior to the rejection of the mercy petition by the President and the necessity of providing legal aid, and the need for a 14 day period between the rejection of the mercy petition and execution. The conditions relating to solitary confinement

⁵ Project 39A National Law University, Delhi, [Deathworthy: A mental health perspective of the death penalty](#) (2021).

⁶ Smith PS, [The effects of solitary confinement on prison inmates: a brief history and review of the literature](#).(Crim Just 34:441–568, 2006).

⁷ Hayes LM, [Prison guide: an overview and guide to prevention](#). Washington, DC: U.S. Department of Justice, National Institute of Corrections, (1995),<http://www.nicic.org/pubs/1995/012475.pdf>.

⁸ *Shatrughan Chauhan v. UOI*, 3 SCC 1 (2014).

haven't changed much. Death row inmates are treated very differently in comparison to other prisoners. According to the report, many death row inmates talked about not being allowed to participate in any educational activities.

According to the Standard Minimum Rules for the Treatment of Prisoners⁹ Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. "The education of illiterates and young prisoners shall be compulsory, and special attention shall be paid to it by the administration," and "Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners." After an accused is sent to prison, he becomes a totally different entity in the eyes of society, and when a death sentence is passed against him, he's not even considered a human. His criminal act becomes his nemesis, and even more inhumane and cruel conditions imposed on him are all deemed deserving.

The fact that death row inmates encounter institutional and structural hurdles to connecting with their families only serves to exacerbate their lonely situation. Families, a source of support to which they no longer have much access. In some prisons, death row inmates are not allowed to use the prison phone facility due to the nature of charges against them. Their families' financial situation also makes meeting them in prisons difficult. Violence is the most prominent factor attached to prisons, and a majority of death row inmates, according to the report, are faced with it. Moreover, in most prisons, they're not allowed to do paid work, as per the report.

The report also revealed significant rates of anxiety, anguish, suicide thoughts, insomnia, and physical symptoms among death row inmates, in addition to different psychiatric diseases. There are two hypotheses that have been proposed to explain why mental health issues are far more frequent in prison populations than in the general population.

According to the deprivation model, jail circumstances contribute to mental health issues. A mental health crisis is quite likely in prison systems because of the severely restrictive

⁹ Adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

restrictions, the isolation from support networks, and the drastically different and rigorously regulated environment¹⁰. The second model, the importation model, contends that most inmates come from already vulnerable populations, have encountered several trying and unfavourable situations, and may already be dealing with mental health concerns prior to being imprisoned, and so 'import' their psychopathology into jail.

The Mental Healthcare Act of 2017 guarantees that inmates have a right to mental health treatment and care, and India's National Mental Health Policy particularly recognises prisoners as a group vulnerable to mental diseases. However, it does not include any preventive measures.

The Death Row Phenomenon

This brings us to a concept that prevailed in the context of the death penalty but has been recognised as relatively new. It is so-called the "death row phenomenon," a relatively recent doctrine of law, to arise, an occurrence that is described as "the harsh treatment arising from specific conditions on death row and frequently extended waits for executions, or where the execution itself is carried out in a way that inflicts needless agony"¹¹. A study conducted by a criminologist on 35 death row inmates in Alabama, USA¹² revealed that the conditions that death row inmates have to face, especially solitary confinement for long durations, led to widespread feelings of abandonment that were linked to depression, hallucinations, losing the sense of reality, and mental and physical deterioration. Which was termed "the death personality"¹³

In *Re Kemmler*¹⁴ in the 1890s, the Supreme Court of the United States said that the death penalty might not be cruel in itself per se, but it becomes cruel with a prolonged death, which is then beyond just a mere termination of life.

The Supreme Court of India has also recognized that a prolonged period of death sentence can make the punishment in totality cruel and inhumane.

¹⁰ Cherie Armour, Mental Health in Prison: A Trauma Perspective on Importation and Deprivation, International Journal of Criminology and Sociological Theory 886,5 (2) (2012).

¹¹ WA Schabas *The abolition of the death penalty in international law* (1993) 127.

¹² R Johnson *Condemned to die: Life under sentence of death* (1981) 4.

¹³ *Id.*

¹⁴ Re Kemmler, 136 US 436 (1890).

The Supreme Court of India, Chief justice Chandrachud in *Sher Singh & Others v State of Punjab*¹⁵(1983) observed that –

“[t]he 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 or degrading punishment in circumstances of a given case.”

