

## Lawyers Can Make a Difference

Getting Death Penalty abolished from the face of the earth is a long haul. During this time, while we continue with our efforts to get them free from death row, we should also devise and adopt methods in order to secure the Rights of the prisoners who are facing death Penalty.

In India while we are campaigning for abolishing of Death Penalty, we have also adopted certain methods in order to ensure that we are able to get the rights of such prisoners protected in the prisons, while they are waiting for the decisions on their mercy petitions pending before the President of India. By using these methods, I have been able to lessen the trauma of Death Penalty prisoners. I am sharing my personal experience with you, hoping that in some part of the world acting upon my experience, you might be able to make your contribution, which will be a rewarding experience for you and would work as a morale booster in your long fight towards a Death Penalty free world.

The Supreme Court of

~~LFHRI~~ has laid down a Law that in cases in which Death Penalty has been upheld by the highest Court of the land i.e. the Supreme Court of India and if the mercy petition is pending before the President of India for a long time, the High Court of any state or the Supreme Court of India can under the Writ jurisdiction convert the Death sentence into Life Imprisonment. It has been the practice in India that the President mostly does not decide the mercy petitions for pretty long time as we have seen that the Presidents of last 3 terms have avoided deciding the mercy petitions and it seems they most probably do not wish to reject the mercy petitions.

It came to my knowledge from a news paper that factually there are about 48 persons, who though, have lost their cases on merits in the highest courts of India, their death sentence has not been executed and that these prisoners have their mercy petitions pending from time period ranging from 0 – 12 years.

I also came to know that in the jurisdiction of the High Court in which I commonly practice that is for the states of Punjab and Haryana, there were 5 such prisoners who have their mercy petitions pending with the President of India since last 6 -12 years and that those prisoners were being detained in solitary confinements.

So in order to know more details, I Firstly filed an application under Right to information Act and collected the details of all the prisoners who were facing death penalty in these two states and the information was supplied to me through response of the state of Punjab on 13th July 2006 and state of Haryana on 3rd Dec 2007.

In state of Punjab response, it was disclosed by the state to me that there were 16 prisoners who were facing Death Penalty, out of whom 4 were such prisoners who had already exhausted their legal remedies and their mercy petitions were pending with the president of India. In two cases that is of PIARA SINGH & SARBJIT SINGH the mercy petition were pending with the President of India since last 11 years and they are in custody since 1991. Where as in the case of GURDEV SINGH & SATNAM SINGH their Co-accused the mercy petition is pending since 6 years and they are in custody since 1996. It is very pertinent to mention that PIARA SINGH is at present 82 years old.

Finding the cases of Punjab state to be very alarming in nature, I decided to visit the jail in which these 4 prisoners were being detained. After securing permission from the Jail Superintendent Amritsar, on 16th Aug 2006, I met them in their barrack where they were being detained in solitary confinement .On meeting them in their barrack I came to know that each one of them were only allowed to come out of their cells 1 hour in the morning and in the evenings and during rest of the time they had to remain in their cell, which was measuring approximately 10' x 4', in which they had their bedding and stinking toilet facility. It was also reported to me personally that PIARA SINGH & SARBJIT SINGH for their initial 4 years detention were never allowed even to come out of their cells during morning and evening. I found all the 4 prisoners who were accused in one crime case FIR NO 226 Dated 21-1-1991, under sections 302/307/460/148/149, Indian Penal Code & sections 25/27/59 Arms Act registered at police station Chheharta, District Amritsar ,Punjab, were lodged in pitiable sub human conditions.

I immediately moved the High Court of Punjab and Haryana at Chandigarh through Civil Writ Petition No 16026 of 2006 on 10th Oct 2006 which was filed in Public Interest under my name and was titled as NAVKIRAN SINGH versus UNION OF INDIA & others. In the said petition, I prayed

for all the prisoners who were totaling 14, to be taken out of the solitary confinement as solitary confinement was opposed to the Judgment of the Supreme Court Of India, titled SUNIL BATRA versus DELHI ADMN as reported in the legal journal i.e. AIR 1978 SUPREME COURT page 1675 and for the 4 prisoners who had their mercy petitions pending since a long time, I prayed for conversion of their Death Penalty to Life imprisonment.

