

The Case for Abolition of Death Penalty in India

ACHR's submission to the
Law Commission of India on Capital Punishment



ASIAN CENTRE FOR HUMAN RIGHTS



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Table of Contents

I. Preface	1
Question no. 4. If you are in favour of abolition of capital punishment, please indicate your reasons for the same -	5
A) There is no conclusive proof that capital punishment acts as a deterrent for future crimes	5
i. Murder case increased despite more executions in India during 1953 to 1963	5
ii. Murder cases decreased with virtual moratorium on death penalty in India during 1992-2012.....	6
iii. United States: murder rate is higher in the States having death penalty than the States without the death penalty.....	7
iv. Death penalty does not act as deterrent to terror offences	8
v. Death penalty does not act as deterrent to non-homicide offences including rape	9
vi. Death penalty has not reduced fraggging/fratricidal killings in the security forces	10
vii. Even execution in public fails to reduce crimes	11
B) Capital punishment imposes hardship and trauma for the convict's family who may have had no role in the crime	11
C) Capital punishment confuses the idea of retribution with justice and society must move away from the conception of "an eye for an eye".....	11
D) Capital punishment deprives people of the opportunity to reform	11
E) Most countries have abolished capital punishment	12
F) The imposition of capital punishment is not free from risk as there is a chance of innocent people being sentenced to death.....	12
G) The application of capital punishment is too judge centric and depends on a judge's personal belief against or in favour of death sentence	13
H) Economically and socially backward groups will always have greater chance of being subjected to capital punishment than the rich	13
I) Capital punishment is a form of state sponsored violence	18
J) The mode of execution i.e. hanging by the neck until death is cruel.....	18

<i>Question no. 5. In your opinion, can the sentence of life imprisonment as an alternate to capital punishment achieve the arguments mentioned in q2 (if there is a stringent and periodic system of review of all prisoners before granting remission/reprieve/commutation)? please indicate why.</i>	<i>18</i>
<i>Question no. 6. The recent criminal law (amendment) act, 2013 introduces capital punishment for the repeat offence of rape (section 376e). should capital punishment extend to non-homicide offences? please indicate your reasons for the same.....</i>	<i>19</i>
<i>Question no. 7. In your opinion, is the crime of murder as severe and abhorring as an act of terrorism? ..</i>	<i>21</i>
<i>Question no. 8. Is it possible to divide murders into different categories for the purpose of sentencing, such that –a) murders punishable with death and b) murders punishable with life imprisonment. if so, what murders would you include in category a)?.....</i>	<i>22</i>
<i>Question no. 9. Do you subscribe to the view that under normal circumstances the punishment of life imprisonment is adequate for murder but under aggravating circumstances, the court may award death penalty?.....</i>	<i>22</i>
<i>Question no. 10. Is it possible to divide offences into different categories for the purpose of sentencing, such that - a) terror offences, and b) non terror offences. if so, do you think capital punishment should be retained for category a) and abolished for category b)?.....</i>	<i>22</i>
<i>Question no. 11. Do you think the existing framework of police investigation and collection of evidence is full proof and guarantees zero room for erroneous convictions?.....</i>	<i>22</i>
<i>i. Innocents almost hanged!</i>	<i>23</i>
<i>ii. Juveniles given death penalty by the high courts and the supreme court</i>	<i>25</i>
<i>Question no. 12. In your opinion, should crimes mandating capital punishment require a higher burden of proof over and above proof beyond reasonable doubt?</i>	<i>26</i>
<i>Question no. 13. Do you believe that capital sentencing carries the risk of being judge centric?</i>	<i>27</i>
<i>Question no. 14. In your opinion, should there be a provision for rehabilitation of families of criminals sentenced to death?</i>	<i>29</i>
<i>Question no. 15. Do you agree with the current mode of execution i.e. hanging by the neck until death? please indicate why. please suggest any other preferable mode of execution.....</i>	<i>29</i>
<i>Question no. 16. In your opinion, should mandatory guidelines be laid down for the governor and president of india to exercise their powers of granting mercy under the constitution of india in death penalty cases.</i>	<i>29</i>
<i>i. Treatment of the mercy pleas is a scam and blot on the highest constitutional office.....</i>	<i>30</i>
<i>a. Missing mercy petitions.....</i>	<i>30</i>
<i>Case 1. Holiram Bordoloi, Assam</i>	<i>30</i>
<i>Case 2. Krisna Mochi, Namhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh, Bihar.....</i>	<i>31</i>

<i>b. Inability to submit mercy petitions by death row convicts.....</i>	<i>31</i>
<i>Case 1: Case of six death row convicts from Maharashtra.....</i>	<i>31</i>
<i>ii. Arbitrariness of the president of india in deciding mercy pleas</i>	<i>32</i>
<i>(a) Cases of murder of spouse and children.....</i>	<i>32</i>
<i>(b) Cases of murder by servants for gains</i>	<i>33</i>
<i>(c) Cases of murder due to enmity.....</i>	<i>33</i>
<i>(d) Cases of murder by relatives</i>	<i>34</i>
<i>(e) Cases of rape and murder of minor girls</i>	<i>34</i>
<i>(f) Cases of murder of political personalities/police officials</i>	<i>35</i>
<i>(g) Cases of kidnapping followed by murder for gains</i>	<i>35</i>
<i>iii. Achr’s 10-point principles for consideration of mercy pleas by the governors of the states and the president of india.....</i>	<i>36</i>
<i>Annexure-1: Copy of the complaint with nhrc dated 6 february 2014 on missing mercy plea of holiram bordoloi.....</i>	<i>44</i>
<i>Annexure-2: Copy of the complaint with nhrc dated 6 february 2014 on missing mercy plea of krishna mochi, nanhe lal mochi, bir kuer paswan and dharmendra singh @ dharu singh</i>	<i>53</i>
<i>Annexure – 3: Complaint to the nhrc with respect to six death row convicts from maharashtra who have not been able to file mercy pleas</i>	<i>59</i>
<i>Annexure-4: List of mercy pleas of 41 condemned prisoners considered by the president of india and analysed by achr for this submission</i>	<i>68</i>
<i>Annexure 5: Briefs of the cases of mercy pleas of 41 condemned prisoners considered by the president of india and analysed by achr for this submission</i>	<i>70</i>

I. Preface

Asian Centre for Human Rights (ACHR) takes the opportunity to make its submission, *The Case for Abolition of Death Penalty in India*, to the Law Commission of India pursuant to its call for suggestions/comments on the issue of death penalty in May 2014.

