



MERCY ON TRIAL IN INDIA

I. Executive summary and recommendations

India currently has 21 death row convicts whose mercy petitions have been rejected by the President of India. After a virtual moratorium on execution since the execution of Dhananjoy Chatterjee on 14 August 2004, India resumed execution after sending Mohammad Amir Ajmal Kasab, the lone captured terrorist of 26/11 Mumbai terror attacks, to the gallows on 21 November 2012 followed by Mohammad Afzal Guru, convicted for the attack on the parliament of India, on 9 February 2013.

President Pranab Mukherjee in an unprecedented spree rejected 13 mercy petitions involving 19 death row convicts¹ since he assumed office on 25 July 2012. The rejection of these mercy petitions has further been challenged before the relevant High Courts and the Supreme Court of India.

On 22 October 2013, the Supreme Court of India is scheduled to hear 10 writ petitions,² involving 18th death row convicts, which are seeking commutation of the death penalty to life imprisonment on the ground of delay caused in the consideration of their

1. President Pranab Mukherjee rejected 13 mercy petitions involving 19 death row convicts as on 21 October 2013 i.e. 1. Ajmal Kasab in 2012; 2. Saibanna Natikar in 2013; 3. Afzal Guru in 2013; 4. Simon, Gnanaprakash, Madaiah, Bilavandran in 2013; 5. Suresh & Ramji in 2013; 6. Gurmeet Singh in 2013; 7. Jafar Ali in 2013; 8. Dharampal in 2013; 9. Sonia & Sanjeev in 2013; 10. Praveen Kumar in 2013; 11. Sunder Singh in 2013; 12. Shivu Munishetty and Jadeswamy Rangashetty in 2013; and 13. Maganlal Barela in 2013.
2. The writ petitions pending before the Supreme Court following rejection of mercy pleas by the President of India are of: (1) Murugan, Santhan and Arivu, (2) Death row convicts, Suresh and Ramji, (3) Praveen Kumar (4) Simon, Gnanaprakash, Madaiah and Bilavandran; (5) Jafar Ali, (6) Gurmeet Singh, (7) Shivu Munishetty and Jadeswamy Rangashetty, (8) Sonia and Sanjeev, (9) Sunder Singh and (10) Maganlal Barela.

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mercy pleas by the President under Article 72 of the Constitution of India. The judgement of the Supreme Court shall also have direct bearing on two other writ petitions pending respectively before the Punjab and Haryana High Court relating to condemned prisoner Dharam Pal, and the Karnataka High Court relating to condemned prisoner Saibanna Nigappa Natikar after rejection of their mercy pleas by the President.

While the Supreme Court had already dismissed the writ petition of Devender Pal Singh Bhullar challenging the rejection of his mercy plea by the President,³ the impending judgment will not only directly affect the 20 death row convicts but also the condemned prisoners whose mercy petitions have been pending with various Governors of the States under Article 161 of the Constitution. For example, a total of ten mercy petitions were pending with the Governor of Maharashtra as on 15 June 2013.⁴

Further, the impending judgement of the Supreme Court will also impact 414 death row convict prisoners who remained in various prisons at the end of 2012. The maximum number of death row convict prisoners at the end of 2012 were in Uttar Pradesh (106) followed by Karnataka (63); Maharashtra (51); Bihar (42); Delhi (27); Gujarat (19); Punjab (16); Kerala (14) and Tamil Nadu (12); while Assam, Jammu and Kashmir and Madhya Pradesh each had 10 death row convict prisoners.⁵

As per the female death row convict prisoners, Maharashtra had maximum with five followed by

Delhi (four); Punjab (two); and one each in Haryana and Karnataka.⁶

While the Supreme Court of India is unlikely to revisit the merits of each individual case, the Court should consider the issue of delay and laches since it is a critical factor in the administration of justice, especially in the context of discretionary powers. The President and the Governors must ensure that their exercise of discretionary powers does not constitute cruel, inhuman or degrading treatment resulting in mental trauma to the condemned prisoners.

The Supreme Court of India must not only consider the death penalty through the right to life principle⁷ but also through the absolute prohibition of torture or cruel, inhuman or degrading treatment or punishment. Since India has ratified International Covenant on Civil and Political Rights (ICCPR) in 1979, it is bound by its treaty obligations. Under Articles 4 and 7 of the ICCPR, torture and inhuman or degrading treatment or punishment are prohibited even in times of public emergency, which threatens the life of the nation.⁸

India ought to bear in mind that international jurisprudence on torture or cruel, inhuman or degrading treatment of death row convicts has been evolving. In its judgement on 7 July 1989, the European Court of Human Rights (ECHR) in the case of *Soering v. the United Kingdom*⁹ held that “the likelihood of the feared exposure of the death-row convict to the death row phenomenon” is in breach

3. Supreme Court rejects Devinderpal Singh Bhullar's mercy plea, *The Indian Express*, 12 April 2013, available at: <http://www.indianexpress.com/news/supreme-court-rejects-devinderpal-singh-bhullars-mercy-plea/1101423/>

