



ASIAN CENTRE FOR HUMAN RIGHTS

Dedicated to promotion and protection of human rights in Asia

ACHR has Special Consultative Status with the United Nations Economic and Social Council

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Right to life in the context of death penalty

ACHR's submission to the Half Day General Discussion on Article 6 of the
UN Human Rights Committee

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1. Executive summary

Asian Centre for Human Rights (ACHR) welcomes the decision of the UN Human Rights Committee to revise the “General Comment No. 36 - Article 6: Right to life” and hold “Half Day of General Discussion on Article 6” on 14 July 2015.

In the light of the issues framed by the UN Human Rights Committee (CCPR/C/GC/R.36), Asian Centre for Human Rights makes this submission focusing on the right to life in the context of death penalty.

The submission focuses on three specific issues on the right to life in the context of death penalty:

First, imposition of death penalty without complying with the ICCPR constitutes arbitrary deprivation of the right to life as provided under Article 6, paragraph 1 of the ICCPR. The death penalty cases which could be considered as arbitrary deprivation of the right to life are: mandatory death sentencing; imposition of death penalty by the courts without procedural guarantees commonly available under national laws consistent with the ICCPR and as per Article 14 of the ICCPR; execution without exhausting all legal remedies including review of the decisions pertaining to pardon and commutation by the competent court; and execution in violation of the principles of equality and non-discrimination. Arbitrary deprivation of the right to life need not be committed by the security forces only but by the judiciary too.

Second, ‘final judgement’ as provided in Article 6, Para 2, should be read with access to pardon and commutation. The finality of the conclusion of finding an accused guilty of an offence punishable with death by the highest court of the country is not necessarily the “final judgement”. Considering that seeking pardon and commutation is recognized as a right under Article 6, paragraph 4, its violation must be subject to judicial review. Therefore, “final judgement” under Article 6, Para 2, should mean “final judgement” delivered after reviewing rejection of mercy plea.

A court established by national law is not necessarily the ‘competent court’. A ‘court’ cannot be considered as ‘competent’ unless the trial complies with the fair trial standards provided in the ICCPR and the court itself meets the UN Basic Principles on the Independence of the Judiciary.

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Third, as stated above seeking 'pardon and commutation' is recognized as a right under Article 6, paragraph 4. The consideration of this right i.e. *the right to seek pardon or commutation of the sentence* cannot be arbitrary. Therefore, the process and decisions on pardon and commutation must be subject to judicial review.

Asian Centre for Human Rights requests the UN Human Rights Committee to consider inclusion of these elements on the right to life in the context of death penalty in its General Comment No.36.

2. Submission of the Asian Centre for Human Rights

Article 6: Right to life – and its relations with death penalty

2.1. Article 6, paragraph 1 relating to arbitrary deprivation of the right to life

A. Issues framed by the UN Human Rights Committee

The Human Rights Committee framed the following issues:

“7. With regard to article 6, paragraph 1: “No one shall be arbitrarily deprived of his life”,

(a) *Meaning of “deprivation of life”, and whether it includes anything other than deliberate killings and other acts or omissions intentionally or inevitably leading to loss of life;*

(b) *Meaning of “arbitrary deprivation”;*

(I) *Substantive requirements of non-arbitrariness;*

(II) *Relevance of other provisions of the Covenant (e.g., article 7, 14, 20);*

(III) *Relevance of other rules of international law, including jus ad bellum and jus in bello and instruments regulating weapons of mass destruction and counter-terrorism;*

(IV) *Relevance of legal protections afforded by domestic law;*

(V) *Relevance of methods of execution (e.g., injection, gas, stoning);*

(VI) *Legitimate and non-legitimate reasons for deprivation of life (e.g., self-defense, excessive use of force by state officials, use of lethal*

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force in connection with detention powers, use of lethal force in connection with protection of property);

(VII) Relevant non refoulement obligations;

(VIII) The need to meet necessity and proportionality requirements in assessing arbitrariness of deprivation in different fields (e.g., criminal sentences, law enforcement, armed conflict, medical treatment etc.).

