

ORAL ANSWERS TO QUESTIONS

आजीवन कारावास की सजा काट रहे अपराधियों पर उच्चतम न्यायालय के निर्णय का प्रभाव

†*461. श्री नरेश अग्रवाल : क्या गृह मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या आजीवन कारावास की सजा काट रहे कैदियों को पहले 14 वर्ष की सजा पूरी करने के पश्चात् रिहा कर दिया जाता था, लेकिन अब उच्चतम न्यायालय के निर्णय के उपरान्त, ऐसे कैदियों को अपने जीवन की अन्तिम सांस तक जेल में रहना पड़ता है;

(ख) क्या उच्चतम न्यायालय के निर्णय के पश्चात् अनेक कैदियों को जेलों में बीस वर्ष या उसे अधिक अवधि तक सजा काटने के बाद भी वृद्धावस्था में सलाखों के पीछे दिन काटने पड़ रहे हैं;

(ग) यदि हां, तो क्या उपर्युक्त स्थिति, को ध्यान में रखते हुए, सरकार एक नया कानून बनाकर आजीवन कारावास की अवधि पुनः चौदह वर्ष करने पर विचार कर रही है; और

(घ) यदि नहीं, तो इसके क्या कारण हैं?

गृह मंत्रालय में राज्य मंत्री (श्री जितेन्द्र सिंह) : (क) से (घ) एक विवरण सदन के पटल पर रख दिया गया है।

विवरण

(क) जी, नहीं। दंड प्रक्रिया संहिता, 1973 की धारा 433-क के प्रावधानों के अनुसार, आजीवन कारावास की सजा काट रहे कैदी, अच्छे आचरण आदि के लिए किसी दोषसिद्ध व्यक्ति को दी गई माफी की अवधि को शामिल किए बिना चौदह वर्ष के वास्तविक कारावास की सजा पूरी करने के बाद समय-पूर्व रिहाई के लिए विचार किए जाने हेतु पात्र हो जाते हैं। मारु राम आदि बनाम भारत संघ के मामले में माननीय उच्चतम न्यायालय के दिनांक 11.11.1980 के निर्णय में यह अनिवार्य कर दिया गया है कि आजीवन कारावास की सजा प्राप्त कैदियों को चौदह वर्ष की वास्तविक सजा अनिवार्य रूप से काटनी चाहिए और चौदह वर्ष की वास्तविक सजा के पूर्ण होने पर ही, कैदी संबंधित राज्य सरकार की माफी के नियमों के अनुसार रिहाई हेतु आवेदन करने के लिए पात्र होंगे।

(ख) से (घ) उपर्युक्त '(क)' के उत्तर के मद्देनजर, प्रश्न ही नहीं उठता।

Effect of supreme court judgement on life convicts

†*461. SHRI NARESH AGRAWAL : Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether prisoners undergoing life imprisonment used to be released after completion of fourteen years of sentence earlier, but now, after the Supreme Court judgement such prisoners have to remain in jails till their last breath;

(b) whether after the Supreme Court judgement, a large number of prisoners are languishing behind bar in their old age even after undergoing twenty or more years of sentence in jails;

† Original notice of the question was received in Hindi.

(c) if so, whether Government is contemplating to fix the term of life imprisonment to fourteen years again by framing a new law in view of the above situation; and

(d) if not, the reasons therefor?

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI JITENDRA SINGH) : (a) to (d) A Statement is laid on the Table of the House.

Statement

(a) No, Sir. As per the provisions of Section 433-A Criminal Procedure Code, 1973, prisoners undergoing life imprisonment become eligible to be considered for pre-mature release after they serve fourteen years of actual imprisonment without including the period of remissions given to a convict for good conduct etc. The Hon'ble Supreme Court's judgment in Maru Ram etc. Vs. Union of India on 11.11.1980 has made it mandatory that all prisoners sentenced to life imprisonment should invariably undergo fourteen years of actual sentence and, only on completion of fourteen years of actual sentence, the prisoners would be eligible to apply for release as per remission rules of the State Government concerned.

(b) to (d) In view of answer to '(a)' above, the question does not arise.