The main argument for retention of death penalty is its effectiveness as a deterrent. Analysis of the data of the National Crime Records Bureau (NCRB) of the Government of India shows that despite large number of executions i.e. an average of 128 persons from 1953 to 1963 as per the 35th Report of the Law Commission, the decadal increase of murder cases during the same period was 17% (please refer to Table 1 at page 11) clearly showing that executions had not acted as a deterrent. On the other hand, due to reduction of execution following the Bachan Singh¹ judgement, the number of murder cases had actually gone down in actual terms. As per the NCRB which started collecting statistics on death penalty from 1995, the decadal decrease of murder cases despite less execution during 1992 to 2002 was 12.43% in actual term despite increase of India's population from 846.3 million in 1991 to 1.028 billion in 2001 with decadal growth rate of 21.34% (please refer to Table 2 at page 13-14).² Similarly, the decadal decrease of murder cases during 2002-2012 was 1.99% in actual term despite increase of India's population from 1.028 billion in 2001 to 1.21 billion in 2011 (please refer to Table 2 at page 13-14).³

With respect to the law enforcement personnel, death penalty is provided under the Army Act of 1950, the Air Force Act of 1950, the Navy Act of 1957, the Border Security Force Act of 1968, Assam Rifles Act of 2006, the *Sashastra Seema Bal* Act of 2007, and Indo-Tibetan Border Police Act of 1992 against a number of crimes including fragging/fratricidal killings but it has failed to act as deterrent. The Ministry of Defence stated that 83 cases of fratricide were reported from the armed forces from 2000 to 2012 (till April).⁴

The central paramilitary forces reported 44 incidents of fratricide from 2008 to 2011 and the Central Reserve Police Force (CRPF) reported highest number of 18 incidents of fratricide during this same period.⁵ However, the CRPF Act,⁶ 1949 does not contain the provision of death penalty for any offence. It is clear that there is no justification to continue with the provisions of death penalty in other legislations governing the law enforcement personnel.

1. Bachan Singh vs State Of Punjab [AIR 1980 SC 898], [1980 CriLJ 636]

2. See 'Census of India 2001' available at: http://censusindia.gov.in/Data_Products/Library/Provisional_Population_Total_link/PDF_Links/chapter3.pdf

3. Census data of 2001 & 2011 available at: <http://censusindia.gov.in/>

4. Information given by Minister of Defence Shri AK Antony in a written reply to Dr. Gyan Prakash Pania in the Rajya Sabha on 2 May 2012, available at: <http://pib.nic.in/newsite/erelease.aspx?relid=82918>

5. See 'Fratricide incident kills 3 CRPF jawans in J&K', India Today, 26 December 2011, at: <http://indiatoday.intoday.in/story/crpf-jawans-killed-in-fratricide-incident-srinagar/1/165800.html>

6. See State Of Punjab vs Dalbir Singh, Supreme Court of India, 1 February, 2012 at: <http://indiankanoon.org/doc/166513655/>

Further, death penalty has failed to act as a deterrent against terror offences. Terror activities in India have reduced because of the peace-processes initiated, changes in geo-politics and cooperation of the neighbouring countries and international community and as a direct consequence of the peace talks initiated by the Ministry of Home Affairs. According to the Ministry of Home Affairs, 1561 incidents of violence were reported in 2008 which reduced to 1025 incidents in 2012 as direct consequence of the peace talks being held in the last one and half decade.⁷

It would not be an understatement to state that commutation of death penalty to life imprisonment remains India's national preference. As per the NCRB, during 2001 to 2012, a total of 4,382 death sentences were commuted to life imprisonment.⁸ There is no evidence to suggest that these large scale commutations had led to increase in crimes in India. Contrarily, there has been reduction of murder cases in actual terms. Nor has there been any public furor against such commutations. It is clear that execution of the remaining few is carried out for retribution and in some cases, for political and populist purposes.

Asian Centre for Human Rights believes that life imprisonment is an equally efficacious alternative to death penalty, among others, because of the fact that in a series of judgments the Supreme Court has clarified that "*imprisonment for life*" means "*imprisonment for the whole of the remaining period of the convicted person's natural life*" subject to remission by the appropriate government. Further, under Section 376E of the Indian Penal Code introduced under the Criminal Law Amendment Act, 2013, clarified that "*imprisonment for life ... shall mean imprisonment for the remainder of that person's natural life*". Therefore, the fear that the convicts will pose a threat to the society if not awarded death penalty stands eliminated. Further, there is no data to show that any convict on death row whose sentence has been commuted to life imprisonment has been released by the Government of India. Even if released, there is no evidence to suggest that they were involved in recidivism though a few cases exist where undertrials charged with offences carrying death sentence committed murders and subsequently sentenced to death. The so-called threat to the society can be addressed through a stringent and periodic system of review of all prisoners before granting remission. **As a trade off for abolition of death penalty, necessary amendments could be made into the laws to provide that no remission can be provided by the appropriate government where there is no possibility of reform of the convict and s/he shall serve the imprisonment for the remainder of her/his natural life.**

Though the Courts have been purportedly applying the rarest of rare doctrine, imposition death penalty depends on the predilection of individual judges and therefore the imposition of death penalty has become judge-centric. There have been profound miscarriages of justice including death penalty being imposed on the juveniles by the Supreme Court (though subsequently

7. Annual Report 2012-13, Page 11, Ministry of Home Affairs, available at: [http://www.mha.nic.in/sites/upload_files/mha/files/AR\(E\)1213.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/AR(E)1213.pdf)

8. here included 303 commutations in 2001, 301 in 2002, 142 in 2003, 179 in 2004, 1241 in 2005, 1020 in 2006, 881 in 2007, 46 in 2008, 104 in 2009, 62 in 2010, 42 in 2011, and 61 in 2012. Please See 'Prison Statistics India' series from 2001 to 2012 of the National Crime Records Bureau, available at: <http://ncrb.nic.in/>

corrected by the Supreme Court itself in *Ram Deo Chauhan*⁹ case). Further, there have been judgments imposing death penalty based on judgments which have been held as *per incuriam*.

Though Asian Centre for Human Rights believes in abolition of death penalty, it is aware that death penalty shall be imposed till it is in the statute books, and the Governors of the States and President of India shall continue to consider mercy pleas against imposition of death penalty.

This submission proves that consideration of the mercy pleas by the Governors and President of India has been reduced to a scam and the process has become a blot on the highest constitutional office. The analysis of 41 mercy pleas considered by the President of India under this submission establish beyond reasonable any doubt that the decisions of the President have been absolutely arbitrary.

Though India does not execute juveniles, pregnant women and those mentally unsound, until death penalty is abolished, Asian Centre for Human Rights requests the Law Commission of India to consider the following 10-Point Principles for Consideration of Mercy Pleas for Reduction of Death Penalty in India (please refer to page 57 for detailed justification for these Principles):

- Principle 1.** The consequences of a delay in the disposal of mercy pleas on condemned prisoners should be considered as grounds for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 2.** Possibility of reform of the condemned prisoner should be considered as a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 3.** A dissenting judgement at any stage of the proceeding before the Court should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 4.** The denial of the right to appeal because of the enhancement of punishment by the Supreme Court in the form of the death penalty should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 5.** Conviction based on self-incrimination should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 6.** Inability to defend oneself by hiring own lawyer as reflected from appointment of *amicus curiae* or lawyers from legal aid services by the Courts in all stages of the proceedings should be a mitigating ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

9. Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam in Criminal Appeal No. 4 of 2000, 31.7.2000

- Principle 7.** Conviction based on per *incuriam* cases should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 8.** Imposition of mandatory death penalty should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 9.** Death penalty imposed solely based on circumstantial evidence should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.
- Principle 10.** Making orphan should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Suhas Chakma
Director

Question No. 4. If you are in favour of abolition of capital punishment, please indicate your reasons for the same -

Asian Centre for Human Rights is in favour of abolition of capital punishment and makes the following submission to the questionnaire prepared by the Law Commission of India in May 2014.

a) There is no conclusive proof that capital punishment acts as a deterrent for future crimes

There has been no scientific or empirical basis to suggest that death penalty acts as a deterrent against any crime. There is also no evidence to suggest that the death penalty has brought down the crime rate in any country where the death penalty is retained.

i. Murder case increased despite more executions in India during 1953 to 1963

According to the 35th Report (1967) of the Law Commission of India, an average of **128 persons** per year was executed during 1953 to 1963. But, the executions had almost no deterrent effect as murder rate consistently increased as can be seen from the table below.

