FROM EXECUTION TO SALVATION: A CONSTITUTIONAL INQUIRY INTO DEATH ROW ORGAN DONATION IN INDIA

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ABSTRACT

Capital punishment in India, though constitutionally upheld under the *rarest of rare* doctrine, continues to evoke profound constitutional, ethical, and humanitarian debate concerning its necessity, proportionality, and irreversible consequences. This paper advances a novel legal proposition by examining the feasibility of compulsory or voluntary post-mortem harvesting of transplantable organs from death-row convicts whose mercy petitions under Article 72 of the Constitution have been finally rejected by the President of India. It explores whether a constitutionally regulated framework permitting the retrieval of vital organs such as kidneys, heart, liver, lungs, corneas, and pancreas could serve as a lawful supplement to, or consequence of, capital punishment while addressing India's persistent shortage of transplantable organs. The study critically analyses the proposal through the lens of Articles 14 and 21 of the Constitution, the Directive Principles of State Policy, the Transplantation of Human Organs and Tissues Act, 1994, and relevant international human rights standards. It further evaluates ethical concerns relating to autonomy, informed consent, dignity, and potential coercion, alongside comparative international practices. Finally, the paper proposes a legislative framework incorporating stringent constitutional, medical, and procedural safeguards to balance the objectives of criminal justice with the societal imperative of saving lives through organ transplantation.

Keywords: Capital Punishment, Organ Donation, Article 21, Death Row, Constitutional Law, India, Transplantation, Mercy Petition, Right to Life.

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I. INTRODUCTION

"When the law extinguishes one life, can justice permit that life to illuminate many others?"

India faces a profound and growing crisis at the intersection of criminal justice and public health. On one hand, the criminal justice system retains the ultimate sanction of death for the most heinous of offences. On the other hand, the country battles a catastrophic shortfall of transplantable organs, condemning hundreds of thousands of its citizens to preventable deaths each year. This paper advances the argument that these two seemingly unrelated phenomena can be addressed simultaneously through a carefully constructed legal mechanism.

The National Organ and Tissue Transplant Organization (NOTTO) has consistently reported that India's organ donation rate stands at approximately 0.52 per million population, compared to a global average of over 10 per million, an acute deficit leaving an estimated five lakh patients awaiting life-saving organ transplants at any given time.[1]

The proposition advanced herein is as follows: persons who have been sentenced to death by competent courts of law, who have exhausted all avenues of appeal including the mercy petition to the President of India under Article 72 of the Constitution, and whose sentence is thus final and irreversible, should, either voluntarily or under a carefully delimited statutory framework, be made subject to the harvesting of their vital organs prior to or in lieu of execution. The organs so harvested would be distributed through India's existing transplantation regulatory framework to needy recipients.

This is not a proposal rooted in vengeance or utilitarianism alone. It is rooted in the recognition that a person condemned to die, whose life the State has already determined must end, still holds within their body the extraordinary power to grant life to others. The State's compelling interest in preventing organ failure deaths, the convicted person's extinguished liberty interest post-final confirmation of death sentence, and the societal benefit of saving multiple lives from a single execution, form the normative scaffolding of this proposal.

II. STATEMENT OF THE PROBLEM AND RESEARCH OBJECTIVES

2.1 The Problem

Two legal and policy crises coexist in India without adequate dialogue between them:

First, India executes death-row prisoners, usually by hanging, in a manner that renders the condemned person's body biologically useless for any productive purpose. The execution terminates life but generates no positive externality.

Second, India suffers one of the world's most severe organ shortages. As of 2023, approximately 2.2 lakh patients require kidney transplants annually, while only about 8,000–9,000 transplants are performed. For liver, the demand exceeds 80,000 while supply is a fraction of that.[2]

The question this paper poses is: Can the State, consistent with constitutional values, design a mechanism to convert the inevitability of a death sentence into an act of life-giving salvage?

