



## SC Guidelines on Death Penalty and Mercy Petitions

**For Prelims:** Important Cases Related to Death Penalty, Provisions for Death Penalty, Article 21.

**For Mains:** SC Guidelines on Death Penalty and Mercy Petitions, Death Penalty and Arguments Related to It.

[Source: HT](#)

### Why in News?

Recently, the [Supreme Court of India \(SC\)](#) has issued **comprehensive guidelines** aimed at streamlining the **execution of [death sentences](#)** and the **processing of [mercy petitions](#)**.

- The SC **upheld the Bombay [High Court's](#) decision in *Purshottam Dashrath Borate vs Union Of India, 2019* to [commute](#) the death penalty of two convicts in the 2007 Pune BPO gang-rape and murder case to a 35-year life term due to **inordinate execution delays**.**

### What are the SC Guidelines on Death Penalty and Mercy Petitions?

- **Establishment of Dedicated Cells:**
  - The SC directed all states and union territories to **establish dedicated cells** within their **Home or Prison Departments** to **handle [mercy petitions](#) efficiently** and within the prescribed time frame.
  - These cells will be managed by a **designated officer**, with contact details shared with all prisons, and an **official from the Law or Justice Department** will ensure legal compliance.
- **Information Sharing:**
  - Prison authorities must **promptly forward mercy petitions** and relevant details, such as the convict's background, incarceration history, and legal documents to the dedicated cell.
  - They must also send **police reports, FIRs, trial evidence**, and court judgments to the cell officer and the Home Department Secretary.
  - Mercy petitions must be promptly forwarded to the Secretariats of the **Governor** or **President** for further action without unnecessary delays.
- **Electronic Communication:**
  - To enhance efficiency, **all communication should be conducted electronically (via email)**, except in cases requiring confidentiality.
- **Record Maintenance on Death Sentence Cases:**
  - The Sessions Courts must **maintain a record of death sentence cases** and **ensure their prompt listing** on the cause list upon receiving orders from the **High Court** or **Supreme Court**.
  - Additionally, notices should be issued to **State Public Prosecutors or investigation agencies** to ascertain the status of any pending legal remedies, including appeals, review petitions, or mercy pleas.
- **Execution Warrant Protocol:**

- There should be a **mandatory 15-day gap** between the issuance of an execution warrant and its implementation.
- **Convicts must be informed of their right** to legal representation, and copies of the warrant and the issuing order must be provided immediately.
- **Legal assistance must be offered immediately** if requested by the convict to challenge the warrant.
- **State Government Responsibility:**
  - The State Government **must apply for an execution warrant** as soon as the death penalty becomes **final and enforceable**.

## What is the Death Penalty and Mercy Petition?

- **About Death Penalty:** It is also known as [capital punishment](#), and the **most severe form of punishment** in the Indian judicial system.
  - It involves the **execution of an individual by the state** as a penalty for certain grave offenses.
- **Legal Framework For Death Sentence:**
  - The death penalty in India is governed by various provisions in the [Bharatiya Nyay Sanhita \(BNS, 2023\)](#), [Bharatiya Nagarik Suraksha Sanhita \(BNSS, 2023\)](#) and other special laws.
  - The **BNS (replaced the Indian Penal Code (IPC))** mandates the death penalty for crimes including **rape causing death (Section 66)**, **gang rape of minors (Section 70(2))**, **serial rape (Section 71)**, etc.
    - **Section 53 of the IPC** provided for the punishment of death, along with other forms such as life imprisonment and imprisonment.
    - Specific offenses punishable by death include, but are not limited to, **murder (Section 302)**, [terrorism \(Unlawful Activities \(Prevention\) Act, UAPA\)](#), and certain offenses related to [drug trafficking](#) under the [Narcotic Drugs and Psychotropic Substances Act \(NDPS\)](#).
  - **The Constitution of India:**
    - The [Constitution of India](#) does not explicitly declare capital punishment as unconstitutional.
    - However, the Supreme Court, as outlined in *Bachan Singh vs. State of Punjab (1980)* identified 5 categories for such cases, including **brutal murder, deprived motives**, and **crimes of significant magnitude** where capital punishment is awarded.
- **About Mercy Petition:** It is a **formal request made** by someone who has been sentenced to death or imprisonment seeking mercy from the [President](#) or the [Governor](#), as the case may be.
- **Constitutional Framework:**
  - As per the Constitutional framework in India, a mercy petition to the President is the last constitutional resort a convict can take when he is sentenced by a court of law. A convict can present a mercy petition to the President of India under [Article 72](#) of the Constitution of India.
  - Similarly, the power to grant pardon is conferred upon the [Governors](#) of States under [Article 161](#) of the Constitution of India.