श्री नरेश अग्रवाल : माननीय सभापति जी, हमने जो प्रश्न किया था, शायद उसका तथ्य न समझा हो। माननीय मंत्री जी ने जवाब दिया है कि सीआरपीसी की धारा 433-A, यह सैक्शन तो हमने भी पढ़ा है। श्रीमन्, पहले यह होता था कि जो कैदी जेल में आजीवन कारावास के लिए जाते थे, अगर 14 साल में उनका व्यवहार अच्छा होता था, तो उनको छोड़ दिया जाता था और राज्यों में 14 साल का मतलब दिन-रात करके होता था। एक दिन को दो दिन मानते थे, दिन को एक में और रात को एक में, इस प्रकार 7 साल में छोड़ देते थे। लेकिन अब सुप्रीम कोर्ट की जजमेंट के बाद **till the last breath** हो गई है। माननीय मंत्री जी ने अपने जवाब में लिखा है कि 14 साल पूरा करना अनिवार्य कर दिया गया है। ऐसा नहीं है। उस जजमेंट का अर्थ हुआ है **till the last breath** जिसके कारण अब भी 80-90 साल के तमाम कैदी जेलों में पड़े हैं, जिनकी स्थिति बड़ी दयनीय है। लेकिन राज्य सरकार उन्हें नहीं छोड़ सकती है। उत्तर प्रदेश में ऐसे कैदियों को छोड़ा गया था, सुप्रीम कोर्ट ने फिर से आर्डर कर दिया और सब को अरेस्ट करना पड़ा।

माननीय मंत्री जी, मैं आपसे जानना चाहता हूँ कि 433-A के जवाब में जो आपने रेफरेंस दिया है, माननीय सुप्रीम कोर्ट के जजमेंट के बाद क्या आपने इस सैक्शन को डिलीट कर दिया या अमेंड कर दिया? अगर डिलीट या अमेंड नहीं किया है, तो इस सैक्शन में जो भी तारतम्य दिया, इस सैक्शन का जो भी मसला है, उसको फिर से लागू करने का क्या कोई आदेश देंगे या कोई ऐसा अमेंडमेंट लाएंगे जिससे फिर पिछली व्यवस्था लागू हो जाए?

SHRI P. CHIDAMBARAM : Sir, these two sections remain on the statute book. There is no proposal to amend these sections. The sections have been interpreted by the Supreme Court and in this House I can read only the interpretation given by the Supreme Court, I cannot question that interpretation.

The interpretation is that the power to commute the sentence in sections 433 and 433(A) places restrictions on the powers of remission or commutation in certain cases. That section has been interpreted to mean that a person has to serve a minimum of 14 years' imprisonment, without counting remission period, before he becomes eligible for remission, in accordance with the remission rules of the State Government. Even after he completes 14 years he must apply for remission and the State Government can take a decision on the remission. That is the interpretation of section 433(A).

श्री नरेश अग्रवाल : श्रीमन्, 433(A), हमारे पास भी किताब है, माननीय मंत्री जी, हमने भी वह पढ़ ली है और सभी जानते हैं कि आपने उसको क्वोट कर दिया है, लेकिन मैं यह जानना चाहता हूँ कि क्या सरकार माननीय सर्वोच्च न्यायालय के आदेशों पर ही चलेगी या सरकार अपने कानूनों को भी जनता के हिसाब से चलाएगी? श्रीमन्, मैं यह देखता चला आ रहा हूँ कि एक बार कोर्ट का जो आदेश हो गया, हम रोज अखबारों में पढ़ते हैं कि आज कोर्ट ने इनको फटकारा, आज कोर्ट ने उनको फटकारा, तो इससे यही लगता है कि सरकार की विल पावर ही खत्म हो गई है।

माननीय मंत्री जी, हमारी जेलों में क्षमता से तीन गुना अधिक कैदी बंद हैं। आज जेलों की हालत बड़ी दयनीय है। पिछली व्यवस्था में जिन कैदियों का अच्छा व्यवहार होता था, चौदह साल से पहले भी उनकी सजा में दिन-रात जोड़कर, राज्य सरकार रिलीज कर देती थी, माननीय मंत्री जी, कैदियों की वास्तविक तकलीफों को देखते हुए क्या आप इस पर पुनर्विचार करेंगे? अगर इसमें सुप्रीम कोर्ट का अस्सी वाला जजमेंट बाधक है, तो क्या कोई अमेंडमेंट लाने पर विचार करेंगे, अगर विचार करेंगे, तो कब तक लाने पर विचार करेंगे?