2.2 Research Objectives

(i) To examine whether compulsory organ harvesting from confirmed death-row convicts violates Article 21 of the Constitution of India.

(ii) To assess whether such a policy is consistent with Article 14's guarantee of equality before law.

(iii) To evaluate the ethical, medical, and human rights dimensions of the proposal.

(iv) To survey comparable international legal frameworks and practices.

(v) To propose a model legislative framework for India.

III. CONSTITUTIONAL ANALYSIS

3.1 Capital Punishment and the Indian Constitution

The constitutional validity of capital punishment in India was settled by the Supreme Court in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, where a five-judge Constitution Bench upheld the death penalty as constitutionally valid under Articles 14, 19, and 21, subject to the condition that it be imposed only in the 'rarest of rare' cases.[3]

Subsequently, in *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470, the Supreme Court elaborated guidelines to identify 'rarest of rare' cases, focusing on the manner of commission,

motive, anti-social nature, and magnitude of the crime.[4]

Thus, the constitutional framework already permits the State to take life as a penal sanction. The question this paper raises is narrower and more specific: if the life is already forfeit by operation of law, does the State violate Article 21 by additionally directing that organs be harvested?

3.2 Article 21 and Its Scope

Article 21 of the Constitution provides: 'No person shall be deprived of his life or personal liberty except according to procedure established by law.' The Supreme Court has, over decades, expanded this provision to encompass a wide range of rights including the right to health, dignity, and bodily integrity.

In *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, the Supreme Court held that bodily integrity and the right to make reproductive choices are protected under Article 21.[5]

The critical issue is: does a convicted person on death row, whose mercy petition has been definitively rejected by the President of India, retain an Article 21 right to the integrity of their body that would bar organ harvesting?

This paper argues in the negative, for the following reasons:

(a) The condemned person's right to life has already been legally overridden by a lawful judicial process and subsequent executive confirmation. The State has already determined, through constitutionally mandated procedure, that this person shall die.

(b) Organ harvesting does not deprive the person of life; they are already subject to deprivation of life by the execution. Harvesting organs is an additional consequence flowing from the same death, not an independent violation.

(c) The procedure itself, if conducted under anesthesia and with medical supervision, may, paradoxically, be more humane than death by hanging, which can involve pain and struggle.

3.3 The 'Procedure Established by Law' Requirement

Post-*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, the 'procedure established by law'

under Article 21 must be fair, just, and reasonable.[6]

Accordingly, any organ harvesting legislation for death-row convicts would need to satisfy these criteria. This paper argues that a statute with the following features would meet constitutional muster:

(i) Applicability only to convicts whose death sentence has been confirmed at all appellate levels including the Supreme Court;

(ii) Applicability only after the Presidential mercy petition under Article 72 has been expressly rejected;

(iii) A medical ethics oversight board to supervise all harvesting procedures;

(iv) Transplantation through the existing NOTTO framework ensuring equitable and need-based allocation;

(v) Exclusion of convicts suffering from infectious diseases or conditions rendering their organs medically unsuitable.

3.4 Article 14 — Equality Before Law

A potential objection under Article 14 is that subjecting death-row convicts to organ harvesting creates a discriminatory class. However, this objection fails because Article 14 permits classification if the classification is founded on intelligible differentia and has a rational nexus to the object sought to be achieved.

Death-row convicts who have exhausted all remedies constitute a distinct, rationally definable class. The object, maximizing organ availability for transplantation, has a clear rational nexus to confining harvesting to this class. No other segment of the population can be subjected to such a procedure without their consent, which distinguishes this class absolutely.

3.5 Directive Principles and the State's Duty Towards Public Health

Article 47 of the Constitution imposes upon the State a duty to raise the level of nutrition and standard of living of the people and improve public health. Article 39(b) directs the State to distribute material resources for the common good. A policy that harvests life-saving organs

from condemned convicts and distributes them to dying patients is directly in furtherance of these Directive Principles.