B. Submission of ACHR

Asian Centre for Human Rights submits that imposition of death penalty without complying with the ICCPR amounts to arbitrary deprivation of the right to life.

The Human Rights Committee while revising its General Comment on the right to life should take note of the following elements of arbitrary deprivation of the right to life relating to death penalty.

First, mandatory death sentencing has been declared as arbitrary and unconstitutional by Supreme Courts across the world as given below.

In 1983, India's Supreme Court had declared mandatory death penalty under Section 303 of the Indian Penal Code¹ as unconstitutional in *Mithu v. State of Punjab*.² Further, relying upon *Mithu v. State of Punjab*, the Supreme Court struck down Section 27(3)g of the Arms Act 1959 which provided for mandatory death penalty in *State of Punjab V. Dalbir Singh* in 2012.

On 23.06.1987, the Supreme Court of the United States struck down mandatory death penalty as unconstitutional.³

On 30.07.2010, the Court of Appeal of Kenya declared unconstitutional the application of a mandatory death sentence on all prisoners convicted of murder.⁴

1. Section 303 in The Indian Penal Code states, "303. *Punishment for murder by life-convict — Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death*".

2. *Mithu v. State of Punjab Etc.* 1983 AIR 473, 1983 SCR (2) 690

3. Please see <http://www.nytimes.com/1987/06/23/us/court-eliminates-mandatory-death-sentence.html>

4. Please see <http://www.worldcoalition.org/Kenyas-mandatory-death-penalty-ruled-unconstitutional.html>

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On 7 July 2004, Judicial Committee of the Privy Council in Jamaica struck down the mandatory death penalty in *Lambert Watson v. The Queen*, [Appeal No. 36 of 2003] and the current penal code no longer provides for the mandatory death penalty.⁵

In 2005, the Judicial Committee of the Privy Council (JCPC) of Dominica ruled in *Balson v. The State* that the mandatory death penalty amounts to inhuman treatment and is thus unconstitutional in Dominica, observing that any barrier to constitutional challenge was identical to those addressed in its decision in *The Queen v. Hughes* regarding the mandatory death penalty in Saint Lucia. The Eastern Caribbean Supreme Court has consistently applied its and the JCPC's decisions in *Hughes* to limit application of the death penalty to "exceptional cases where there is no reasonable prospect of reform and the object of punishment would not be achieved by any other means," in other words, where a murder is the "worst of the worst."⁶

In *Bowe v. The Queen* (2006), the Judicial Committee of the Privy Council (JCPC) —the highest constitutional court for the Bahamas—struck down the mandatory death penalty for murder in the Bahamas, holding that the relevant legal provision should be construed as imposing a discretionary and not a mandatory sentence of death. The court reasoned that the mandatory death sentence contravened the constitutional prohibition on inhuman or degrading punishment because of its lack of individualization.⁷ In response to the JCPC's decision, the Bahamas repealed the mandatory death penalty for murder in 2011 and enacted a law establishing that the punishment for aggravated murder is either the death penalty or life imprisonment, at the court's discretion.⁸

In May 2015, the Supreme Court of Bangladesh declared mandatory death sentencing as unconstitutional.⁹

5. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Jamaica#f21-3>

6. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Dominica>

7. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas>

8. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas>

9. "Press Release: Landmark Appellate Division Judgment Declaring Unconstitutional Mandatory Death Penalty under Special Law on Violence against Women and Children 1995", Bangladesh Legal Aid and Services Trust, 5 May 2015, available at <http://www.blast.org.bd/content/pressrelease/05-05-2015-Press-Release-SukurAli.pdf>

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Second, imposition of death penalty by the courts without procedural guarantees commonly available under national laws and as per Article 14 of the ICCPR constitutes “arbitrary deprivation of the right to life”.

In this regard, it is pertinent to mention that anti-terror laws, anti-drug laws have been enacted to circumvent procedural guarantees commonly available to the accused. The special courts or designated courts constituted under the special laws are effectively reduced to military tribunal/summary trial.