4. RTI Reply No. RB-2013/Admin/RTI/23805 from the Governor's Secretariat, Raj Bhawan, Mumbai, 15 June 2013 provided to Asian Centre for Human Rights

5. Prison Statistics Report, 2012, National Crime Records Bureau, Ministry of Home Affairs, Government of India

6. *Ibid*

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

8. Article 7 of ICCPR: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

Article 4 of ICCPR:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

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

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

Moreover, the Inter-American Court of Human Rights and Inter-American Commission on Human Rights held in *Paul Lallion v. Grenada*¹⁰, *Denton Aitken v. Jamaica*¹¹ and *Hilaire v. Trinidad and Tobago*¹² that prison conditions, together with the anxiety and psychological suffering caused by prolonged periods on death row, constitute a violation of the prohibition of torture and other cruel, inhuman and degrading treatment.

The Supreme Court of India has the responsibility to ensure that India complies with its legal obligations on the absolute prohibition of torture or cruel, inhuman or degrading treatment or punishment with respect to the death row convicts by commuting that death penalty to life imprisonment. That the delay upto 14 years in deplorable prison conditions in India constitutes violations of India’s obligation with respect to absolute prohibition of torture requires little introduction.

Even if the Supreme Court is to consider “inordinate executive delay” as grounds for commutation of capital punishment to life imprisonment, India

conducting more executions remains imminent. There are at least two death-row convicts whose mercy petitions have been rejected by the President in less than three years. Condemned prisoner, Maganlal Barela of Madhya Pradesh filed his mercy petition on 9 January 2012 and it was rejected by the President on 22 July 2013 in less than two years. The mercy petition of condemned prisoner Sunder Singh of Uttarakhand was filed on 16 September 2010 and rejected by the President on 4 April 2013 in less than three years.

Since the adoption of the resolution 62/149 by the General Assembly on 18 December 2007 on moratorium on the use of the death penalty, the United Nations has recognized that “the use of the death penalty undermines human dignity”. Furthermore, this trend has included a movement for the abolition of the death penalty, as evidenced by 150 countries, including 30 states in Asia and the Pacific region, ending the use of the death penalty in law or in practice.¹³

The Asian Centre for Human Rights once again calls upon the Government of India to immediately put a moratorium on death penalty with the aim for its eventual abolition as each execution moves India further away from the accepted international standards on the administration of justice.

II. Over 400 condemned prisoners await the gallows

At the end of 2012, there were 414 death row convict prisoners who remained in various prisons at the end of 2012. The maximum number of death row convict prisoners at the end of 2012 were in Uttar Pradesh with 106 followed by Karnataka (63); Maharashtra (51); Bihar (42); Delhi (27); Gujarat (19); Punjab (16); Kerala (14) and Tamil Nadu (12); while Assam,

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

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

12. *Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago* (paras.167,168) available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf

13. Moving Away from the Death Penalty: Lessons from National experiences, Office of the High Commissioner for Human Rights available at: http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

Jammu and Kashmir and Madhya Pradesh each had 10 death row convicts.¹⁴

As per the female death row convict prisoners, Maharashtra had maximum with five followed by Delhi (four); Punjab (two); and one each in Haryana and Karnataka.¹⁵

Table 1: State-wise number of convicts in prison awarded death penalty during 2012¹⁶

Sl. No.	States	Death penalty
1	Andhra Pradesh	5
2	Arunachal Pradesh	0
3	Assam	10
4	Bihar	42
5	Chhattisgarh	1
6	Goa	0
7	Gujarat	19
8	Haryana	6 (1 female)
9	Himachal Pradesh	0
10	Jammu and Kashmir	10
11	Jharkhand	6
12	Karnataka	63 (1 female)
13	Kerala	14
14	Madhya Pradesh	10
15	Maharashtra	51 (5 female)
16	Manipur	0
17	Meghalaya	3
18	Mizoram	0
19	Nagaland	0
20	Odisha	0
21	Punjab	16 (2 female)
22	Rajasthan	2
23	Sikkim	0
24	Tamil Nadu	12
25	Tripura	2
26	Uttar Pradesh	106
27	Uttarakhand	1
28	West Bengal	6
29	Andaman and Nicobar Island	0
30	Chandigarh	2
31	Dadra & Nagar Haveli	0
32	Daman and Diu	0
33	Delhi	27 (4 female)
34	Lakswadeep	0
35	Puducherry	0
	Total	414 (13 females)

A number of death row convicts have also submitted their mercy petitions to the Governors of the States under Article 161 of the Constitution. For example, ten mercy petitions were pending with the Governor of Maharashtra as on 15 June 2013.¹⁷

III. Case details of rejected mercy petitions pending before the High Courts and Supreme Court

As per the information provided by the Additional Solicitor General of India to the Supreme Court, between 1950 and 2009, over 300 mercy petitions were filed before the President of India. Out of these, 214 were accepted by the President and the sentence of death was commuted into life imprisonment while 69 petitions were rejected by the President. The result of one petition was obscure while about 18 petitions filed between 1999 and 2011 remained pending for a period ranging from 1 year to 13 years.¹⁸

There are 20 condemned prisoners whose rejection of mercy petitions by the President of India are under adjudication by the High Courts and the Supreme Court on the grounds of delay (please refer to table 2 at page no. 9). The period of delay for consideration of the mercy pleas ranges from one year (Maganlal Barela) to 14 years (Dharampal) as given below.