IV. THE PRESIDENTIAL MERCY PETITION AS THE DECISIVE THRESHOLD

4.1 Constitutional Position

Article 72 of the Constitution vests in the President of India with the power to grant pardons, reprieves, respites, or remissions of punishment in cases involving sentences of death. This power is exercisable on the advice of the Council of Ministers and operates independently of the judicial process.

In *Kehar Singh v. Union of India*, AIR 1989 SC 653, the Supreme Court held that the President's power under Article 72 is of the widest amplitude and is not subject to judicial review on merits, though the exercise of the power must not be arbitrary.[7]

Further, in *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1, the Supreme Court laid down that undue delay in disposing of mercy petitions itself constitutes a ground for commutation of the death sentence.[8]

4.2 Why Rejection of Mercy Petition is the Appropriate Threshold

This paper specifically proposes that the organ harvesting mechanism apply only after the Presidential mercy petition has been rejected. This threshold is appropriate for the following reasons:

First, it ensures that every possible avenue of clemency has been exhausted. The convict has had the benefit of trial court, appellate court, High Court, Supreme Court, and Presidential review. No other class of persons in India is subjected to this degree of legal scrutiny before a final determination.

Second, the rejection of the mercy petition by the President, acting on advice of the Cabinet, represents the highest constitutional endorsement of the execution. At this point, the fate of the convict is irreversibly sealed by the joint action of all three branches of the State.

Third, from the perspective of proportionality, the organ harvesting at this stage does not add a qualitatively different kind of harm: the person is going to die in any event. It merely redirects

the biological value of that death toward a life-saving purpose.

V. INDIA'S ORGAN SHORTAGE: A PUBLIC HEALTH EMERGENCY

5.1 Statistical Overview

India's organ donation crisis is one of the most severe in the world. NOTTO's annual data reveals that only approximately 15,000 organ transplants are performed in India annually, against a waiting list running into hundreds of thousands.[9]

The breakdown of critical shortfalls is as follows:

- Kidney: Demand approximately 2,00,000 per year; supply under 10,000 transplants.
- Liver: Demand approximately 80,000 per year; live donor and cadaveric transplants combined fall short by over 95%.
- Heart: Demand far exceeds the approximately 10–15 cadaveric heart transplants per month reported across major centers.
- Corneas: Despite better supply than solid organs, lakhs await corneal transplants.

5.2 Legislative Framework Governing Transplantation

The Transplantation of Human Organs and Tissues Act, 1994 (THOTA), as amended in 2011, is the primary legislation governing organ transplantation in India. It prohibits commercial transactions in human organs, regulates removal of organs from deceased persons, and establishes the NOTTO/ROTTO/SOTTO framework.[10]

The existing Act contemplates organ donation from 'brain-dead' donors. An amendment could extend this to death-row convicts under the framework proposed in this paper. The harvesting could be conducted in a medically controlled environment, with full compliance with the clinical protocols already established under THOTA.

VI. ETHICAL ANALYSIS

6.1 Objections from Autonomy and Consent

The most powerful ethical objection to this proposal is that organ harvesting without the convict's consent violates the principle of bodily autonomy, a value deeply embedded in bioethical theory.

This paper acknowledges the force of this objection but responds to it in two ways.

First, the proposal does not necessarily require involuntary harvesting. It can be structured as a voluntary scheme in which the condemned convict elects, prior to execution, to donate organs. Such a voluntary scheme preserves autonomy entirely and provides an incentive: some jurisdictions allow 'last wishes' of condemned persons to be honoured in various ways. India's legal framework could similarly create a formal mechanism for voluntary donation.

Second, even in the involuntary model, autonomy has never been treated as an absolute right in Indian constitutional jurisprudence. Article 21 protections are subject to 'procedure established by law,' and if Parliament enacts a law permitting organ harvesting from condemned prisoners post-Presidential rejection of mercy petition, the 'procedure' would be legally established. The question then reduces to whether such procedure is 'fair, just and reasonable,' which this paper argues it can be with appropriate safeguards.

