

A G PERARIVALAN GRANTED BAIL AFTER 31 YEARS

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Addressing delay in justice and advocating the abolishment of capital punishment.

The Former Prime Minister of India, the Late Rajiv Gandhi was assassinated on May 21, 1991 by the Liberation Tigers of Tamil Eelam (LTTE). He deployed the Indian Peace Keeping Forces (IPKF) in Sri Lanka. The possibility of him getting re-elected and IPKF getting redeployed were the major reasons for his assassination. A G Perarivalan, one of the accused, was arrested in 1991 and sentenced to death in 1998 by a TADA (Terrorist and Disruption (Prevention) Activities, 1987) court. The Supreme Court of India commuted the sentence to life imprisonment from the death penalty in 2014 and after multiple mercy petitions were finally released on March 9, 2022. This case has been a hot topic for debate among jurists for several years. It has been subject to many controversies and Perarivalan has constantly pleaded innocence after being sentenced. The hardship and turmoil that he had to suffer were in no way justifiable. Moreover, this case is also proof of how death penalties are given arbitrarily and violate the human rights and dignity of a person. The Supreme Court's stance, in this case, is ultimately appreciated because it provided due consideration to Perarivalan and upheld the principle of the 'rarest of rare cases'. This will lead us to the discussion of whether it is time we analyse the need for capital punishment. In the following sections, I will be discussing the case facts, the problematic details among them, the decision, and finally an overall critical analysis of the issue.

Perarivalan was 19 when he was arrested on June 11, 1991, for the assassination of the Late Rajiv Gandhi. He was accused of buying the two 9-volt 'Golden Power' battery cells which were used in the bomb that was used to assassinate Gandhi. He was sentenced to death in 1998 under TADA Act, along with 26 others accused of being involved in the conspiracy of the crime. Capital punishment is an exception to Art 21 of the Indian Constitution, the procedural provision is given in Sec 345(5) of the Criminal Code of Procedure, 1973. In 2013, controversies arose when it was discovered that the confession recorded was false. Former Central Bureau of Investigation SP V Thiagarajan admitted that he altered the confession to imply that Perarivalan knew that those batteries would be used to make the bomb, whereas the

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truth is to the contrary. Moreover, the 1998 bench considered confessions as substantive evidence rather than corroborative evidence, against the conventional practice under the Indian Evidence Act, 1872. In 2014, Justice KT Thomas invoked 'double jeopardy' and said that hanging them after 23 years would be unconstitutional, so the Supreme Court commuted three death sentences to life imprisonment. Pratibha Patil, the former President, rejected their mercy petition in 2011 after 11 years after receiving it under Art 72. Madras High Court stayed the order in 2011. Similarly, the Governor of Tamil Nadu, in 2015 got a mercy petition under Art 161 for his release and did not respond. In 2018, the Tamil Nadu cabinet, led by then CM Edappadi K Palaniswami, recommended the release of all 7 defendants, however, the governor did not pay heed to the suggestion. The Madras High Court strongly condemned the delay in 2020 and similarly in 2021, the Supreme Court expressed its discontent for Governor's inaction. The Governor ultimately gave the petition to President Ramnath Kovind in Feb 2021. The state government granted Perarivalan parole in 2019. The Supreme Court ultimately used Art 142, to grant bail to A G Perarivalan to prevent any further injustice.

The major concern regarding this entire case was that Perarivalan was only 19 when he was arrested and is now 50 when he is finally granted bail. The struggles and turmoils he had to face in the prison due to the extraordinary delay in the judgement is in no way justifiable. A substantive evidence was brought under scrutiny and its legitimacy was disputed and yet, no action towards providing him any kind of relief was taken. The reasonable doubt regarding his guilt was considerable and even then, he was left in the mercy of the system which proved to be too slow to grant justice. Although, when the Supreme Court finally decided to take matters into its own hands and bail Perarivalan, is when the system regained its trust. Multiple International and National Human Rights Organisations have condemned capital punishment and demanded it be repealed completely. Various Indian Jurists also demanded the release of Perarivalan and called the Governor's action illegal to move the petition to the President. In India, capital punishment is only to be provided to the 'rarest of the rare' cases. For a person to be sentenced to death, it must be proven that the crime was exceptional and had a grave impact on society, and the threshold to prove that is very high, considering the punishment is taking away their life. Fortunately, the court commuted their sentences to life imprisonment, it still has a very high threshold for guilt, and in Perarivalan's case, the evidence was not sufficient. The Supreme Court decided to grant bail because of the grave injustice that Perarivalan suffered, for not a substantial reason.