SHRI P. CHIDAMBARAM : Sir, the Government can only act according to the law made by the Parliament. The interpreter of the law is the Supreme Court. Now, I think, sections 433 and 433 (A), as at present advised, seem to be the wholesome provisions. If anyone or anybody or any Law Commission recommends a re-look at sections 433 and 433(A), the Parliament can certainly do that. But, as at present advised, I see no strong ground to re-examine sections 433 and 433(A).

Secondly, I am not sure that what the hon. Member has said is correct. It may be so in one or two States. But I am not sure that all States count 'day' and 'night' as two days. I am not aware of such a counting. I think, a 'day' is a day of 24 hours.

SHRI RAVI SHANKAR PRASAD : Mr. Chairman, Sir, the hon. Home Minister is absolutely right that '14 years' has been held by the Supreme Court to be 14 years 'actual suffering of sentence'. But, of late, what we are witnessing is that the poor and the under-privileged have to undergo full imprisonment. But many of the accused, who have been convicted for life imprisonment, in many sensational cases manage parole and abuse that provision and frequently keep on coming out. The hon. Home Minister is telling the House that they have to follow this law—I will not take the name of any specific accused—but the people involved in Jessica Lal murder case and Nitish Katara murder case have frequently made outings from the jail by abusing the provision of parole, which has adversely been commented by the Government, by the media and also by the courts. Therefore, I would like to know from the hon. Home Minister whether he will insist that even parole provision, which has been abused in

many cases, has to be restrained. There must be specific guidelines also which must be diligently followed.

SHRI P. CHIDAMBARAM : Sir, I fully agree that the parole provisions are, indeed, abused. The rich and the influential are able to abuse the parole provisions. I think, in one of the cases, where the parole provision was very badly abused, the court has pulled up the State Government concerned and the State administration concerned. I will certainly look into the matter and if an advisory has to be issued, based on the last judgement of the Supreme Court that all parole provisions must be observed scrupulously so that they cannot be abused, I will certainly issue an advisory. I entirely agree that parole provisions cannot be abused.

SHRI D. RAJA : Sir, I have a very simple question for the hon. Minister, slightly different from the answer given, but emanating from this answer. The hon. Home Minister is from Tamil Nadu. There are cases in Tamil Nadu where people who have been awarded death sentences have spent more than 20 years in prison. They have been given the death sentence but have spent more than 20 years in prison, and there is a popular demand that these cases must be considered on humanitarian grounds and the prisoners must be released. Does the Government have any stand on capital punishment? Also, in these specific cases, has the Government taken any stand? Do they plan to release these prisoners without keeping them in prison any further?

SHRI P. CHIDAMBARAM : Sir, Government has not taken any view on capital punishment as different from what the law says today. Therefore, whatever the law says today is the Government's view. There is no proposal to reconsider that view at the moment. As regards persons in jail, after being convicted to death sentence, the only way that death sentence can be altered is by the Governor of the State or the President of India exercising the power to entertain a mercy petition and commute that sentence. If the sentence of death has not been commuted, then the prisoner remains a convict with a death sentence in that prison and the execution of the death sentence is a matter for the prison authorities. But, if the death sentence is commuted by accepting a mercy petition, whatever the order of commutation says will be enforced. Suppose, the death sentence is commuted to life, they will serve life; if it is commuted to another term of imprisonment, they will serve that term of imprisonment. We cannot interfere with the death sentence passed by a court except through a mercy petition.

SHRI D. RAJA : Sir, there have been many petitions.

MR. CHAIRMAN : Just a minute please.

SHRI D. RAJA : Sir, I am talking of a specific case where the man was arrested at the age of 19. He has been there in prison for more than 20 years and now he has crossed 40 years of age. How long will this situation continue? The Government must consider this on humanitarian grounds for those ...(*Interruptions*)...

MR. CHAIRMAN : Please take up the specific case with the hon. Minister.

SHRI D. RAJA : Sir, the Home Minister knows the case very well and that is why I am raising this issue. It is not a question of what stand the Government takes on capital punishment. But for how long would such prisoners spend their lives in prison? That is what we wish to know. There is this innocent mother who is running from pillar to post to get her son released. For how long would this situation continue? We need a specific answer. What is the Government going to do for commutation of this death sentence to life imprisonment? Even life imprisonment is for 14 years, but these people have spent more than 20 years now. That is what I am asking about. And, here, I am talking about the specific case of Mr. Perarivalan. The Minister knows about his mother too. She has met many people in the Government and in various courts. What is the Government's answer to that innocent mother, Sir?