Asian Centre for Human Rights cites two specific cases of imposition of death penalty in India to illustrate the situation:

Devender Pal Singh Bhullar was arrested under the Terrorists and Disruptive Activities (Prevention) Act (TADA) and the Indian Penal Code and he was sentenced to death solely based on his confessional statements recorded by Deputy Commissioner of Police B.S. Bhola under Section 15¹⁰ of the TADA. While two judges of the Supreme Court confirmed the conviction and death sentence on Bhullar on 22 March 2002, the third judge in the bench Justice M. B. Shah delivered a dissenting judgement, and pronounced Bhullar as “innocent”. Justice Shah held that there was nothing on record to corroborate the confessional statement of Bhullar and police did not verify the confessional statement including the hospital record to find out whether D. S. Lahoria, one of the main accused went to the hospital and registered himself under the name of V. K. Sood on the date of incident and left the hospital after getting first aid. None of the main accused, i.e. Harnek or Lahoria was convicted¹¹ but Bhullar, the alleged conspirator, was sentenced to death. In

10. “Section 15 of the TADA. Certain confessions made to police officers to be taken into consideration. – (1) *Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder:*

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under subsection (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.”

11. ACHR “Death Penalty Through Self Incrimination in India”, October 2014, <http://www.achrweb.org/reports/india/Incrimination.pdf>

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April 2013, Anoop G Chaudhari, the Special Public Prosecutor who had appeared against Bhullar in the Supreme Court in 2002 stated that though two of the three judges on the Supreme Court bench upheld his arguments, he found himself agreeing with the dissenting verdict delivered by the presiding judge, M B Shah, who had acquitted Bhullar. Chaudhari had stated *“Surprising as it may sound, I believe that Shah was right in not accepting my submissions in support of the trial court’s decision to convict Bhullar in a terror case, entirely on the basis of his confessional statement to the police”*.¹²

Similarly for assassination of Rajiv Gandhi, former Prime Minister of India, Perarivlan @ Arivu, one of the four convicts, was sentenced to death. The Central Bureau of Investigation (CBI) charge-sheeted 26 accused for various offences under the TADA and the IPC¹³ and the Special Judge of the TADA Court sentenced all 26 main accused to death.¹⁴ On 11 May 1999, the Supreme Court set aside convictions under the TADA but confirmed the death sentence passed by the TADA Court on Nalini, Santhan, Murugan and Arivu under the IPC.¹⁵ Arivu was sentenced to death based on his confessional statement. Interestingly, in a documentary released in November 2013 on Arivu, the former Superintendent of Police of the CBI Mr P V Thiagarajan admitted that he had manipulated Arivu’s confessional statement in order to join the missing links in the narrative of the conspiracy in order to secure convictions. Thiagarajan stated, *“But [Perarivalan] said he did not know the battery he bought would be used to make the bomb. As an investigator, it put me in a dilemma. It wouldn’t have qualified as a confession statement without his admission of being part of the conspiracy. There I omitted a part of his statement and added my interpretation. I regret it.”*¹⁶

12. Public prosecutor turns surprise ally for Bhullar, The Times of India, 18 April 2013, <http://timesofindia.indiatimes.com/india/Public-prosecutor-turns-surprise-ally-for-Bhullar/articleshow/19606737.cms>

13. All the accused were charged under Section 302 read with Section 120-B of the Indian Penal Code and Section 3 & 4 of the TADA.

14. All the accused were sentenced under Section 302 read with Section 120-B IPC. One of accused was also sentenced to death under Section 3(1)(ii) of the TADA.

