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**“JUSTICE TO THE KILLER TOO, A REVISITING THE INFAMOUS POISON
INJECTION CASE”****- RAM PRAKASH R¹**

ABSTRACT. –The object of this paper is to analysis the infamous cold blooded and ingeniously planned, fiendish, rarest of rare murder case happened in the year 1975, at Madras City in Tamil Nadu and the main accused, without executing death sentence, was put into 10 years in solitary confinement, amounts to inhuman and degrading punishment. Which is violative of Article 21 of the Constitution of India, 1949. Though, the descriptions on the part of executive are still unbridled a feature of negation of rule of law. The question arising that whether accused person undergone capital punishment have entitled to claim any of fundamental rights or human rights? Since, he was a cold blooded murder, failed to show any mercy to the many persons have killed by him.

KEYWORDS.-Prisoner, prolonged delay in execution, dehumanizing, fundamental rights, human rights, principle of reasonableness, etc.

INTRODUCTION. – The judgment of former Justice Chinnappa Reddy, J in the case of TV. Vaitheeshwaran’s diabolic murder case holds a great significance in the development of procedural aspects in human rights law as well as constitution. It brought about a significance change in how the person under the sentence of death may also entitled to claim fundamental rights as basic human right. The decision propounded by Hon’ble Supreme Court in this case, deviated from the usual scheme,when an accused person is an arch – villain of a villainous piece and his plan was ingeniously fiendish and he was an architect.

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Where the circumstances was cried at that time, to award sentence of death to him, the learned Court of Sessions rightly convicted him to capital punishment. When the question raised that why should any mercy to be shown too? Since, the accused failed to show mercy to his victims. But Supreme Court answered the question that, *“it is not shylock’s pound of flesh that are seek, nor a chilling of the human spirit. It is justice to the killer too and not justice untempered by mercy that we dispense”*.

BACKGROUND OF THE CASE.- *“Sir! We are Customs officer. We have received information that you are doing smuggling business. We need to investigate yourself, will you come with us too?”* this how the many persons were abducted by the gang of TV. Vaitheeshwaran (Head) owner of pharmacy, Dawooth, Parthasarathi, Venugopal, Ayub Khan, and Kannan. In the desire to make a lot of money, they decided to rob from one who had unaccounted black money holders. They were turned into a fake customs officers. Should they be given information about those who involving smuggling business, hawala business and those who holding black money! Ayub Khan sought help from his friend Jafferrullah, both were worked as servant in hotel situated in Broadway. Many of unsuspected visitors to the madras were abducted by them and administered enormous pethidine drug to them, thereby robbed the cash and jewels from the victims and murdered them and finally, their body was disposed by them either by hanging in trees or by throwing into river or bridge or in forest. This cold blooded murdered continuously happened in various place around the Madras City. However, the police officers could not able to find out the villain behind these continuous cold blooded murders.

Entente Cordiale, Ayub Khan met his friend Khadar, who worked for hawalas. He introduced Khadar to Venugopal and Parthasarathi. However, the CBCID have got information about this gang through Khadar’s friend, he says to police officer that, *“those who betrays the hawalas, smugglers and or given information about them to the Customs officers, will be rewarded”*. CBCID, finally understand the plan behind this continuous murders, and arrested the fake customs officer Venugopal and brought before magistrate and he became approver to the case. The Madras Court of Sessions, entertained this case and finally awarded Capital Punishment to Vaitheeshwaran, Parthasarathi, Lakshmanan and

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Kannan. Dawood, Ayub Kahn, Majeeth and Gopal were sentenced to undergo Life imprisonment. However, in appeal to High Court of Madras, Life Imprisonment was reduced into rigorous imprisonment, however, capital punishment was confirmed thereto.

Vaitheeshwaran was sent to central prison for execution of sentence of death. But, they put in solitary confinement for 10 years out of which 8 years was illegal solitary confinement. Later, A Writ of Habeas Corpus was filed and alleging that Keeping the Accused in jail for ten years, for which eight years in illegal solitary confinement, would be violative of Article 21 of Constitution of India.