Table 1: Statistics of increase of murder cases despite large executions during 1953 to 1963

Year	Murder cases*	Executions	Increase/decrease per year
1953	9802	21	
1954	9765	108	-0.38%
1955	9700	150	-0.67%
1956	10025	151	3.35%
1957	10419	153	3.93%
1958	10661	144	2.32%
1959	10712	181	0.48%
1960	10910	174	1.85%
1961	11188	150	2.55%
1962	11586	107	3.56%
1963	10754	71	-7.18%
Average	10502	128	17% (decadal increase)

*Note: Murder cases as reported by the NCRB

An analysis of the above data shows that during this period despite large number of executions, murder cases reported an increase. For example, in 1955, 150 persons were executed but murder cases increased by **3.35%** in **1956**. Similarly, **151** persons were executed in **1956** but murder cases increased by **3.93%** in **1957**; **153** persons were hanged in **1957** but murder cases increased by **2.32%** in **1958**; **181** persons were hanged in **1959** but murder cases increased by **1.85%** in **1960**; **174** persons were hanged in **1960** but murder cases increased by **2.55%** in **1961**; **150** persons were hanged in **1961** but murder cases increased by **3.56%** in **1962**.

The above statistics establish that executions do not act as a deterrent.

ii. Murder cases decreased with virtual moratorium on death penalty in India during 1992-2012

While an average of 128 persons per year were executed during 1953 to 1963, it is generally acknowledged that the award of death sentence declined significantly post-*Bachan Singh* case.

According to National Crime Records Bureau (NCRB), a total of **1,552 persons** or an average of **129 persons** per year were awarded capital punishment in India from **2001 to 2012**.¹⁰ There was virtual moratorium on death penalty following the execution of Dhananjay Chatterjee in West Bengal in August 2004¹¹ which was resumed with execution of Mohammed Ajmal Amir Kasab in 2012¹² and Afzal Guru in 2013.¹³

Yet, the decline in execution or death sentencing has not caused an increase in murder rates. According to the NCRB, murder cases have been declining for the last 20 years since 1992 as shown in the table below:

Table 2: Statistics of decrease of murder cases despite reduction of execution from 1992 to 2012

Year	Murder cases	Increase/decrease per year
1992	40105	
1993	38240	-4.65%
1994	38577	0.88%
1995	37464	-2.89%
1996	37671	0.55%
1997	37543	-0.34%
1998	38653	2.96%
1999	37170	-3.84%
2000	37399	0.62%
2001	36202	-3.20%
2002	35290	-2.52%
Decadal increase or decrease		-12.43%

10. These include 106 persons sentenced to death in 2001; 126 persons in 2002, 142 persons in 2003, 125 persons in 2004, 164 persons in 2005, 129 persons in 2006, 186 persons in 2007, 126 persons in 2008, 137 persons in 2009, 97 persons in 2010, 117 persons in 2011 and 97 persons in 2012. Please see Prison Statistics Report from 2001 to 2012 of the National Crime Records Bureau available at <http://ncrb.nic.in/>

11. See 'The last hanging took 14 years after rape and murder', 26 December 2012', at: <http://archive.indianexpress.com/news/the-last-hanging-took-14-years-after-rape-and-murder/1050101/0>

12. See 'Ajmal Kasab hanged and buried in Pune's Yerwada Jail, The Times of India, 21 November 2012 at: <http://timesofindia.indiatimes.com/india/Ajmal-Kasab-hanged-and-buried-in-Punes-Yerwada-Jail/articleshow/17303820.cms>

13. See 'Afzal Guru hanged in secrecy, buried in Tihar Jail', The Hindu, 9 February 2013 at: <http://www.thehindu.com/news/national/afzal-guru-hanged-in-secrecy-buried-in-tihar-jail/article4396289.ece>

Year	Murder cases	Increase/decrease per year
2003	32716	-7.29%
2004	33608	2.73%
2005	32719	-2.65%
2006	32481	-0.73%
2007	32318	-0.50%
2008	32766	1.39%
2009	32369	-1.21%
2010	33335	2.98%
2011	34305	2.91%
2012	34434	0.38%
Decadal increase or decrease		-1.99%

The above statistics of the NCRB show that despite increase in population which is one of the yardsticks for determining crime rate, murder cases significantly decreased in the last two decades. The population of India increased from 846.3 million in 1991 to 1.028 billion in 2001 (decadal growth rate of 21.34%), but the murder cases reduced from 39,174 cases in 1991 to 36,202 cases in 2001.¹⁴ Similarly, the population increased to 1.21 billion in 2011 over 1.028 billion in 2001 (decadal growth rate of 17.64%)¹⁵, but the murder cases again indicated a decline - 34,305 cases in 2011 compared to 36,202 cases in 2001.¹⁶

iii. United States: murder rate is higher in the States having death penalty than the States without the death penalty

In the United States of America, the murder rate in States that have the death penalty is higher compared to States without the death penalty. According to Death Penalty Information Center (DPIC) data from 1991 to 2011, States without the death penalty have had consistently lower murder rates compared to States with the death penalty. The table below shows the murder rates in States with and without death penalty from 2001 to 2011¹⁷:

Table 3: Murder rates in the States with death penalty and murder rates in the States without death penalty

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Murder rate in death penalty States	5.82	5.82	5.91	5.71	5.87	5.90	5.83	5.72	5.26	5.00	4.89
Murder rate in non-death penalty States	4.25	4.27	4.10	4.02	4.03	4.22	4.10	4.05	3.90	4.01	4.13

14. See 'Crime in India' reports 1991 and 2001 available at: <http://ncrb.nic.in/>, and Census data of 1991 & 2001 available at: <http://censusindia.gov.in/>

15. Census data of 2001 & 2011 available at: <http://censusindia.gov.in/>

16. See 'Crime in India' reports 2001 & 2011 available at: <http://ncrb.nic.in/>, and Census data of 2001 & 2011 available at: <http://censusindia.gov.in/>

17. The data is available at: <http://www.deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates>

Note: For the above figures DPIC states that “Populations are from the U.S. Census estimates for each year. Murder rates are from the FBI’s “Crime in the United States” and are per 100,000 populations. The murder rate for the region (death penalty states or non-death penalty states) is the total number of murders in the region divided by the total population (and then multiplied by 100,000) In calculations that include Kansas and New York, Kansas is counted as a death penalty state from 1994 and New York from 1996, since New York’s law did not become effective until September, 1995.”