Case 1: Death row convict, Dharampal (14 years delay)

In 1991, Dharampal was charged with rape of a girl in Sonapat, Haryana. Dharampal was convicted and sentenced to 10 years imprisonment in 1993. While on parole, Dharampal, killed five members of the victim's family while they were sleeping. Nirmal, Dharampal's brother, who helped Dharampal in the killings, was also sentenced to death. The Punjab and Haryana High Court upheld both Dharampal and Nirmal's sentences in 1998. In 1999, the Supreme Court upheld Dharampal's sentence, but commuted

14. Prison Statistics Report, 2012, National Crime Records Bureau, Ministry of Home Affairs, Government of India

15. Ibid

16. Ibid

17. RTI Reply No. RB-2013/Admin/RTI/23805 from the Governor's Secretariat, Raj Bhawan, Mumbai, 15 June 2013 provided to Asian Centre for Human Rights

18. Writ petition (Criminal) D.No. 16039 of 2011 (Devender Pal Singh Bhullar versus State of N.C.T. of Delhi) with Writ Petition (criminal) no. 146 of 2011 and Writ Petition (Criminal) no. 86 of 2011

Nirmal's sentence from death to life imprisonment. Dharampal submitted his mercy petition in 1999, which was rejected in 2000.¹⁹ The Ministry of Home Affairs reviewed his mercy petition and forwarded its final recommendations to the President on 2 May 2005.²⁰

On 4 April 2013, President Pranab Mukherjee rejected the mercy petition of Dharampal of Haryana.²¹ On 10 April 2013, the Punjab and Haryana High Court stayed the hanging after Dharampal moved the court on the ground of delay.²²

Case 2: Death row convicts, Murugan, Santhan and Arivu(13 years delay)

Death row convicts, Murugan, Santhan and Arivu were convicted in the Rajiv Gandhi assassination case of 21 May 1991. On 8 November 1997, the designated court under the Terrorists and Disruptive Activities (Prevention) Act (TADA) convicted all 26 accused and sentenced them to death. On 11 May 1999, the Supreme Court upheld the death penalty sentence handed down to Nalini, Santhan, Murugan and Perarivalan, alias Arivu. The Supreme Court rejected their review petition in 2000. Thereafter, Nalini, Santhan, Murugan and Perarivalan, alias Arivu, submitted mercy petitions to the Governor. In April 2000, the Governor rejected the mercy petitions of Santhan, Murugan and Perarivalan, but commuted Nalini's death sentence to imprisonment for life.²³ Nalini's mercy petition was accepted by the Governor based on the Council of Ministers' advice that "*mercy may be shown to Nalini as she has*

a daughter who would become an orphan".²⁴ Santhan, Murugan and Perarivalan submitted mercy petitions to the President on 26 April 2000.²⁵ On 11 August 2011, President Pritibha Patil rejected their mercy petitions.²⁶

Santhan, Murugan and Perarivalan were scheduled to be hanged on 9 September 2011, but the Madras High Court stayed their execution on 30 August 2011 after they moved the High Court seeking commutation to life term on the ground of delay. They contended that the delay of 11 years and four months in the disposal of their mercy petitions made the death sentence "unduly harsh and excessive", amounting to violations of their rights to life under Article 21 of the Constitution. On 1 May 2012, the Supreme Court took over the petitions of the three convicts.²⁷

Case 3: Death row convicts, Suresh and Ramji (11 years delay)

Suresh and Ramji (brothers) of Uttar Pradesh have been on death row since 2001. In 2001, the trial court convicted and sentenced them to death for killing five of their relatives, including three children. On 23 February 2001, the Allahabad High Court confirmed the death penalty, which was upheld by the Supreme Court on 2 March 2001.²⁸ In 2002, Suresh and Ramji filed mercy petitions to the President, but they were subsequently rejected. However the Ministry of Home Affairs reviewed the petitions and forwarded its recommendations to the President on 21 June 2005.²⁹

19. President Pranab Mukherjee rejects mercy plea, Haryana rape convict will hang next week, The Indian Express, 4 April 2013, available at: <http://www.indianexpress.com/news/president-pranab-mukherjee-rejects-mercy-plea-haryana-rape-convict-will-hang-next-week/1097421/>

20. Available at: http://media2.intoday.in/indiatoday/images/Cases_of_terrorist_activities.pdf

21. President Pranab rejects five mercy petitions, commutes death sentence to life term for two, Sahara Samay, 4 April 2013, available at: <http://www.sahasaramay.com/nation-news/676527184/president-pranab-rejects-five-mercy-petitions-commutes-death-sen.html>