Article 72	Article 161
<ul style="list-style-type: none"> <li>▪ The President shall have the <b>power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute</b> the sentence of any person convicted of any offence:</li> <li>▪ In all cases where the punishment or sentence is by a <a href="#">Court Martial</a></li> <li>▪ In all cases where the punishment or sentence is for an offence against any law relating to a matter to which the</li> </ul>	<ul style="list-style-type: none"> <li>▪ It provides that the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.</li> <li>▪ The SC in 2021 held that the Governor of a State can pardon prisoners, including death row ones, even before</li> </ul>

executive power of the Union extends

- In all cases where the sentence is a sentence of death.

they have served a minimum 14 years of prison sentence.

## What are the Implications of SC Guidelines on Death Penalty and Mercy Petition?

- **Reduction in Delays:** The establishment of dedicated cells and a structured approach for processing mercy petitions will **minimize delays, ensuring timely resolution**. Regular monitoring and prompt listing of cases by Sessions Courts will expedite the process.
  - **Example:** In the ***Mukesh Singh vs. NCT of Delhi (2017)*** case (also known as ***Nirbhaya rape case***) the execution of the Nirbhaya convicts was delayed due to multiple mercy petitions and legal challenges.
- **Enhanced Accountability:** Designated officers and **clear responsibilities** for various departments will ensure **transparency and accountability**, making it **easier to track** the progress of cases and petitions.
  - **Example:** In the case of ***Shatrughan Chauhan vs. Union of India (2014)***, the Supreme Court criticized the **delay in the execution of death sentences**.
- **Legal Support and Human Rights:**
  - The guidelines ensure convicts are informed of their rights and provided legal aid, upholding fairness and constitutional protections under **Article 21**. They align with evolving jurisprudence on capital punishment, focusing on "**rarest of rare**" cases and mitigating factors.
- **Strengthened Judicial Oversight:** Sessions Courts must maintain records and ensure timely listing of death sentence cases. Regular **judicial review** and coordination with the **Governor/President** further **safeguard against miscarriages of justice**.

## SC Rulings on the Death Penalty

- In ***Bachan Singh v. State of Punjab, 1980 case***, the SC established the principle of awarding the death penalty only in the "**rarest of rare**" cases.
  - This dictum implies that capital punishment should be imposed only when the **alternative sentence of life imprisonment is deemed inadequate** due to the extreme nature of the crime.
- In ***Jagmohan Singh v. State of UP 1973 case***, SC held that according to **Article 21** deprivation of life is constitutionally permissible if that is done according to the procedure established by law.
  - Thus the death sentence imposed after a trial in accordance with legally established procedures under CrPC and the **Indian Evidence Act is not unconstitutional under Art. 21**.
- In ***Rajendra Prasad v. State of UP 1979 case***, SC held that, if the murderous operation of a criminal jeopardizes social security in a persistent, planned and perilous fashion then his enjoyment of fundamental rights may be rightly annihilated.
- In ***Machhi Singh v. State of Punjab 1983 case***, SC laid down certain considerations for determining whether a case falls under the category of rarest of rare cases or not.

## Conclusion

The Supreme Court's guidelines on death penalty and mercy petitions aim to streamline the process, ensure timely justice, and uphold constitutional safeguards. These measures focus on transparency, efficient communication, and fair execution, balancing the severity of capital punishment with the need for fairness and human rights.

### ***Drishti Mains Question:***

Discuss the Supreme Court's guidelines on the execution of death penalties and the processing of mercy petitions. How do these guidelines aim to address delays in the judicial process and ensure fairness in

## UPSC Civil Services Examination Previous Year Question (PYQ)

**Q.** Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyse. (2014)

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