iv. Death penalty does not act as deterrent to terror offences

The Government of India enacted a number of anti-terror legislations to deal with terrorist activities in the country. With increase in terror activities, a number of persons were awarded capital punishment on conviction. Some of them who were convicted under anti-terror law such as Terrorist and Disruptive Activities (Prevention) Act of 1985 (TADA) and Prevention of Terrorism Act, 2002 (POTA) and awarded death penalty included Sukhdev Singh and Nirmal Singh in the killing of General A S Vaidya in 1986 in retaliation to Operation Blue Star, Devender Pal Singh Bhullar in the 1993 Delhi bomb blast case; Krishna Mochi, Bir Kuair Prasad, Dharmendra Singh @ Dharu Singh and Nanhe Lal in the killing of 35 persons at Bara, Bihar in 1992; Simons, Gnana Prakash, Madhiha and Bilavendra in the killing of 22 Police personnel through landmine blast in Karnataka in 1993; Yakub Abdul Rajak in the 1993 Mumbai serial blasts that killed 257 people; Afzal Guru convicted in the 2001 Parliament attack case, Mohammed Amir Ajmal Kasab in the 2012 Mumbai terror attack case; Santhan, Murugan and Perarivalan in the Rajiv Gandhi assassination case of 1991, etc.

However, experience has shown that the death penalty has not yielded the desired results. The execution of Kehar Singh and Satwant Singh in the assassination of former Prime Minister Smt. Indira Gandhi¹⁸ did not deter two Khalistani extremists namely Sukhdev Singh and Nirmal Singh from killing General A S Vaidya in retaliation against the Operation Blue Star,¹⁹ or targeting innocent persons such as June 1991 attack on a passenger train by Khalistani extremists in Punjab, which killed at least 55 persons²⁰, or September 1993 bombing in New Delhi targeting Indian Youth Congress President M S Bitta that killed nine persons.²¹ Similarly, award of capital punishment to convicts of 1993 Bombay serial blast case did not prevent recurrence of similar terror attacks.

In an interview with *The Economic Times* on 11 February 2013 Justice V R Krishna Iyer, former Supreme Court judge stated, *“Even for terrorists, death penalty is not the answer. It does not deter terrorists from executing future terror strikes. It is foolish to think that death penalty to a terrorist would deter future terror attacks. People do these crimes driven by emotion or propaganda. So, death penalty can never be a deterrent to stop terror.....”*²²

18. See ‘End of the road’ India Today, 31 January 1989 at: <http://indiatoday.intoday.in/story/indira-gandhi-assassination-trial-satwant-singh-and-kehar-singh-hanged/1/323031.html>

19. See State of Maharashtra Vs. Sukhdeo Singh & Anr, 15 July 1992

20. See ‘DEAD SILENCE: The Legacy of Human Rights Abuses in Punjab’, Human Rights Watch, May 1994 at: <http://www.hrw.org/sites/default/files/reports/India0594.pdf>

21. See Devender Pal Singh Vs State NCT of Delhi and Anr, 22 March 2002

22. The interview is available at: http://articles.economicstimes.indiatimes.com/2013-02-11/news/37039183_1_death-penalty-padma-vibhushan-ajmal-kasab

Prevention is one of the key elements to counter terror attacks. It is also known to the Government of India that terror activities in India have reduced because of the peace-processes initiated, changes in geo-politics and cooperation of the neighbouring countries and international community, and not necessarily because of imposition of death penalty. According to the Ministry of Home Affairs, Government of India, terrorist activities in Jammu and Kashmir showed a significant decline with incidents of terrorist violence declining from 499 in 2009, 488 in 2010 and 340 in 2011 to 192 in 2012. The number of persons killed also declined from 389 in 2009 to 102 in 2012.²³ Similarly, the security situation including reduction of terror attacks in the North East India has been also improving for the last one and half decades. According to the Ministry of Home Affairs, 1561 incidents of violence were reported in 2008 which reduced to 1025 incidents in 2012.²⁴ This reduction is a direct consequence of the peace talks initiated by the Ministry of Home Affairs with a number of insurgent groups, and not because of the imposition of death penalty.²⁵

v. Death penalty does not act as deterrent to non-homicide offences including rape

That death penalty does not act as a deterrent is clear from increase of rape incidents in West Bengal following the execution of rape and murder convict Dhananjoy Chatterjee in August 2004. The execution has not reduced incidence of rape in West Bengal. As per NCRB data, 1,475 rape cases were reported in West Bengal in 2004, 1,686 cases in 2005, 1,731 cases in 2006, 2,106 cases in 2007, 2,263 cases in 2008, 2,336 cases in 2009, 2,311 cases in 2010, 2,363 cases in 2011 and 2,046 cases in 2012. Clearly, West Bengal has been witnessing an increasing trend since 2004. There was no deterrent effect at national level either. In 2004, 18,233 rape cases were reported across India, which increased to 24,923 cases in 2012.²⁶

Following the Nirbhaya gang rape case in Delhi on 16 December 2012, the Government of India expanded the scope of the death penalty to include certain crimes of rape following the enactment of the Criminal Law (Amendment) Act, 2013. The Criminal Law (Amendment) Act, 2013, which came into force from 3 February 2013, introduced death penalty for repeat offenders of rape under Section 376E of the Indian Penal Code (IPC).²⁷

On 4 April 2014, a Sessions Court in Mumbai, Maharashtra became the first in the country to impose death penalty to three repeat offenders of rape under the new Section 376E of the IPC. After the court ruling, Maharashtra Home Minister R. R. Patil said *“No one will dare commit such a crime after this verdict. The death penalty is necessary to deter such criminal acts.”*²⁸ However, the

23. Annual Report 2012-13, Page 5, Ministry of Home Affairs, available at: [http://www.mha.nic.in/sites/upload_files/mha/files/AR\(E\)1213.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/AR(E)1213.pdf)

24. Annual Report 2012-13, Page 11, Ministry of Home Affairs, available at: [http://www.mha.nic.in/sites/upload_files/mha/files/AR\(E\)1213.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/AR(E)1213.pdf)

25. See Status of Peace Process, Ministry of Home Affairs at: http://www.mha.nic.in/sites/upload_files/mha/files/Peaceprocess-300813.pdf

26. See Crime in India Report series, 2004 to 2012, National Crime Records Bureau at: <http://ncrb.nic.in/>

27. Criminal Law (Amendment) Act, 2013 is available at: <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

28. See ‘Three repeat offenders get death penalty in Shakti Mills rape case’, The Hindu, 4 April 2014, at: <http://www.thehindu.com/news/national/three-repeat-offenders-get-death-penalty-in-shakti-mills-rape-case/article5871677.ece>

statistics provided by Mumbai Police shows that 273 rape cases were reported in Mumbai from January – 15 June 2014²⁹ including 138 cases registered during January to March 2014.³⁰ This means 135 rape cases were reported from April to 15 June 2014. This clearly suggests that the award of death penalty to those three convicts by the Sessions Court in the Mumbai's Shakti Mill gang rape case on 4 April 2014 had no deterrent impact on sexual predators.