22. HC extends stay on Dharampal hanging till July 31, The Times of India, 11 July 2013, available at: http://articles.timesofindia.indiatimes.com/2013-07-11/chandigarh/40514012_1_devinderpal-singh-bhullar-july-31-hc-division-bench

23. Chennai Corner, Outlook, 23 November 2012, available at: <http://www.outlookindia.com/printarticle.aspx?283082>

24. Letter No. 406 dated 24.04.2000 of Secretary to the Government of Tamil Nadu, Home Department to death row convict Nalini obtained by The Asian Centre for Human Rights under the RTI Act, 2005

25. Chennai Corner, Outlook, 23 November 2012, available at: <http://www.outlookindia.com/printarticle.aspx?283082>

26. President rejects mercy plea of Rajiv Gandhi's killers, The Indian Express, 30 August 2011, available at: <http://www.indianexpress.com/news/president-rejects-mercy-plea-of-rajiv-gandhis-killers/830448/>

27. SC takes over case of Rajiv Gandhi assassination case convicts, The Times of India, 2 May 2012, available at: http://articles.timesofindia.indiatimes.com/2012-05-02/india/31537779_1_death-row-convicts-mercy-pleas-death-penalty

28. UP officials begin process for hanging of 4 convicts, The Times of India, 5 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-05/lucknow/38305676_1_four-convicts-mercy-petitions-death-sentence

29. Available at: http://media2.intoday.in/indiatoday/images/Cases_of_terrorist_activities.pdf

President Pranab Mukherjee rejected the mercy petitions on 4 April 2013. On 6 April 2013, a bench of Justices P Sathasivam and M Y Eqbal of the Supreme Court stayed the executions of Suresh and Ramji following a petition filed by People's Union for Democratic Rights on their behalf.³⁰

Case 4: Death row convict, Praveen Kumar (9 years delay)

Praveen Kumar of Karnataka was convicted for killing four members of a family on 23 February 1994. He filed his mercy petition on 26 October 2003, and President Pranab Mukherjee rejected his mercy petition on 4 April 2013.³¹ On 6 April 2013, a bench of Justices P Sathasivam and M Y Eqbal of the Supreme Court stayed the execution of Praveen Kumar following a petition filed by People's Union for Democratic Rights on his behalf.³²

Case 5: Death row convicts, Simon, Gnanaprakash, Madaiah and Bilavendran (9 years delay)

Simon, Gnanaprakash, Madaiah and Bilavendran, associates of the slain forest thief, Veerappan, were convicted for killing 22 persons in a landmine blast in 1993. They filed mercy petitions on 12 February 2004 after the Supreme Court upheld their conviction by a TADA court in Mysore in 2001 and increased the sentence to death. President Pranab Mukherjee rejected their mercy petitions in February 2013. On 20 February 2013, a bench of Chief Justice Altamas Kabir and Justices Anil R. Dave and Vikramajit Sen

of the Supreme Court extended the stay on their execution.³³

Case 6: Death row convict, Saibanna Nigappa Natikar(8 years delay)

Saibanna Nigappa Natikar (60), a resident of Mandwal village in Gulbarga, Karnataka, was initially convicted for life for murdering his first wife in 1992. While on parole in September 1994, Saibanna killed his second wife and her daughter. On 21 April 2005, the Supreme Court upheld the verdict of the Karnataka High Court, which had confirmed death penalty imposed by the trial court.³⁴ On 22 January 2013, the Karnataka High Court stayed the hanging of Saibanna Nigappa Natikar after his mercy petition was rejected by the President on 4 January 2013.³⁵ Saibanna moved the Karnataka High Court pleading for stay of the death penalty on the ground of delay and commutation of the death sentence to life imprisonment.³⁶ Since then, his execution has been extended regularly.

Case 7: Death row convict, Jafar Ali (about 7 years delay)

On 14 July 2003, Jafar Ali of Etawah, Uttar Pradesh was sentenced to death for the murder of his wife and five daughters in 2002. The Allahabad High Court confirmed the death sentence on 27 January 2004. It was further upheld by the Supreme Court on 5 April 2004. His mercy petition was filed on 18 August 2006.³⁷ President Pranab Mukherjee rejected it on 4 April 2013.³⁸ On 6 April 2013, a bench of

30. President Pranab rejects five mercy petitions, commutes death sentence to life term for two, Sahara Samay, 4 April 2013, available at: <http://www.sahasasamay.com/nation-news/676527184/president-pranab-rejects-five-mercy-petitions-commutes-death-sen.html>. 8 convicts denied mercy by President get SC stay on hanging, The Times of India, 7 April 2013

31. *ibid*

32. 8 convicts denied mercy by President get SC stay on hanging, The Times of India, 7 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-07/india/38345226_1_mercy-plea-suresh-and-ramji-chief-justice-altamas-kabir