15. The death sentence was under Section-120B read with Section 302 IPC. State through Superintendent of Police, CBI/SIT v. Nalini and Ors.[AIR1999SC2640]

16. Ex-CBI man altered Rajiv death accused’s statement, The Times of India, 24 November 2013, available at: <http://timesofindia.indiatimes.com/india/Ex-CBI-man-altered-Rajiv-death-accuseds-statement/articleshow/26283700.cms>

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In the cases of both Arivu and Bhullar, the confessions made to the police officers are in violation of the Indian Evidence Act,¹⁷ which does not allow confessions made to police officers as admissible evidence, and Article 14(3)(g) of the ICCPR which prohibits self-incrimination.¹⁸ Had they been tried under the IPC based on the evidence taken under the Indian Evidence Act, both would have certainly been acquitted. Had they been tried only under the TADA, they would not have been sentenced to death as the maximum punishment for abetment under the TADA is five years imprisonment.¹⁹ Since Arivu was discharged under the TADA, the evidence (confession made to police officer) extracted under the TADA should not have been used as evidence to prosecute him under the IPC offences. In such a case Arivu would have been released as confession made to a police officer is not admissible under the Indian Evidence Act. Devender Pal Singh Bhullar too, if tried under the IPC without relying on the evidence obtained under the TADA (confession made to a police officer) would have certainly been acquitted.

Third, execution without access to pardon and commutation constitutes arbitrary deprivation of the right to life.

In this regard, it is pertinent to draw attention to a recent judgement of the Supreme Court of India. Shabnam and Salim were convicted for murder and sentenced to death vide order dated 15.07.2010 by the sessions court. The High Court of Allahabad confirmed the death sentence vide judgment dated 26.04.2013. The Supreme Court vide order dated 15.05.2015 also affirmed the death sentences.²⁰ On 21.05.2015, death warrants were issued by the Sessions Judge for their execution.

A petition was filed before the Supreme Court challenging the death warrants, which are impermissible inasmuch as various remedies which are

17. Section 25 of the Indian Evidence Act, Confession to police officer not to be proved - "*No confession made to police officer shall be proved as against a person accused of any offence.*"

18. Article 14 (3) of the ICCPR. "*In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt.*"

19. Under Section 3(3) of the TADA the punishment for abetting terrorism is "*imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine*".

²⁰ . Supreme Court judgement dated 27.05.2015 in the case of Shabnam Vs Union of India Writ Petition (Criminal) No. 89 of 2015 available at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42719>

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available to the convicts, even after the dismissal of the appeals by the highest court, are still open and yet to be exercised by them. It is submitted that these convicts can file review petition seeking review of the judgment dated 15.05.2015. They also have the right to file mercy petitions to the Governor of Uttar Pradesh and to the President of India.²¹

The Supreme Court of India while staying the executions stated that “*condemned prisoners also have a right to dignity and execution of death sentence cannot be carried out in a arbitrary, hurried and secret manner without allowing the convicts to exhaust all legal remedies*”²² including filing of mercy petition before the President of India.

Fourth, execution in violation of the principles of equality and non-discrimination is arbitrary deprivation of the right to life. Asian Centre for Human Rights cites below as to how arbitrary executions are carried out.

On 28 October 2012, the Secretariat of the President of India displayed all the mercy petitions pending before President Pranab Mukherjee on its webpage. As per that list, there were altogether 12 pending mercy pleas which were listed in sequential order as per the date of recommendation received by the President's Secretariat from the Ministry of Home Affairs (MHA), with the oldest listed first. In that list, the mercy plea of Ajmal Kasab, sentenced to death for 26/11 Mumbai terror attack, was put at the last being number 12 based on the receipt of the recommendations of the MHA dated 16.10.2012 to reject the mercy plea.²³ However, President Pranab Mukherjee jumped the queue of 11 other convicts whose cases appeared first in sequential order and rejected the mercy plea of Kasab on 05.11.2012.²⁴ Soon after rejection of his mercy plea Kasab was executed on 21.11.2012 and buried at Pune's Yerwada Central Prison.²⁵

²¹ . Ibid

²² . Ibid

²³. Ajmal Kasab's mercy petition last among 12 pending petitions in President Pranab Mukherjee's office, The Times of India, 30 October 2012; link http://articles.economicstimes.indiatimes.com/2012-10-30/news/34817055_1_mercy-petitions-mercy-plea-afzal-guru

²⁴. President Secretariat: Statement of Mercy Petition cases - Rejected as on 01.08.2014; available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