Similarly, the award of death penalty to four adult accused found guilty by a first track court in September 2013 in connection with the Delhi gang-rape case of December 2012 failed to act as a deterrent. According to data released by the Delhi Police, 616 rape cases were registered in Delhi from 1 January 2014 to 30 April 2014 i.e. six cases were reported every day. This is an increase of 36% compared to around 450 cases registered in the same period in 2013.³¹

vi. Death penalty has not reduced fragging/fratricidal killings in the security forces

Capital punishment is provided in various legislations relating to the establishment of the security forces such as the Army Act of 1950, the Air Force Act of 1950, the Navy Act of 1957, the Border Security Force Act of 1968, Assam Rifles Act of 2006, the *Sashastra Seema Bal* Act of 2007, and Indo-Tibetan Border Police Act of 1992 for a number of military offences such as in relation to the enemy or terrorist, mutiny, desertion and aiding desertion and other offences such as murder including fratricide.³² However, award of death sentence under the military offences is rare except under the provision of civil offences i.e. fragging/fratricidal killings etc. The first death sentence awarded ever by an Army Court post-Independence was in September 1990 against jawan Devendra Nath Rai of the Armoured Regiment, in connection with a fratricidal killing.³³

The capital punishment in various legislations relating to the establishment of the security forces does not act as deterrent as incidents of fragging/fratricidal killings are reported at regular intervals. The Ministry of Defence stated that 83 cases of fratricide were reported from the armed forces from 2000 to 2012 (till April). Majority of the cases are reported in the Army.³⁴

The central paramilitary forces reported 44 incidents of fratricide from 2008 to 2011. Out of

29. See '43% rise in rape cases in Mumbai but the police claims more than 90% 'consensual'', Daily News and Analysis, 24 June 2014, at: <http://www.dnaindia.com/mumbai/report-43-rise-in-rape-cases-in-mumbai-but-the-police-claims-more-than-90-consensual-1997422>

30. See 'In 2014, Mumbai has become more unsafe for women than last year, says statistics'. Daily News and Analysis, 29 April 2014, at: <http://www.dnaindia.com/mumbai/report-in-2014-mumbai-has-become-more-unsafe-for-women-than-last-year-says-statistics-1983111>

31. See 'Six rapes daily in Delhi, says police data', Hindustan Times, 26 May 2014 at: <http://www.hindustantimes.com/india-news/newdelhi/six-rapes-daily-in-capital-city-says-police-data/article1-1222882.aspx>

32. The sentence of death can be awarded under Section 69(a) of Army Act, Section 71(a) of Air Force Act, Section 77(1) of Navy Act, 1957, Section 49(a) of ITPB Act, Section 46(a) of BSF Act, Section 49(a) of SSB Act and Section 55(a) of the Assam Rifles Act

33. See 'Death penalty for Army jawan', Outlook, 2 March 2007, at: <http://www.outlookindia.com/news/article/Death-penalty-for-Army-jawan-/455049>

34. Information given by Minister of Defence Shri AK Antony in a written reply to Dr. Gyan Prakash Pilania in the Rajya Sabha on 2 May 2012, available at: <http://pib.nic.in/newsite/erelease.aspx?relid=82918>

these 44 incidents, the Central Reserve Police Force (CRPF) reported highest number of 18 such incidents.³⁵

However, the Central Reserve Police Force³⁶ Act of 1949 does not have the provision of death penalty for any offence. If fragging/fratricidal incidents and other offences by the CRPF personnel who have the highest number of fratricidal killings can be dealt with without death penalty, surely the provision of death penalty can be removed by other security forces.

vii. Even execution in public fails to reduce crimes

A number of countries such as Saudi Arabia, North Korea, Iran, Somalia, etc practice executions in public. These public executions are carried out by beheading, stoning or by firing in public to act as a deterrent. According to Amnesty International, Saudi Arabia executed an average of at least 80 persons from 2011 to 2013³⁷ and execution is carried out in public. However, despite the cruel, inhuman and barbaric nature of these executions, it failed to deter criminals as reflected from the high number of executions each year.

b) Capital punishment imposes hardship and trauma for the convict's family who may have had no role in the crime

The award of death sentence on a convict poses hardship and trauma on the family members. This traumatic impact is suffered by many victims who are innocent but given death sentence. For example, in a recent judgment on the 2002 Akshardham Temple terror attack in Gujarat, the Supreme Court acquitted all the six accused, including two on death row after concluding that they were innocent.³⁸ There is no doubt that family members have equally suffered 11 years of agony and stigma of being family members of terrorists.

c) Capital punishment confuses the idea of retribution with justice and society must move away from the conception of "an eye for an eye"

Asian Centre for Human Rights agrees that capital punishment is based on retribution through justice. Death penalty, at the end of the day, makes civilisational difference. The justice system has moved away from the concept of "eye for an eye". Death penalty remains medieval.

d) Capital Punishment deprives people of the opportunity to reform

Reformation and rehabilitation of offenders are among the foremost objectives of the administration of criminal justice in India. In both the majority and minority judgments of

35. See 'Fratricide incident kills 3 CRPF jawans in J&K', India Today, 26 December 2011, at: <http://indiatoday.intoday.in/story/crpf-jawans-killed-in-fratricide-incident-srinagar/1/165800.html>

36. See State Of Punjab vs Dalbir Singh, Supreme Court of India, 1 February, 2012 at: <http://indiankanoon.org/doc/166513655/>

37. See Death Sentences and Executions 2013, 2012, 2011 of Amnesty International at: <http://amnesty.org/en/death-penalty/death-sentences-and-executions-in-2011>

38. See Adambhai Suleman Ajmeri & Ors. Vs. State of Gujarat at: <http://www.sci.nic.in/outtoday/CrI.AppealNo.2295-2296of2010.pdf>

the *Bachan Singh* case it was acknowledged that the object of reformation will be defeated by capital punishment because it extinguishes life and puts an end to any possibility of reformation. Even if not executed, the scope for recidivism by a person sentenced to death if commuted to life imprisonment is almost nil given that “*imprisonment for life*” means imprisonment for the whole of the remaining period of the convicted person’s natural life. The risk of deprivation of opportunity to reform shall always remain in capital punishment cases.

Mythologies of India are full of stories of criminals being reformed. Valmiki, the author of the epic Ramayana, was a highway robber known as Ratnakara until he came under the influence of Maharshi Narada to leave the paths of sin. Similarly, according to Buddhist literature, Daku Angulimala (“*dacoit who wears finger necklace/garland*”) was a ruthless killer who was redeemed by a sincere conversion to Buddhism. Surely, these mythological figures could have been awarded death penalty in the present day context!

e) Most countries have abolished capital punishment

Today, more than two-thirds of the countries of the world have done away with the death penalty. According to Amnesty International, 140 countries have abolished the death penalty in law or practice.³⁹ India is one of the 59 countries that retain the death penalty. Over 20 countries though they retain it - have not executed capital sentences in 10 years.⁴⁰ Although the United States of America retains the death penalty, the number of States with capital punishment decreased to 32 with Maryland State repealing the death penalty in 2013.⁴¹ India should abolish death penalty and join the overwhelming majority of the countries which abolished death penalty.

f) The imposition of capital punishment is not free from risk as there is a chance of innocent people being sentenced to death