LEGAL ANALYSIS. –From the time immemorial to nowadays, common people will always think about the higher punishment to the accused like TV. Vaitheeswaran. When a higher punishment was imposed to the accused, people screams ‘woe’ and were not merciful to him, but rather rejoiced that this was his proper punishment. Such phenomenon is often not overstated. However, eight long years in illegal solitary confinement is depriving the basic and inherent human rights to the great extent. Such dehumanising factor of prolonged delay in the execution of a capital punishment awarded by Learned Sessions Court has depriving a fundamental right of person to his life and personal security in an unjust, unfair and unreasonable way thereby to offend the constitutional guarantee in Article 21 in Constitution of India, which says that, *“No person shall be deprived of his life or personal liberty except according to procedure established by law”*.²

According to Section 432, 433 of Code of Criminal Procedure, 1973 and Section 54 and 55 of Indian Penal Code, 1860 specifically says power of pardoning the accused which are vested with the Government alone and Article 72 and 161 of the Constitution says about power of pardon which is vested with the president and the Governor with power to suspend, remit or commute a sentence of death.

JUSTICE TO THE KILLER TOO.– Even though, the Hon’ble Supreme Court has neither power to commute the sentence nor suspend the sentence passed by it or any other Court.

²Article 21 of Constitution of India, 1949.

Then the question arising that, Is there any constitutional implication exists for dehumanising factor of prolonged delay in the execution of a capital punishment? This question was rightly answered by the Hon'ble CHINNAPPA REDDY, J. following observations are extracted herein.-

“Making all reasonable allowance for the time necessary. For appeal and consideration of reprieve, a delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death:

- (i) *“A convict is entitled to the precious right guaranteed in Art. 21. The right to a speedy trial is implicit in the right to a fair trial which has been held to be part of the right to life and liberty guaranteed by this article.*
- (ii) *Though Sat of Art. 21 is that any procedure which deprives a person of his life or liberty must be just, fair and 'reasonable. It implies humane conditions of detention, preventive or punitive. 'Procedure established by law' does not end with the pronouncement of sentence; it includes the carrying out of sentence. Prolonged detention to await the execution of a sentence, of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death.*
- (iii) *Sentence of death is one thing; sentence of death followed by lengthy imprisonment prior to execution is another. A period of anguish and suffering is an inevitable consequence of sentence of death, but a prolongation of it beyond the time necessary for appeal and consideration of retrieve is not. And, it is no answer to say that the man will struggle to stay alive. In truth, it is this ineradicable, human desire which makes prolongation inhuman and degrading with its anguish of alternating hope and despair, the agony of uncertainty and the consequences of such suffering on the mental, emotional and physical integrity and health of the individual. Where, after the sentence*

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of death is given, the accused is made to undergo inhuman, and degrading punishment or where the execution of the sentence is endlessly delayed and the accused is made to suffer the most excruciating agony and anguish, it is open to a court of appeal or a court exercising writ jurisdiction, in an appropriate proceeding, to take note of the circumstance when it is brought to its notice and give relief where necessary.”³

Since, the Article 3 & Article 9 of Universal Declarations on Human Rights, 1948 and Article 14, 19 and 21 of Constitution secures the right to life, liberty and personal security of person and are not mutually exclusive and the word '**Procedure established by law**' in above said provisions does not end with the pronouncement of punishment, which also includes the procedure of executing the sentence passed by the Court of Law. Hence, a person under sentence of death may also claim Fundamental Rights. The Ambit of Article 3 & Article 9 of UDHR and Art. 14, 19 & 21 which explained that any procedure which deprives the right of person of his life or liberty must be just, fair and reasonable.

CONCLUSION. – In my opinion, *Firstly*, When Article 21 was introduced in Constitutional assembly and debated, there was conflict regarding the term '**procedure established by law**'. The members of committee advocates that, this term was not sufficient to eradicate the civil liberties. In such a case, the judiciary only can check, whether procedure established has been followed and cannot be reviewed that the law itself for adherence to fundamental rights.

Secondly, the term '**due process**' was included into Article 21, which allows the judiciary to investigate that whether the law is consistent with its provisions and could be in a position to protect civil liberties.

Finally, even though, the Drafting committee have borrowed the American concept "**due Process**" and introduced as Article 21, it serves a good tool to the poor people to get proper justice and fundamental rights and thereby, Hon'ble Supreme Court of India has delivering a great judgement without any discrepancies and guarded the fundamental rights of every citizens. This Case is perfect example there for.

³TV. *Vatheeswaran v. State of Tamilnadu*, AIR 1983 SC 361.

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