The logic of the judgement may be sound, but the arrival to the decision was a little too late. While the decision to commute the sentence from the death penalty to ultimately, bail, is held in high regard, it is important that we also analyse how the situation might have been avoided from the start. The legal system should be efficient enough to not let people suffer through countless years of distress and lost hope. One of the major factors here is the arbitrariness by which the death penalty was imposed. When the punishment for killing someone is by taking away their life, then the proof of guilt should be absolute and indisputable. As already established above, the TADA court bench of 1998, accepted the confession as substantive evidence rather than corroborative, and majorly relied on this confession to sentence him to death. Coercion and alteration of confessions are not rare phenomena and cannot be used to sentence someone, especially to death. The evidence was not enough and Perarivalan's guilt was not 'rarest of the rare'. This actually forms a major part of the argument that the death penalty should be abolished. Between 2000 and 2015, the Court admitted that it had erred in 25% of the cases by imposing the death penalty. The lives of that 25% of inmates should matter more than punishing the other 75%. Since, human error is inevitable, even in the justice system, it is better that we do away with capital punishment rather than risk the lives of that 25% again. Even the UNGA has stated that "there is no conclusive evidence of the deterrent value of the death penalty". The statement implies that it is not a guarantee that capital punishment will prove to be effective and deter future crimes. Death is imposed on terrorists and yet terrorism has continued, so should we let people like Perarivalan get caught up in the mess and let them unreasonably suffer for so called justice? The stakes of the punishment are too high and any kind of error can lead to a massive failure of the part of our legal system. 108 countries in the world have completely abolished the death penalty and 28 countries have effectively done it, hence, there is no substantial reason for us to continue it. Fortunately, after it was revealed that his confession was altered, the Supreme Court lessened the degree of punishment. This judgement came after 23 years of their sentencing and 23 years after he spent in agony, waiting for someone to listen to him. Capital punishment is also dependent on the adjudicator's personal beliefs. Former President Pratibha Patil rejected their mercy petition after 11 years. It is a long time to keep someone waiting, at someone else's mercy, kept in blind faith until ultimately reject their petition. The justice system again seems to lack efficiency, where a petitioner is made to wait for 11 years in prison as there is no time limit provided for the president to decide. Although we do not want the decision to be made in haste, it does not seem fair to the human life and dignity of the prisoner. The Supreme Court's interference after the Governor's lack of response is somewhat laudable because it acknowledged the unfairness

towards Perarivalan due to procedural delay and took swift action. He would not have had to spend 31 years in prison without any definite status of his imprisonment, the ups, and downs that caused him a lot of agony and suffering if he had not been arbitrarily sentenced to death in the beginning. Even though his sentence was commuted to life imprisonment after 23 years, he served unreasonably extra time. The related discussion is whether Governor and President should be allowed indefinite time to decide on mercy petitions. Many jurists called the Governor's initiative of passing the petition to the President as "illegal" and Rashtrapati Bhavan is still in charge of the situation. The Madras High Court in 2020 said that no time frame is provided to make a decision solely "because of the faith and trust attached to the constitutional post." However, "...If the such authority fails to make a decision within a reasonable time, the court will be forced to intervene." The issue is that the court was too late to intervene. Very often, even constitutional post holders are personally or politically motivated, and resting the decision of someone else's life on that post holder for an indefinite time is unjust. The process of the death penalty and the sentencing itself is so arbitrary and problematic, that there is no reason to keep the practice going on. The state's response was mostly positive. While Indian National Congress disapproved of his release, parties like DMK and AIADMK were in support of it. Overall, the state of Tamil Nadu has supported Perarivalan from the beginning. Internationally, more than 2/3rds of the country has abolished capital punishment, so while the judgement of releasing a convict who was wrongly sentenced to death is praiseworthy, it is not enough. The 262nd Law Commission report strongly suggested the repeal of the capital punishment law in India and it is time that these demands are looked into and discussed at the highest level.

An eye for an eye makes the whole world blind, said by the Father of Our nation, Mahatma Gandhi. The case can be briefly summarised that A G Perarivalan was sentenced to death in 1998 and released on bail in 2022, in the time being, his mercy petition got rejected by the president after 11 years and it was revealed that his confession was altered. Even after completing life imprisonment time for all offences, he was charged with, except one, his sentence was not remitted by the Governor. Finally, the Court interfered and granted him bail. My opinion of it is basically that it is yet again a case of death penalty is arbitrarily imposed and that all the procedural delays caused by it were unjust towards Perarivalan. The Supreme Court's judgement is appreciated and should be considered in other cases as well, where convicts waiting to be hanged can get some justice. Capital punishment is against the human life and dignity of a person, no matter the offence. The state cannot punish someone for murder

by hanging them. “The death penalty is a symptom of a culture of violence, not a solution to it”. The state should not have the right to take away someone’s life. Moreover, mercy relying solely on the personal inclination of the President or the Governor and they have an indefinite time to decide is unreasonable and unjust. The procedural delays and political motivations of people involved in the process have unfairly punished Perarivalan who had to suffer in the prison for more than a necessary time period. It is not that he was innocent, but he did not deserve to be failed by our legal system.



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