There is evidence to show that capital punishment is not free from risk. Even in the United States, where forensic science is more advanced than in India, there have been miscarriage of justice. According to Amnesty International, over 130 people have been released from death rows throughout the United States of America due to evidence of their wrongful convictions since 1973.⁴²

India is no exception. The acquittal of the six accused persons including two who were given death sentence in connection with the 2002 Akshardham Temple attack in Gujarat by the

39. See ‘Abolitionist and Retentionist Countries’, Amnesty International, at: <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>

40. See ‘Law Commission calls for review of death penalty’, The Hindu, 26 May 2014 at: <http://www.thehindu.com/news/national/law-commission-calls-for-review-of-death-penalty/article6047542.ece>

41. See ‘THE DEATH PENALTY IN 2013: YEAR END REPORT’, Death Penalty Information Centre at: <http://deathpenaltyinfo.org/documents/YearEnd2013.pdf>

42. See ‘Death Penalty and Innocence’, Amnesty International at: <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-and-innocence>

Supreme Court on 16 May 2014 is a perfect example of wrongful conviction in India. The Supreme Court found that all the six accused were innocent.⁴³

There are many other examples where convicts were acquitted by the Supreme Court despite confirmation of death penalty by the High Courts.

g) The application of capital punishment is too judge centric and depends on a judge's personal belief against or in favour of death sentence

Yes. The same is elaborated under question No.13.

h) Economically and socially backward groups will always have greater chance of being subjected to capital punishment than the rich

Asian Centre for Human Rights is in full agreement with this view.

A perusal of the court judgments awarding capital punishment in India will speak volume that majority of those sentenced to death belongs to economically and socially backward groups like Scheduled Castes, Scheduled Tribes, and religious minorities. This situation has been acknowledged by the Supreme Court of India in a number of cases including in *Rajendra Prasad Etc. Etc vs State Of Uttar Pradesh* (1979), *Bachan Singh* case⁴⁴ (1982), and more recently in *Mohd. Farooq Abdul Gafur and Anr. v. State of Maharashtra* (2009).

As majority of accused in offences providing death penalty belong to economically and socially backward groups, effective legal aid in all stages of the proceedings is paramount. However, this is not the case presently. Almost all defendants in capital cases cannot afford their own lawyers. In many cases the appointed *amicus curiae* lawyers are overworked, underpaid, or lack the trial experience required for death penalty cases. Therefore, the socially and economically excluded groups are more at risk of being subjected to capital punishment.

In a landmark judgment delivered in October 2009, a Division Bench of Justice Naresh Patil and Shrihari Davare of the Bombay High Court had ordered that senior advocates who have sufficient experience on the legal issues raised in a specific case should be appointed on behalf of the legal aid panel. The ruling came while the court was hearing an application filed by accused Sunil Gaikwad who was sentenced to death by the trial court. The High Court found that though the lawyer appointed to defend the accused, Sunil Gaikwad, had an experience of over eight years, she had not conducted a single murder trial. The High Court while concurring with the defence' objection that Gaikwad was not provided with effective and meaningful legal assistance sent the case back to the trial

43. Adambhai Suleman Ajmeri & Ors. Vs. State of Gujarat, available at: <http://www.sci.nic.in/outtoday/Crl.AppealNo.2295-2296of2010.pdf>

44. The dissenting judgment of Justice P N Bhagwati in the Bachan Singh case is available at: <http://www.indiankanoon.org/doc/1201493/>

court and asked the judge to appoint an experienced advocate to examine five witnesses in the case.⁴⁵

On 21 January 2014, the Supreme Court in the case of *Shatrughan Chauhan & Anr Vs Union of India & Ors*⁴⁶ further reaffirmed that access to legal aid should not just be provided at the trial stage but at all stages even after rejection of the mercy petition by the President.

Without doubt, access to courts and legal aid by poor defendants in capital cases is difficult, if not impossible. This has been articulated by the Supreme Court in *Mohd. Farooq Abdul Gafur and Anr. v. State of Maharashtra* (2009). The Court noted that “....*The situation is accentuated due to the inherent imperfections of the system in terms of delays, mounting cost of litigation in High Courts and apex court, legal aid and access to courts and inarticulate information on socio-economic and criminological context of crimes. In such a context, some of the leading commentators on death penalty hold the view that it is invariably the marginalized and destitute who suffer the extreme penalty ultimately.*”

The Supreme Court in the case of *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid vs State of Maharashtra* (2012) while replying allegations of lack of fair trial and due process guarantees noted that accused (Mohammed Ajmal Kasab) was provided “*legal assistance of a standard and quality that is not available to a majority of Indian nationals approaching this Court against their conviction and sentence.*”⁴⁷ This observation of the Supreme Court is not without truth.

The case of Afzal Guru who was executed on 3 February 2013 is illustrative. Afzal Guru was sentenced to death in 2002 after being convicted of conspiracy to attack the Parliament of India in December 2001 by a special court. There was allegation of denial of proper legal aid during the trial stage. In August 2005, Afzal Guru’s death sentence was confirmed by the Supreme Court. However, the Supreme Court did not find substance in this contention. On 17 May 2002, the trial Judge appointed Ms. Seema Gulati, who easily conceded that the prosecution had prima facie evidence to frame charges. Later on 2 July 2002, Ms Gulati without giving any reasons withdrew her vakalatnama and decided to appear for S. A. R. Geelani, another accused in the same case. Ms Gulati assigned Guru’s case to her junior Niraj Bansal. Afzal Guru’s pleas that he had no confidence in Niraj Bansal’s performance and requests for another lawyer went unheeded. Afzal Guru, who had no training in law, had to cross-examine most of the witnesses himself.⁴⁸

Asian Centre for Human Rights has tried to study the judgments of the Supreme Court of India since 1980 in which *amicus curiae*/ or lawyers from legal aid services were provided to those whose death penalty were confirmed by the High Courts. In a number of cases the convicts

45. See ‘Lawyers providing free legal aid should be experienced’, The Times of India, 12 October 2009 at: <http://timesofindia.indiatimes.com/city/mumbai/Lawyers-providing-free-legal-aid-should-be-experienced/articleshow/5113526.cms>

46. *Shatrughan Chauhan & Anr vs Union Of India & Ors* (2014)35SCC1

47. *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid Vs. State of Maharashtra*, Supreme Court of India, 29.08.2012

48. *Mohd. Afzal Vs State (N.C.T. OF Delhi)* in Criminal Appeal No. 381 OF 2004

were represented by *amicus curiae*/ lawyers from legal aid services in the Supreme Court, indicating that these convicts belong to economically and socially backward groups and could not hire their own lawyers. It is pertinent to mention that the lack of effective defence at the stage of trial affects the cases at the stage of confirmation. In at least 15 cases, the Supreme Court confirmed death penalty in which *amicus curiae* represented the victims as given below:

Case 1: Sunder Singh Vs. State of Uttaranchal

On 30 June 1989, five persons of a family were burnt to death in Mahargheti village Bageshwar District, Uttarakhand. On conviction, the trial court awarded death sentence to accused Sunder Singh, which was confirmed by the High Court. On 16 September 2010, the Supreme Court confirmed the death sentence on appellant. Advocate Y. P. Singh, *amicus curiae*, represented appellant Sunder Singh in the Supreme Court.⁴⁹