SHRI P. CHIDAMBARAM : Sir, I think I have answered the question. I don't think it would be proper to comment on any individual case, but let us assume the facts of this case. If there is a death sentence, it can only be commuted if the constitutional authority accepts the mercy petition and commutes that sentence. If the mercy petition is rejected, the sentence stands. If the mercy petition is accepted and another sentence is substituted by way of commutation, the prisoner has to serve according to that commutation order. There are only two options: either the mercy petition is accepted or the mercy petition is rejected. Government is bound ...(Interruptions)...

SHRI D. RAJA : Sir, it is the Council of Ministers ...(Interruptions)...

SHRI P. CHIDAMBARAM : Sir, as far as the mercy petition is concerned, I have already stated that this Government and the current Rashtrapatiiji have disposed of more mercy petitions in the last three-and-a-half years than in any period before. If I remember it right, the President has disposed of 16 mercy petitions out of the cases submitted to her. Now, I cannot, obviously, comment on the decision of the President.

प्रो राम गोपाल यादव : श्रीमन्, माननीय गृह मंत्री जी के जवाब में डेथ सेंटेंस की बात आई है। सारी दुनिया में एक लम्बे अरसे से कैपिटल पनिशमेंट को समाप्त करने पर बहस चल रही है। कई देशों ने कैपिटल पनिशमेंट, मृत्यु दंड को समाप्त भी कर दिया है। मैं माननीय गृह मंत्री जी से जानना चाहता हूँ कि क्या वे हिन्दुस्तान में कैपिटल पनिशमेंट को खत्म करने के सम्बन्ध में कोई विचार कर रहे हैं या इस तरह की कोई योजना है? क्या कभी इस सम्बन्ध में कोई स्टडी हुई है या विचार हुआ है या आगे आप इस पर विचार करने वाले हैं? क्या आप कैपिटल पनिशमेंट को समाप्त करने के बारे में कोई निर्णय लेने वाले हैं?

SHRI P. CHIDAMBARAM : Sir, there are two views on death sentence. A large number of countries have abolished capital punishment and a large number of countries continue to have capital punishment on the Statute Book for certain offences. As far as the Indian law is concerned, death sentence is awarded only in the rarest of rare cases. So, that is the filter. Where death sentence is awarded, there is a provision for a mercy petition. That is another filter. Now, the last Report, I remember, by one of the Commissions is that that they do not favour abolition of capital punishment. They

favour retention of capital punishment for certain categories of cases. But it should be imposed only in the rarest of rare cases. Has the time come to do a review of that view? We will consider it. At the moment, we are not engaged in any exercise. Maybe a time will come when we have to do a fresh review whether death sentence should remain on the Statute Book. When we do a review, we will take into account all the views.

Budgetary provisions for various services

*462. SHRI ANIL DESAI : Will the Minister of DEFENCE be pleased to state:

- (a) whether the budgetary provisions have been made as per the current requirements of the various services;
- (b) if so, what are the estimated requirements under different heads; and
- (c) whether the funds allotted for the current financial year are adequate and will meet our defence needs?

THE MINISTER OF STATE IN THE MINISTRY OF DEFENCE (SHRI M.M. PALLAM RAJU) : (a) to (c) A Statement is laid on the table of the House.

Statement

(a) to (c) The projected budgetary requirements for the financial year 2012-13 for the Defence Services & Departments covered under the Defence Services Estimates and the provision made in the Budget Estimates (BE) 2012-13 are as given in the following table. The table also indicates the projected requirement and allocation under the revenue and capital heads –

(Rs. in crores)

Service	Projected requirement for BE 2012-13			Allocated BE 2012-13		
	Revenue	Capital	Total	Revenue	Capital	Total
1	2	3	4	5	6	7
Army	83861.62	28234.60	112096.22	77327.03	19237.80	96564.83
Navy	15835.71	28643.19	44478.90	12548.02	24766.42	37314.44
Air Force	19887.73	36950.52	56838.25	17705.81	30514.45	48220.26
Sub-total Services	119585.06	93828.31	213413.37	107580.86	74518.67	182099.53
DGOF	-417.49	552.76	135.27	-535.09	399.96	-135.13
R&D	6934.12	7528.54	14462.66	5995.56	4640.00	10635.56
DGQA	838.23	25.00	863.23	787.33	20.00	807.33
Sub-total Deptts	7354.86	8106.30	15461.16	6247.80	5059.96	11307.76
TOTAL	126939.92	101934.61	228874.53	113828.66	79578.63	193407.29