6.2 The Dignity Argument

In *Francis Coralie Mullin v. Union Territory of Delhi*, (1981) 1 SCC 608, the Supreme Court held that the right to life includes the right to live with dignity.[11]

The dignity argument cuts both ways. On one hand, involuntary organ removal may be seen as an indignity. On the other hand, allowing a condemned convict to contribute to the salvation of multiple lives through organ donation could, from many ethical perspectives, be seen as the most dignified possible end to a life forfeited by crime. The proposal, properly constructed, can be framed as dignifying rather than degrading.

6.3 The Deterrence and Coercion Concern

A further ethical concern is whether condemned prisoners would be coerced into 'consenting' to organ donation through promises of commutation or better treatment. This concern is genuine and must be addressed by strictly prohibiting any linkage between organ donation and alteration of the death sentence. The legislative framework must make absolutely clear that

donation, voluntary or otherwise, carries no legal benefit in terms of sentence modification.

VII. COMPARATIVE INTERNATIONAL PERSPECTIVES

7.1 China

China's past practice of harvesting organs from executed prisoners attracted severe international condemnation from human rights organizations and the medical community. The Chinese government officially declared in 2015 that it had ended the practice of using prisoner organs and would rely exclusively on a voluntary donation system.[12]

China's experience offers a cautionary tale: the practice, when conducted without transparency, consent, or international oversight, rapidly degenerates into abuse. It confirms that the mechanism itself is not beyond human capacity, but that its moral legitimacy depends entirely upon procedural safeguards.

7.2 United States

In the United States, condemned prisoners have in some instances voluntarily donated organs. These voluntary donations have raised complex ethical questions about the relationship between execution and organ harvesting. In 2019, a Utah prisoner sought to donate a kidney before his execution; the case attracted significant public attention.

American medical ethics bodies have generally opposed physician participation in executions, creating a structural conflict: physicians are required for organ harvesting but prohibited from participating in executions. India does not have equivalent physician-ethics rules on this point, offering greater legislative flexibility.

7.3 Distinguishing India's Proposed Framework

India's proposed framework is distinguishable from China's abusive practice in the following critical respects:

(i) It would apply only post-Presidential rejection — the highest constitutional threshold.

(ii) It would operate under a transparent statutory and regulatory framework, not administrative secrecy.

(iii) Voluntary consent would be the preferred mode; involuntary harvesting, if permitted at all, would be subject to parliamentary deliberation and judicial review.

(iv) Organ allocation would follow the existing equitable NOTTO framework, not preferential or commercial criteria.

VIII. PROPOSED LEGISLATIVE FRAMEWORK

8.1 Proposed Amendment to THOTA, 1994

This paper proposes the addition of the following provisions to the Transplantation of Human Organs and Tissues Act, 1994:

> Section 3A — Organ Donation by Condemned Convicts. (1) Notwithstanding anything contained in any other provision of this Act, organs and tissues may be removed from the body of a person condemned to death where: (a) a court of competent jurisdiction has awarded the sentence of death; (b) all appeals including special leave petitions to the Supreme Court have been dismissed; (c) the mercy petition filed under Article 72 or Article 161 of the Constitution has been expressly rejected; and (d) the concerned person has been given a minimum period of thirty days to indicate their willingness or unwillingness for organ donation.
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> (2) Where a condemned person consents to organ donation, the organs shall be removed in a medically supervised procedure conducted under general anesthesia, and the removal shall itself constitute the manner of execution, subject to confirmation of death by two independent medical practitioners.
>
> (3) Where a condemned person does not consent, no organ shall be removed prior to or during execution. Post-execution, corneas and tissues may be harvested subject to such consent, consistent with the standard provisions governing deceased donor donation.
>
> (4) All organs harvested under this section shall be allocated through the National Organ and Tissue Transplant Organization in accordance with the standard waitlist and priority criteria.