Case 2: State of U.P. Vs. Sattan @ Satyendra

On 15 August 1999, the trial court imposed death sentences on Sattan @ Satyendra, Upendra, Hari Pal, son of Kiran Singh and Hari Pal, son of Ram Charan after being found guilty for the killing of six persons in Ghaziabad, Uttar Pradesh in August 1994. On 18 October 2000, the Allahabad High Court commuted the death sentence of Sattan and Upendra to life imprisonment and acquitted the two others. However, the Division Bench of the Supreme Court consisting of Justices Arijit Pasayat and Justice Mukundakam Sharma re-imposed death sentence of Sattan and Upendra in its judgment delivered on 27 February 2009. Senior Advocate Mr. M. Karapaga Vinayagam represented the accused respondents as *amicus curiae*.⁵⁰

Case 3: Shivaji vs State of Maharashtra

On 5 September 2008, the Supreme Court confirmed the death sentence of Shivaji who was found guilty for the rape and murder of a minor girl in Pune, Maharashtra on 14 March 2002. On conviction, the trial court had sentenced Shivaji to death which was upheld by the Bombay High Court. Advocate Ranjan Mukherjee represented appellant, Shivaji in the Supreme Court as *amicus curiae*.⁵¹

Case 4: Bantu Vs. State of Uttar Pradesh

On 23 July 2008, the Supreme Court upheld the death sentence awarded to appellant Bantu by the trial court and confirmed by the Allahabad High Court. The appellant was convicted for committing rape and murder upon a five-year old girl in Uttar Pradesh in 2003. *Amicus curiae* Mr. Shankar Divate represented the appellant in the Supreme Court.⁵²

49. Sunder Singh Vs. State of Uttaranchal in Criminal Appeal No. 1164 of 2005, Supreme Court of India, 16.9.2010

50. State of U.P. Vs. Sattan @ Satyendra and Ors in Criminal Appeal Nos. 314-315 of 2001, Supreme Court of India, 27.02.2009

51. Shivaji @ Dadya Shankar Alhat Vs. State of Maharashtra in Criminal Appeal No. 1409 of 2008, Supreme Court of India, 5.9.2008

52. Bantu Vs. State of Uttar Pradesh in Criminal Appeal No. 117 of 2007, Supreme Court of India, 23.7.2008

Case 5: Gurmeet Singh Vs. State of Uttar Pradesh

Gurmeet Singh of Uttar Pradesh was convicted and sentenced to death by the trial court on 20 September 1992 for the murder of 13 members of his family in Pilibhit in 1986. His death sentence was confirmed by the Allahabad High Court on 29 February 1996. The Supreme Court upheld the death sentence on 28 September 2005. Gurmeet Singh was represented by *amicus curiae* Harbans Lal Bajaj in the Supreme Court.⁵³

Case 6: Mohan Anna Chavan Vs. State of Maharashtra

On 14 December 1999, Mohan Anna Chavan of Maharashtra was accused of rape and murder of two minor girls. On conviction, the trial court awarded him death sentence. On 6 September 2002, the Bombay High Court confirmed the death sentence. On 16 May 2008, the Supreme Court affirmed the death sentence awarded by the trial court and confirmed by the High Court. The appellant was represented by *amicus curiae* in the Supreme Court.⁵⁴

Case 7: Prajeet Kumar Singh Vs. State of Bihar

Prajeet Kumar Singh of Bihar was charged under Section 302 and 307 IPC for the murder of three children. The trial Court found him guilty under Section 302 and sentenced him to death. On 2 March 2007, the Patna High Court accepted the death reference and dismissed the appeal filed by Prajeet Kumar Singh. On 2 April 2008, the Supreme Court upheld the death sentence. Appellant Prajeet Kumar Singh was represented by *amicus curiae* Ms. Ranjana Narayan in the Supreme Court.⁵⁵

Case 8: Praveen Kumar Vs. State of Karnataka

In 1994, Praveen Kumar was accused of killing four persons in Karnataka. In 2002, the trial court awarded the death penalty on conviction and confirmed by the High Court in the same year. On 15 October 2003, the Supreme Court upheld the death sentence. Praveen Kumar was represented by *amicus curiae* Mr. R S Lambat in the Supreme Court.⁵⁶

Case 9: Sushil Murmu Vs. State of Jharkhand

In 2003, the Supreme Court upheld the death sentence of Sushil Murmu awarded by the trial court for the murder of a 9-year old child in 1996 who was sacrificed to appease Goddess Kali in Jharkhand. The Jharkhand High Court confirmed the death sentence in April 2003. Appellant Sushil Murmu was represented by *amicus curiae* Mr. Anil Kumar Mittal in the Supreme Court.⁵⁷

Case 10: Om Prakash @ Raja Vs. State of Uttaranchal

Om Prakash was accused of killing three members of a family where he was working as domestic

53. Gurmeet Singh Vs. State of Uttar Pradesh in Criminal Appeal No. 1371 of 2004, Supreme Court of India, 28.9.2005

54. Mohan Anna Chavan Vs. State of Maharashtra, Criminal Appeal No. 680 of 2007, Supreme Court of India, 16.5.2008

55. Prajeet Kumar Singh Vs. State of Bihar in Criminal Appeal No. 1621 of 2007, Supreme Court of India, 2.4.2008

56. Praveen Kumar Vs. State of Karnataka in Criminal Appeal No. 254 of 2003, Supreme Court of India, 15.10.2003

57. Sushil Murmu Vs. State of Jharkhand in Criminal Appeal No. 947 of 2003, Supreme Court of India, 12.12.2003

servant in Uttarakhand on 15 November 1994. On conviction, the trial court imposed the death sentence, which was confirmed by the High Court in 2001. On 5 December 2002, the Supreme Court dismissed the appeal of Om Prakash and upheld the death sentence. Senior Advocate Dr. Syamala Pappu who was appointed as *amicus curiae* represented Om Prakash in the Supreme Court.⁵⁸

Case 11: Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra

In August 1994, Narayan Chetanram Chaudhary and Jitendra @ Jitu Nayansingh Gehlot were accused of killing seven persons, five women and two children in Pune, Maharashtra. The trial court on conviction sentenced them to death which was confirmed by the Bombay High Court on 22 July 1999. On 5 September 2000, the Supreme Court upheld the conviction and the death sentence. Narayan Chetanram Chaudhary and Jitendra @ Jitu Nayansingh Gehlot were represented by *amicus curiae* Mr. S. Muralidhar in the Supreme Court.⁵⁹

Case 12: Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam

In 1992, Ram Deo Chauhan of Assam was accused of killing four persons of a family. On conviction, the trial court sentenced him to death in 1998. The death sentence of Ram Deo Chauhan was confirmed by the Guwahati High Court and Supreme Court in 1999 and 2000 respectively. Ram Deo Chauhan was represented by *amicus curiae*, Advocate Balraj Dewan in the Supreme Court.⁶⁰ Chauhan was released later as he was found to be juvenile at the time of the commission of the offence.