33. Execution of Veerappan aides stayed for 6 weeks, The Hindu, 20 February 2013, available at: <http://www.thehindu.com/news/national/execution-of-veerappan-aides-stayed-for-6-weeks/article4434522.ece>

34. Karnataka HC stays hanging of Saibanna, The Hindu, 22 January 2013, available at: <http://www.thehindu.com/news/cities/bangalore/karnataka-hc-stays-hanging-of-saibanna/article4332078.ece>

35. Karnataka HC extends stay on murder convict Saibanna's execution till April 6, The Times of India, 5 March 2013, available at: http://articles.timesofindia.indiatimes.com/2013-03-05/india/37469072_1_murder-convict-mercy-petition-execution

36. Karnataka HC stays hanging of Saibanna, The Hindu, 22 January 2013, available at: <http://www.thehindu.com/news/cities/bangalore/karnataka-hc-stays-hanging-of-saibanna/article4332078.ece>

37. UP officials begin process for hanging of 4 convicts, The Times of India, 5 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-05/lucknow/38305676_1_four-convicts-mercy-petitions-death-sentence

38. President Pranab rejects five mercy petitions, commutes death sentence to life term for two, Sahara Samay, 4 April 2013, available at: <http://www.sahasasamay.com/nation-news/676527184/president-pranab-rejects-five-mercy-petitions-commutes-death-sen.html>

Justices P Sathasivam and M Y Eqbal of the Supreme Court stayed the execution of Jafar Ali following the petition filed by People's Union for Democratic Rights on his behalf.³⁹

Case 8: Death row convict, Gurmeet Singh (about 6 years delay)

Gurmeet Singh of Uttar Pradesh was convicted and sentenced to death by the trial court on 20 September 1992 for the murder of 13 members of his family in Pilibhit in 1986. His death sentence was confirmed by the Allahabad High Court on 29 February 1996. The Supreme Court upheld the sentence on 28 September 2005.⁴⁰ Gurmeet Singh filed his mercy petition in 2007.⁴¹ On 18 May 2007, the Ministry of Home Affairs submitted its recommendations to the President, and then re-submitted its recommendations on 9 December 2009.⁴²

President Pranab Mukherjee rejected Gurmeet Singh's mercy petitions on 4 April 2013.⁴³ On 6 April 2013, a bench of Justices P Sathasivam and M Y Eqbal of the Supreme Court stayed the execution of Gurmeet Singh following a petition filed by People's Union for Democratic Rights on his behalf.⁴⁴

Case 9: Death row convicts, Shivu Munishetty and Jadeswamy Rangashetty (6 years delay)

Shivu Munishetty and Jadeswamy Rangashetty were sentenced to death by the District and Sessions Court

in July 2005 for raping and murdering an 18-year-old girl at Bhadranshalli of Chamarajnagar district of Karnataka in 2001. The Karnataka High Court upheld their convictions in October 2005. They submitted mercy petitions after the Supreme Court confirmed their death sentences in 2007.⁴⁵ On 13 August 2013, President Pranab Mukherjee rejected their mercy petitions.⁴⁶ They were to be hanged on 22 August 2013, but the Supreme Court stayed their execution on 21 August 2013 following the submission of petitions seeking commutation of their sentence on the ground of six-year-delay in deciding their mercy petitions by the President.⁴⁷

Case 10: Death row convicts, Sonia and Sanjeev (6 years delay)

On 4 July 2013, President Pranab Mukherjee rejected the mercy petitions of Sanjeev and his wife Sonia of Haryana.⁴⁸ Sanjeev and Sonia were convicted of murdering eight members of Sonia's maternal family in 2001. The Supreme Court upheld their death sentences in 2007.⁴⁹ They submitted their mercy appeals to the President in 2007. The Ministry of Home Affairs submitted its final recommendation on 11 February 2008 and then re-submitted it on 21 May 2009.⁵⁰ On 6 April 2013, a bench of Justices P Sathasivam and M Y Eqbal of the Supreme Court stayed the executions of the Sonia and Sanjeev

39. 8 convicts denied mercy by President get SC stay on hanging, The Times of India, 7 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-07/india/38345226_1_mercy-plea-suresh-and-ramji-chief-justice-altamas-kabir

40. UP officials begin process for hanging of 4 convicts, The Times of India, 5 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-05/lucknow/38305676_1_four-convicts-mercy-petitions-death-sentence

41. Pardon the wait: A matter of life and death, MSN News, available at: <http://news.mobile.in.msn.com/en-in/national/articles.aspx?aid=3944808&catid=-1&pg1=1>

42. Available at: http://media2.intoday.in/indiatoday/images/Cases_of_terrorist_activities.pdf

43. President Pranab rejects five mercy petitions, commutes death sentence to life term for two, Sahara Samay, 4 April 2013, available at: <http://www.sahasaramay.com/nation-news/676527184/president-pranab-rejects-five-mercy-petitions-commutes-death-sen.html>