In a similar manner, I sought the conversion of the sentence of Death Penalty to Life Imprisonment of DHARAM PAL, who is convicted in case FIR NO 187, dated 10-6-1993, registered under Section 302/34 of Indian Penal Code of Police Station Sonapat, Haryana State and he is behind the bars since 1993 and after losing in all the legal battles on merits, made a mercy petition to the President of India and the same is pending decision since 1999. The said Writ Petition is also filed in my name in Public Interest Litigation and is numbered as Civil Writ Petition No 18 of 2008 and is titled NAVKIRAN SINGH Versus UNION OF INDIA & OTHERS. In the State of Haryana there are 11 prisoners who are facing Death Penalty and I have also sought their removal from the solitary confinement, however the State of Haryana has not obliged with removal of the death Penalty prisoners from solitary confinement on their own and we are awaiting the court decision.

That Dharam Pal was visited by me on 1st Oct 2009 in Ambala Jail in Haryana State. Dharam Pal was found in a pitiable condition, living in sub human conditions in a dingy cell in which there is no cross ventilation nor is it accessible to sun light. As per the version of the jail staff, no electricity can be provided to the prisoners who are facing Death Penalty, due to security reasons. Since last one year Dharam Pal is just taken out for permitting him to have bath in the small enclosed area outside his cell or once in the morning for visiting the lavatory. Otherwise he has to use a small hole in the back wall of his cell as a urinal and a plastic pot for his excreta. It was difficult to even stand in front of the cell, what to talk of living in that cell. Dharam Pal was found living the life of a forlorn prisoner who is rarely visited by his family, who are too poor to afford visiting the Ambala jail from District Sonapat. He informed me that his family has only visited him once a year, in the last two years. Dharam Pal was suffering from depression and though he is aged around 44 years he looks to be 65 years old, due to the pitiable and depressing conditions of the cell. It was also very alarming that though solitary confinement has been condemned by the Honâ€™ble Supreme Court of India as far back in the case of Sunil Batra in 1978, but solitary confinement is being still used in the cases of death sentence prisoners. It exhibited the sick mind set of the jail authorities.

My petition was able to get the interim relief for all the 14 prisoners, as the State of Punjab, on their own shifted them to the barracks allocated for normal prisoners and now they are enjoying the company of the other prisoners and enjoy much more freedom as compared to their, earlier detention. On my second visit to the Amritsar Jail In Punjab on 16th Oct 2009, When I went to the Barrack, where the prisoners who are facing Death Penalty are being detained, I found them all enjoying each otherâ€™s company in the open court yard and they reported to me that now they feel much better and healthier.

However the relief claimed for the 4 prisoners who are awaiting execution of their Death Penalty

since last 6 to 11 years pending their mercy petitions before President Of India ,that their Death sentence be converted to Life Imprisonment on the bases of Supreme Court of India Full bench decision as reported in the case of SMT TRIVENIBEN versus STATE OF GUJRAT 1989 ( 1) RCR CRIMINAL 512, is still pending for decision and is fixed before the Division bench headed by the Honble Chief Justice and another Honble judge of Punjab and Haryana High Court at Chandigarh.

**Lawyers can make a difference in not only providing effective legal help before conviction, but can also make a difference and secure relief for the prisoners of the Death Penalty, till we achieve in our mission to get the Death Penalty abolished from the face of the earth.**

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The writer is a Human Rights Lawyer, practicing law at Supreme Court of India as well as Punjab and Haryana High Court at Chandigarh since last 23 years and is also General Secretary of an self funded NGO , Lawyers For Human Rights International.

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