²⁵. Ajmal Kasab hanged, buried at Pune's Yerwada Jail, Indiatoday.com, 21 November 2012; available at: <http://indiatoday.intoday.in/story/ajmal-kasab-hanged-after-president-rejected-his-mercy-plea/1/230103.html>

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Similarly, the mercy plea of Mohammad Afzal Guru, convicted for the attack on Indian Parliament in 2001, had been listed at number 6 based on the receipt of the recommendation of the MHA dated 04.08.2011.²⁶ The President rejected his mercy plea ahead of the other pending cases²⁷ on 03.02.2013²⁸ and he was hanged on 09.02.2013²⁹ without his family being informed about the hanging as required under the Jail Manual.

2.2 Article 6, paragraph 2, inter alia, relating to final judgement and competent court

A. Issues framed by CCPR

Article 6, paragraph 2

8. With regard to article 6, paragraph 2: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide", issues may include:

(a) Meaning of "not abolished" (e.g., moratorium de jure/ de facto);

(b) Meaning of "most serious crimes";

(c) Meaning of "law in force at the time of commission" (e.g., substantive/procedural retroactivity);

(I) Relationship to other articles of the Covenant, e.g. 14, 15;

(II) Relationship to the Second Optional Protocol;

(III) Relationship to the Genocide Convention;

26. Ajmal Kasab's mercy petition last among 12 pending petitions in President Pranab Mukherjee's office, The Times of India, 30 October 2012; link http://articles.economictimes.indiatimes.com/2012-10-30/news/34817055_1_mercy-petitions-mercy-plea-afzal-guru

27. Afzal Guru hanged in secrecy, buried in Tihar Jail, The Hindu, 10 February 2013 available at: <http://www.thehindu.com/news/national/afzal-guru-hanged-in-secrecy-buried-in-tihar-jail/article4396289.ece>

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

29. Afzal Guru hanged in secrecy, buried in Tihar Jail, The Hindu, 10 February 2013 available at: <http://www.thehindu.com/news/national/afzal-guru-hanged-in-secrecy-buried-in-tihar-jail/article4396289.ece>

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- (d) Applicability of the paragraph to extradition proceedings;*
- (e) The scope of the prohibition on the reintroduction of the death penalty;*
- (f) The scope of the prohibition on mandatory death sentences;*
- (g) Whether there is a need to periodically review the list of "most serious crimes".*

9. With regard to article 6, paragraph 2: "This penalty can only be carried out pursuant to a final judgment rendered by a competent court", issues may include:

(a) Meaning of "final judgment";

(I) Relationship of this paragraph to article 6, paragraph 4;

(II) Relevance of recourse to international review procedures in ascertaining finality;

(b) Meaning of a "competent court";

(I) Relationship of this paragraph to other articles of the Covenant, e.g. article 14;

(II) Applicability to military justice, including in cases covered by reservations regulated in article 2 to Second Optional Protocol;

(c) The extent of required judicial control over the manner of execution.

B. Submission of ACHR

ACHR reiterates that mandatory death sentencing is arbitrary and therefore cannot be imposed even in the most serious crimes.

With respect to "final judgement *rendered by a competent court*" as provided in Article 6, paragraph 2, ACHR submits the following:

i. Meaning of 'final judgement'

The finality of the conclusion of finding an accused guilty punishable with death by the highest court of the country is not necessarily the "final judgement". 'Final judgement' as provided in Article 6, Para 2, should be read with access to pardon and commutation which is recognized as a right under Article 6, paragraph 4 of the ICCPR. In many countries including India

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the decision on mercy plea by the Head of the State are subject to judicial review by the Supreme Court or the Constitutional Court. Considering the arbitrariness and denial of equality and non-discrimination and violations of the principles of natural justice in consideration of the mercy pleas, in the context of death penalty, “final judgement” should mean “final judgement” delivered by the competent court after reviewing the rejection of mercy plea.

ii. Meaning of a ‘competent court’

ACHR submits that a court established by national law itself is not the competent court. A court cannot be considered as ‘competent’ unless the trial complies with the fair trial standards provided in the ICCPR and the court itself meets the UN Basic Principles on the Independence of the Judiciary.