44. 8 convicts denied mercy by President get SC stay on hanging, The Times of India, 7 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-07/india/38345226_1_mercy-plea-suresh-and-ramji-chief-justice-altamas-kabir

45. Rape and murder convict on death row slashes his own private parts, The Times of India, 21 August 2013, available at: http://articles.timesofindia.indiatimes.com/2013-08-21/india/41432094_1_hindalga-death-row-jadeswamy

46. Two death row convicts say it is 'God's will', The Hindu, 21 August 2013, available at: <http://www.thehindu.com/news/national/karnataka/two-death-row-convicts-say-it-is-gods-will/article5041938.ece>

47. Supreme Court reprieve for two death row convicts a day before hanging, NDTV, 21 August 2013, available at: <http://www.ndtv.com/article/india/supreme-court-reprieve-for-two-death-row-convicts-a-day-before-hanging-408463>

48. President Pranab rejects five mercy petitions, commutes death sentence to life term for two, Sahara Samay, 4 April 2013, available at: <http://www.sahasaramay.com/nation-news/676527184/president-pranab-rejects-five-mercy-petitions-commutes-death-sen.html>

49. Mercy plea rejected by President, Sonia finds solace in SC stay order, The Times of India, 27 July 2013, available at: http://articles.timesofindia.indiatimes.com/2013-07-27/chandigarh/40832426_1_mercy-petition-mercy-plea-apex-court

50. Available at: http://media2.intoday.in/indiatoday/images/Cases_of_terrorist_activities.pdf

following a petition filed by People's Union for Democratic Rights on their behalf.⁵¹

Case 11: Death row convict, Sunder Singh(2 years)

Sundar Singh from Uttarakhand was sentenced to death for murdering five members of his brother's family on 30 June 1989.⁵² On 16 September 2010, the Supreme Court confirmed his death sentence.⁵³ On 4 April 2013, President Pranab Mukherjee rejected the mercy petition.⁵⁴ On 6 April 2013, a bench of Justices P Sathasivam and M Y Eqbal of the Supreme Court stayed the execution of Sunder Singh following a petition filed by People's Union for Democratic Rights on his behalf.⁵⁵

Case 12: Death row convict, Maganlal Barela (one year delay)

On 22 July 2013, President Pranab Mukherjee rejected the mercy petition of death row convict Maganlal Barela of Madhya Pradesh. Maganlal Barela was sentenced to death by the trial court on 3 February 2011. The trial court found Maganlal Barela guilty of beheading his five minor daughters following a property dispute with his two wives on 11 June 2010 in the Sehora district. The death sentence was upheld by the Jabalpur Bench of the Madhya Pradesh High Court on 3 February 2011 and the Supreme Court on 9 January 2012.⁵⁶ On 8 August 2013, the Supreme Court stayed the execution until further orders and

clubbed his petition along with the pleas of other condemned prisoners who had also sought quashing of capital punishment on various grounds.⁵⁷

IV. Scale of execution in independent India

Statistics on executions in India since 1947 are not available. The Government of India treated information on death penalty as a State secret. The only source of information is the 35th Report of the Law Commission of India relating to "Capital Punishment" which reported that a total of 1410 death row convicts were executed in various states during 1953-1963 alone⁵⁸ (please refer to table no. 3 at page 10). The 35th Report of the Law Commission of India however did not cover States such as Assam, Jammu and Kashmir, Rajasthan and Delhi and the figures are therefore not accurate. There is also no information concerning executions from 1964 to 1994 in addition to those prior to 1953. The National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India, started collecting information on death penalty only from 1995 and as per the NCRB, a total of 21 condemned prisoners have been executed since 1995.⁵⁹ (please refer to table no. 4 at page 10)

As per the 35th Report of the Law Commission, out of the 1410 executions, 21 were executed in 1953; 108 in 1954; 150 in 1955; 151 in 1956; 153 in 1957; 144 in 1958; 181 in 1959; 174 in 1960; 150 in 1961; 107 in 1962; and 71 in 1963.⁶⁰

51. 8 convicts denied mercy by President get SC stay on hanging, The Times of India, 7 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-07/india/38345226_1_mercy-plea-suresh-and-ramji-chief-justice-altamas-kabir

52. President rejects mercy pleas: 3 to hang for mass murders, 1 for rape, The Times of India, 5 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-05/india/38306109_1_mercy-petition-suresh-and-ramji-death-sentence

53. Sunder Singh vs State Of Uttaranchal on 16 September, 2010, available at: <http://indiankanoon.org/doc/617176/>

54. President Pranab rejects five mercy petitions, commutes death sentence to life term for two, Sahara Samay, 4 April 2013, available at: <http://www.sahasrasamay.com/nation-news/676527184/president-pranab-rejects-five-mercy-petitions-commutes-death-sen.html>

55. 8 convicts denied mercy by President get SC stay on hanging, The Times of India, 7 April 2013, available at: http://articles.timesofindia.indiatimes.com/2013-04-07/india/38345226_1_mercy-plea-suresh-and-ramji-chief-justice-altamas-kabir