(5) No benefit, advantage, or modification in sentence shall be offered to, or accepted by, any condemned person in consideration of consent to organ donation under this section.

8.2 Oversight Mechanism

The proposed framework must include: a dedicated Ethics Committee at the National Human Rights Commission level to oversee each case; mandatory independent legal representation for the condemned person at the consent stage; public reporting of all cases processed under the section; and annual Parliamentary review of the scheme's operation.

IX. COUNTER-ARGUMENTS AND REBUTTALS

9.1 'This Is Extra-Judicial Punishment'

Counter-argument: Organ harvesting constitutes additional punishment beyond the sentence of death and therefore violates the principle that punishment must not exceed what is prescribed by law.

Rebuttal: In the voluntary model, no additional punishment is imposed — the convict chooses donation. In the involuntary model, if Parliament legislates that the manner of execution shall be organ-harvesting-then-death, or that post-execution organs may be harvested by law, this is a legislative determination of the consequences of a lawfully imposed death sentence, not extra-judicial punishment. Parliament has the authority to prescribe the manner of execution under Entry 1, List III (Concurrent List) of the Seventh Schedule.

9.2 'It Violates International Human Rights Law'

Counter-argument: International instruments, including the UN Convention Against Torture, prohibit degrading treatment of prisoners, which organ harvesting would constitute.

Rebuttal: The UN Convention Against Torture applies to acts causing severe pain or suffering for prohibited purposes. Organ harvesting conducted under anesthesia, humane conditions, and with medical supervision does not constitute torture or degrading treatment under the Convention's standards. Moreover, India has not ratified the UNCAT, though it is a signatory.

9.3 'Innocent People May Be Wrongly Executed'

Counter-argument: Given the possibility of wrongful convictions, organ harvesting from death-row prisoners risks harvesting organs from innocent people.

Rebuttal: This objection applies equally to the death penalty itself. If the objection is valid, it is an argument against capital punishment as such, a debate that has already been resolved in India by Bachan Singh. The Presidential mercy petition mechanism provides an additional layer of executive review specifically designed to catch potential wrongful convictions. Furthermore, this paper's proposal applies only to cases where the Presidential review has been completed and rejected, arguably the most robustly verified cases in India's criminal justice system.

X. CONCLUSION

India stands at a unique junction where two crises, one in criminal justice, one in public health, can be simultaneously addressed by a coherent, constitutionally grounded policy intervention. The proposal advanced in this paper is not about devaluing human life; it is about maximising the life-saving potential of a death that the State has already, through the most rigorous legal process available, determined must occur.

The proposal is constitutionally defensible. The condemned person's Article 21 rights have been lawfully overridden through the constitutionally prescribed procedure, culminating in Presidential rejection of the mercy petition. Article 14 is satisfied by the rational classification of condemned post-mercy-rejection convicts. Directive Principles affirmatively support the public health rationale of the scheme.

The proposal is ethically defensible. In its voluntary form, it is an unqualified good; it gives meaning and salvage to a life that would otherwise end without positive consequence. In its involuntary form, it requires careful legislative crafting with independent oversight, prohibition of coercion, and transparent administration.

Critically, India need not repeat the failures of China. The proposed framework is designed around transparency, legislative mandate, independent oversight, and the rigorous constitutional threshold of Presidential rejection, features entirely absent from China's discredited practice.

The Legislature, if it chooses to act, has before it the opportunity to convert the sentence of death from a sterile terminus into a life-giving juncture. From execution to salvation, this is the constitutional possibility that India's legal system is, this paper argues, capable of embracing.

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Author's Note

This research paper is an academic exercise in constitutional and policy analysis. It does not represent advocacy for any particular political position. The views expressed are those of the authors and are intended to stimulate scholarly debate on an under-explored intersection of criminal law, constitutional law, and public health policy in India.