In *Ediga Anamma v State of Andhra Pradesh*¹⁶ in 1974, Justice Krishna Iyer observed,

“The excruciation of a long pendency of the death sentence, with the prisoner languishing in near solitary confinement suffering all the time may make the death sentence unconstitutionally cruel and agonising.” “[... The] brooding horror of ‘hanging’ which has been haunting the prisoner in her condemned cell [...] This prolonged agony has [an] ameliorative impact according to the rulings of this Court.”

Many studies conducted all around the world have showcased the psychological trauma that death row prisoners are subjected to. The uncertainty around the execution date and the circumstances on death row are primarily to blame for the trauma. The conditions of the death row prisoners are compared to those of terminally ill patients. It has been highlighted that additional issues, such as their isolation and lack of access to recreational and other amenities, aggravate their plight.

Now, Article 21 of the Indian Constitution states that ‘No person shall be deprived of his life or personal liberty except according to procedure established by law.’ It has been contended many times in various cases that the death penalty is in violation of Article 21. In the landmark case of *Bachan Singh v. State of Punjab*¹⁷, The Supreme Court of India observed that the death sentence is not unconstitutional. It should be given in the rarest of rare cases. Therefore, the state can take away or abridge even the right to life as enshrined in the constitution only when it is in accordance with due process¹⁸.

¹⁵ *Sher Singh vs State of Punjab*, 2 SCC 344 (1983).

¹⁶ *Ediga Annamma v. State of Andhra Pradesh*, 4 SCC 443 (1974).

¹⁷ *Bachan Singh v. State of Punjab*, SC 898 (1980). See also 2 SCC 684 (1980), 715 para 88.

¹⁸ *Maneka Gandhi v. Union of India*, SC 597 (1978).

The death row phenomenon has not been an established concept in India but its elements in bits and pieces are mentioned in various cases. Though, the courts in some cases have held that undue long delay in execution would be considered as violation of procedure as mentioned in article 21.

In *T.V. Vatheeswaran v. State of Tamil Nadu* ('Vatheeswaran')¹⁹ The Court decided that to terminate the appellants' life after an eight-year wait would be a grotesque distortion²⁰ of the fundamental right provided by Article 21 of the Constitution, quoting extensively from the minority decision in the *Riley* case. The Supreme Court had sought to define two years as the amount of time that constitutes an unreasonable and excessive delay, but this was eventually overturned since it interfered with the President's constitutional authority²¹

Even though it is contended that suffering and anguish naturally follow as consequences of the death penalty, a prolongation of it beyond the time necessary can be considered cruel. Moreover, the basic idea of imprisonment involves the loss of liberty and other restrictions. But the additional baggage of deteriorating mental and psychological health caused by the long waiting time for a death row inmate's execution violates the inmate's right to life.

The death row phenomenon has given rise to two different approaches: progressive and conservative. The progressive approach holds that executing a death sentence after a prolonged delay violates the prohibition against inhuman and cruel treatment, regardless of whether the delay was caused by the inmate himself, whereas the conservative approach holds that a prolonged time period does not by itself constitute a violation of the prohibition against inhuman and cruel treatment and that additional compelling circumstances must exist.

The prohibition against cruel, inhuman, or degrading treatment or punishment is not defined in most of the international instruments, though the European Commission and the European Court have drawn distinctions between the various components of this prohibition. The European Commission's definition of inhuman treatment also includes "intention" to cause

¹⁹ *T.V. Vatheeswaran v. State of Tamil Nadu*, 2 SCC 68 (1983).

²⁰ Kealeboga N Bojosi, *The death row phenomenon and the prohibition against torture and cruel, inhuman or degrading treatment* 4 AFRICAN HUMAN RIGHTS LAW JOURNAL (2004).

²¹ *Triveniben v. State of Gujarat*, 1 SCC 678 (1989).

severe suffering²², which would negate the circumstance where the prisoner himself is causing the delay, as it would be difficult to establish an intention to cause suffering.

Conclusion

Even if it is said that pain and agony inevitably result from the death sentence, extending it beyond the point where it is required might be seen as cruel. The fundamental concept of incarceration entails the loss of freedom and other constraints. However, the additional burden of declining mental and psychological health brought on by the protracted waiting period before an execution can be carried out can be viewed as a violation of the inmate's right to life. The universal acceptance of the death row phenomenon has not ensured unanimity on its precise nature. There is a need to further research and reconcile the two approaches.



²² Ireland v United Kingdom, (No 25) 2 EHRR 25 (1977).