56. SC stays death penalty of Maganlal Barela guilty of beheading 5 daughters, IBN Live, 8 August 2013, available at: http://ibnlive.in.com/news/sc-stays-death-penalty-of-maganlal-barela-guilty-of-beheading-5-daughters/412765-3-236.html?utm_source=ref_article

57. SC stays death penalty of Maganlal Barela guilty of beheading 5 daughters, IBN Live, 8 August 2013, available at: http://ibnlive.in.com/news/sc-stays-death-penalty-of-maganlal-barela-guilty-of-beheading-5-daughters/412765-3-236.html?utm_source=ref_article

58. 35th Report, Volume II (Capital Punishment), September 1967 of the Law Commission of India, Ministry of Law, Government of India, available at: <http://lawcommissionofindia.nic.in/1-50/Report35Vol2.pdf>

59. Prison Statistics Reports, 1995 to 2011, National Crime Records Bureau, Ministry of Home Affairs, Government of India

60. 35th Report, Volume II (Capital Punishment), September 1967 of the Law Commission of India, Ministry of Law, Government of India, available at: <http://lawcommissionofindia.nic.in/1-50/Report35Vol2.pdf>

Table 2: Delay in consideration of the mercy pleas

Sl. No.	Name of convicts	Date of Supreme Court judgment	Date of mercy petition filed	Date of mercy petition decided by the President	Rejected/commuted/pending	Period of pendency	Charges
1	Dharampal	18.3.1999	1999	4.4.2013	Rejected	14	Rape and murder of five persons
2	Murugan, Santhan and Arivu	11.5.1999	2000	11.8.2011	Rejected	13	Rajiv Gandhi assassination case, 1991
3	Suresh and Ramji	2.3.2001	2002	4.4.2013	Rejected	11	Murder of five including three minors
4	Praveen Kumar	25.10.2003	2004	4.4.2013	Rejected	9	Murder of four persons
5	Simon, Gnanaprakash, Madaiah and Bilavendran,	29.01.2004	12.2.2004	February 2013	Rejected	9	Killing of 22 persons in a land mine blast
6	Saibanna Ningappa Natikar	21.04.2005	2005	4.1.2013	Rejected	8	Murder of two wives and a minor daughter
7	Jafar Ali	5.4.2004	18.8.2006	4.4.2013	Rejected	7	Murder of his wife and five daughters
8	Gurmeet Singh	28.09.2005	2007	4.4.2013	Rejected	6	Murder of 13 family 7 members
9	Shivu Munishetty and Jadeswamy Rangashetty	2007	28.2.2007	13.8.2013	Rejected	6	Rape and murder of a girl
10	Sonia and Sanjeev	2007	2007	4.7.2013	Rejected	6	Murder of eight family members
11	Sunder Singh	16.9.2010	2011	4.4.2013	Rejected	2	Murder of five family members
12	Maganlal Barela	9.1.2012	2012	22.7.2013	Rejected	1	Beheaded his five minor daughters on 11.6.2010
	Total -20						

Table 3 : State wise no. of people executed between 1953 and 1963.

States	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	Total
A&N Islands	0	0	0	0	1	1	0	0	0	0	0	2
Andhra Pradesh	20	3	15	12	13	8	20	16	9	3		119
Bihar		6	3	7	3	5	2	4	4	2	0	36
Gujarat		2	1	2	1	0	3	4	1	2	5	21
Himachal Pradesh		0	0	0	0	0	0	1	0	0	0	1
Kerala		11	9	2	0	5	10	16	9	7	15	84
Manipur	0	0	0	0	0	0	0	1	0	0		1
Madhya Pradesh				6	10	7	5	7	1	3	0	39
Madras State		44	53	56	50	59	71	45	51	33	23	485
Maharashtra		4	4	5	4	4	6	8	10	7	4	56
Mysore State	1	1	4	1	2	1	3	3	0	0		16
Orissa State		2	3	1	0	0	1	0	0	0	3	10
Punjab State		10	11	16	11	12	12	20	21	11	4	128
Tripura		0	0	0	0	0	0	0	0	0	0	0
UP State		24	46	41	54	41	47	47	44	36	17	397
West Bengal		1	1	2	4	1	1	2	0	3	0	15
Total	21	108	150	151	153	144	181	174	150	107	71	1410

Table 4: State wise list of 21 condemned prisoners executed by India since 1995:⁶¹

Year	Number of executions	States
1995	13	Uttar Pradesh (11), Delhi (1) and Assam (1)
1996	1	Kerala
1997	1	Andhra Pradesh
1998	3	Haryana
1999-2003	No execution	
2004	1	West Bengal (Dhananjay Chatterjee)
2005-2011	No execution	
2012	1	Maharashtra (Mohammad Amir Ajmal Kasab)
2013	1	Delhi (Afzal Guru)

61. Prison Statistics Reports, 1995 to 2011, National Crime Records Bureau, Ministry of Home Affairs, Government of India

Annexure I: List of mercy petitions pending with the Governor of Maharashtra



No. RB-2013/Admin/RTI/23805.