A competent court must conduct the trial through the common laws of the country such as Code of Criminal Procedure (CrPC) and Evidence Act. However, when the common laws relating to trial are circumscribed and made subservient to special laws while trying the cases relating to national security, counter terrorism or anti-drug measures, the special courts or designated courts are effectively reduced to military tribunal/summary trial. The Government of India under the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Prevention of Terrorism Act (POTA) made self-incrimination prohibited under ICCPR admissible for the purposes of imposing death penalty and further allowed in camera trial including under the National Investigation Agency Act.³⁰ Though the courts under the TADA and the POTA were established by law, because of the violations of the principles of fair trial, these courts cannot be considered as “competent court” as provided in the ICCPR; and therefore imposition of death sentences by these courts are illegal irrespective of the review by the Supreme Court.

30. Section 13 of the TADA, 1985 refers to protection of the identity and address of the witness and in camera proceedings. Section 16 of TADA, 1987 followed the TADA, 1985 as it provided camera trial for the protection of identity of witnesses. It was mandatory to hold proceedings in camera under Section 13 of TADA, 1985 whereas the proceedings could be held in camera under Section 16 of TADA, 1987 only where the Designated Court so desired.

Section 30 of POTA 2002 also provided camera proceedings on the same lines as Section 16 of TADA, 1987.

Section 17 of National Investigative Agency Act, 2008 also provides for camera proceedings for the protection of identity of witnesses if the Special Court so desires.

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2.3. Article 6, paragraph 4 relating to pardon and commutation of the sentence

A. Issues framed by CCPR

"11. With regard to article 6, paragraph 4: "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence", issues may include:

(a) Meaning of "pardon or commutation";

(I) Relevant authorities who may grant pardon or commutation;

(II) Procedural safeguards governing the process of reconsideration of sentence;

(b) The duty to facilitate the exercise of the right to seek pardon or commutation (e.g., duty to inform the convict; legal aid etc.).

12. With regard to article 6, paragraph 4: "Amnesty, pardon or commutation of the sentence of death may be granted in all cases", issues may include:

(a) Meaning of "amnesty";

(b) The duty on state authorities to consider amnesty, pardon or commutation proprio motu.

B. Submission of ACHR

It is submitted that seeking 'pardon and commutation' is recognized as a right under Article 6, paragraph 4. The consideration of this right i.e. *the right to seek pardon or commutation of the sentence* cannot be arbitrary. Therefore, the process and decisions on pardon and commutation must be subject to judicial review.

Based on the experiences in India, the following elements can be drawn:

*First, consideration of 'pardon or commutation of the sentence' cannot be arbitrary decision of the executive including the Head of the State. With respect to consideration of mercy plea by the President of India, the Supreme Court of India in the landmark decision in the *Shatrughan Chauhan v. Union of India* delivered on 21 January 2014 held: "It is well settled law that executive action and the legal procedure adopted to deprive a person of his life or liberty must be fair, just and reasonable and the protection of Article 21 of the Constitution of India inheres in every person, even death row prisoners, till the very last breath of their lives. We have already seen the provisions of various State Prison Manuals and the actual*

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procedure to be followed in dealing with mercy petitions and execution of convicts."³¹

*Second, in India, the Supreme Court has intervened in plethora of cases to review the decision of the President of India. On the consideration of the mercy pleas, Supreme Court of India held that "exercising of power under Article 72/161 (on commutation) by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every Constitutional duty must be fulfilled with due care and diligence; otherwise judicial interference is the command of the Constitution for upholding its values."*³² The review by the judiciary is an indispensable element.

Third, the right to life does not get extinguished following confirmation of the death sentence. The execution must not violate the principles of equality and non-discrimination i.e. State must not carry out executions selectively and arbitrarily.

[Ends]

³¹. Shatrughan Chauhan vs Union of India [(2014)35SCC1]

³². Shatr Chauhan vs Union of India [(2014)35SCC1]