GOVERNOR'S SECRETARIAT
RAJ BHAVAN
MALABAR HILL
MUMBAI 400 035

15 June, 2013.

To

✓ Shri Tejang Pradip Kumar Chakma,
C-3/441-C, Janakpuri,
New Delhi 110 058.

Subject : Regarding an application for providing information under
the Right to Information Act 2005 ...

Sir,

With reference to your application dated 26th April, 2013 under Right to Information Act, 2005 received by this office as on 29th April, 2013 requesting to provide information as per points (1 to 3) mentioned in the application.

Point 1, as you required information about the names of death-row convicts who had submitted Mercy Petitions to the Governor of Maharashtra from 1st January 1980 to 31st December, 2013. As per this office available record the following information is as follows.

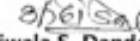
Sr. No.	Names of death-row convicts	Date of Mercy Petitions received by this office
01	Convict Seema Mohan Gavit	10-10-2008
02	Convict Renuka alias Rinku Kiran Shinde	17-06-2009
03	Convict Ashrat Ansari & Others	04-12-2009
04	Convict Surya Suresh Shinde	17-06-2010
05	Convict Mohan Anna Chavan	17-06-2010
06	Convict Ankush Maruti Shinde	17-06-2010
07	Convict Shivaji alias Dayashankar Alhat	17-06-2010
08	Convict Raju Mhasu Shinde	17-06-2010
09	Convict Rajya Appa Shinde	17-06-2010
10	Convict Bapu Appa Shinde	17-06-2010

Point 2, the required information falls within the jurisdiction of the Home Department, therefore, as required the copy of your application is transferred to the Public Information Officer, Home Department, Mantralya, Mumbai and requested to seek out the said information from the same.

Point 3, the required information falls within the jurisdiction of the President's Secretariat, New Delhi, therefore, as required the copy of your application is transferred to the Public Information Officer, President's Secretariat, Rashtrapati, New Delhi and requested to seek out the said information from the same.

If you desire to prefer an appeal against this decision, you may file the appeal within 30 days after receipt of this letter, to the Appellate Authority & the Deputy Secretary to the Governor (Admin), Raj Bhavan, Malabar Hill, Mumbai 400 035.

Yours,



(Ujjwala S. Dandekar)

Public Information officer and
Under Secretary to Governor (Admin)
Raj Bhavan, Malabar Hill, Mumbai 35.

प्रत आवश्यक कार्यवाहीसाठी:-

राज्य शासकीय जन माहिती अधिकारी,
गृह विभाग, महाराष्ट्र शासन, मंत्रालय,
हुतात्मा राजगुरु चौक, मादाम कामा मार्ग,
मुंबई ४०० ०३२.

महोदय,

उपरोक्त विषयासंदर्भात, श्री तेजंग प्रदीपकुमार चकमा यांचा दिनांक २६ एप्रिल, २०१३ च्या माहिती अर्जाची छायांकित प्रत (सहपत्रासह) सोबत जोडली आहे.

त्या अनुषंगाने, श्री चकमा यांचा दिनांक २६ एप्रिल, २०१३ च्या माहिती अर्जाची छायांकित प्रत माहितीचा अधिकार अधिनियम, २००५ च्या कलम ६(३) मधील तरतुदीनुसार पुढील आवश्यक त्या कार्यवाहीसाठी तसेच अर्जदारांस माहिती अचगत करण्याच्या विनंतीसह आपल्या विभागाकडे हस्तांतरित करण्यात येत आहे.

आपली,

सही/-

(उज्ज्वला सं. दांडेकर)

जन माहिती अधिकारी तथा
राज्यपालांच्या अवर सचिव (प्रशासन)
राजभवन, मलबार हिल, मुंबई ०३५.

Copy for necessary action:-

The Public Information Officer,
The President's Secretariat,
Rashtrapati Bhavan,
NEW DELHI - 110 004.

Sir,

I am directed to forward herewith a copy of an application dated 26 April, 2013, received by this office under the **Right to Information Act, 2005** from Shri Tejang Pradip Kumar Chakma, New Delhi of the Right to Information Act, 2005, with a request to send information sought by him if available under intimation to this office.

Yours,



(Ujjwala S. Dandekar)

Public Information Officer and
Under Secretary to Governor (Admin),
Raj Bhavan, Malabar Hill, Mumbai 035.



Acknowledgement: This report is being published as a part of the ACHR's "National Campaign for Abolition of Death Penalty in India" - a project funded by the European Commission under the European Instrument for Human Rights and Democracy – the European Union's programme that aims to promote and support human rights and democracy worldwide. The views expressed are of the Asian Centre for Human Rights, and not of the European Commission.

ASIAN CENTRE FOR HUMAN RIGHTS

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