Case 13: Jai Kumar Vs. State of Madhya Pradesh

On 11 May 1999, the Supreme Court confirmed the death sentence of appellant Jai Kumar for committing murders in Rewa district of Madhya Pradesh in 1997. On conviction, the trial court sentenced Jai Kumar to death, which was confirmed by the High Court of Madhya Pradesh at Jabalpur. Appellant Jai Kumar was represented by *amicus curiae* S. Muralidhar before the Supreme Court.⁶¹

Case 14: Shiv Ram and Anr. Vs. State of Uttar Pradesh

In 1990, five persons were killed in a village under Mitauli Police Station in Uttar Pradesh. The trial court found four persons namely Shyam Manohar, Suresh, Sheo Ram and Harish guilty under Section 302 IPC and each one of them was sentenced to death. In 1997, the High Court of Allahabad Bench at Lucknow not only confirmed the death sentence of the four persons but also enhanced the life imprisonment to death sentence of another three accused namely Prakash, Rajender and Ravindra. On 21 October 1997, the Supreme Court upheld the death sentence of six accused as awarded by the trial court and enhanced by the High Court except

58. Om Prakash @ Raja Vs. State of Uttaranchal, Supreme Court of India, 5.12.2002

59. Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra Criminal Appeal Nos. 25 and 26 of 2000, Supreme Court of India, 5.9.2000

60. Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam in Criminal Appeal No. 4 of 2000, 31.7.2000

61. Jai Kumar Vs. State of Madhya Pradesh in CrI. A. No. 548 of 1999, Supreme Court of India, 11.5.1999

accused Rajender whose death sentence was commuted to life imprisonment. The Supreme Court appointed Mr. A. K. Ganguli, Senior Advocate as *amicus curiae* to represent the seven condemned prisoners.⁶²

Case 15: Ravji alias Ram Chandra Vs. State of Rajasthan

Ravji alias Ram Chandra of Rajasthan was charged with murder of five persons. The trial court found Ravji guilty and sentenced him to death. The sentence of death was confirmed by the Rajasthan High Court and the Supreme Court in March 1995 and December 1995 respectively. Initially, the Supreme Court appointed *amicus curiae* to represent Ravji's case. Later on, Ravji wrote a letter to the Registry of the Supreme Court expressing his intention that one of the three advocates mentioned by him in his letter may be engaged to represent his case. Pursuant to the request, a senior advocate of the Supreme Court agreed to appear as *amicus curiae* for him.⁶³ In this case, the Supreme Court declared the case of Ravji as per incuriam. Ravji was executed in 1996.

i) Capital Punishment is a form of state sponsored violence

Yes.

j) The mode of execution i.e. hanging by the neck until death is cruel

Yes. The same is elaborated under Question No.15.

Question No. 5. In your opinion, can the sentence of life imprisonment as an alternate to capital punishment achieve the arguments mentioned in Q2 (if there is a stringent and periodic system of review of all prisoners before granting remission/reprieve/commutation)? Please indicate why.

Yes. Asian Centre for Human Rights believes that life imprisonment is an equally efficacious alternative to death penalty, among others, for the following reasons:

First, commutation of death sentence into life imprisonment remains the overwhelming national option for India. As stated above, out of 5,934 convicts who were given death sentence from 2001 to 2012, death sentences for 4,382 convicts were commuted into life imprisonment. There is no statistics to suggest that these large scale commutations had led to increase in crimes.

Second, in a series of judgments the Supreme Court has clarified that "*imprisonment for life*" means "*imprisonment for the whole of the remaining period of the convicted person's natural life*" subject to remission by the appropriate government. Further, under Section 376E of the Indian Penal Code introduced under the Criminal Law Amendment Act, 2013, clarified that "*imprisonment for life ... shall mean imprisonment for the remainder of that person's natural life*". Therefore, the fear that the convicts will pose a threat to the society if not awarded death penalty stands eliminated. Further, there is no data to show that any convict on death row whose sentence has

62. Shiv Ram and Anr. Vs. State of Uttar Pradesh in Criminal Appeal Nos. 593 and 715-16 of 1997, Supreme Court of India, 21.10.1997

63. Ravji alias Ram Chandra Vs. State of Rajasthan in Criminal Appeal No. 1595 of 1995, Supreme Court, 5.12.1995

been commuted to life imprisonment has been released by the Government of India. Even if released, there is no evidence to suggest that they were involved in recidivism though a few cases exist where undertrials charged with offences carrying death sentence committed murders and subsequently sentenced to death. The so-called threat to the society can be addressed through a stringent and periodic system of review of all prisoners before granting remission. **As a trade off for abolition of death penalty, necessary amendments could be made into the laws to provide that no remission can be provided by the appropriate government where there is no possibility of reform of the convict and s/he shall serve the imprisonment for the remainder of her/his natural life.**

Third, prison conditions in India are deplorable and torturous. Imprisonment till the end of natural life in sub-human conditions in the prisons is no less harsh punishment than death penalty. But the State must not snatch the right to life.

Fourth, death penalty negates criminal justice system's core objectives i.e. to reform and rehabilitate offenders.

Question No. 6. The recent Criminal Law (Amendment) Act, 2013 introduces capital punishment for the repeat offence of rape (Section 376E). Should capital punishment extend to non-homicide offences? Please indicate your reasons for the same.

The introduction of Section 376E under the recent Criminal Law Amendment Act, 2013 mandating death penalty to repeat offence of rape is a knee-jerk reaction to the vociferous demand for the death penalty for rapists following the gang rape and murder of a young girl in Delhi in December 2012. It is pertinent to remember that regardless of public opinion and emotions, administration of justice is about applying the rule of law fairly and justly in the investigation, trial and punishment of a crime.

It is also important to point out that the Justice J. S. Verma Committee, constituted by the Government in the wake of the Delhi gang rape case of December 2012 did not recommend death penalty as punishment for rape. The Committee in its report⁶⁴ observed:

“25. We must therefore end this topic with a note of caution. Undoubtedly, rape deserves serious punishment. It is a highly reprehensible crime in the moral sense, and demonstrates a total contempt for the personal integrity and autonomy of the victim. Short of homicide, it is the “ultimate violation of self.” It is also a violent crime because it normally involves force or the threat of force or intimidation to overcome the will and the capacity of the victim to resist. Rape is very often accompanied by physical injury to the victim and can also inflict mental and psychological damage. We have no doubt that it undermines the communicating sense of security and there is public injury. However, we believe that such offences need to be graded. There are instances where the victim/survivor is still in a position from which she can, with some support from society, overcome the trauma and lead a normal life. In

64. Justice Verma Committee report is available at: <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

other words, we do not say that such a situation is less morally depraved, but the degree of injury to the person may be much less and does not warrant punishment with death.”

Asian Centre for Human Rights is of the opinion that death penalty for non-homicidal offences including rape is legally unsound, unnecessary and it is unlikely to deter probable offenders as explained below:

First, death penalty does not have deterrent effect in non-homicidal offences including rape. The same was explained above under the heading “*v. Death penalty does not act as deterrent to non-homicide offences including rape*” at page 17.

Second, it is not the severity of punishment but the low rate of conviction which fail to act as a deterrent. According to NCRB, the conviction rate for rape has declined from 26.6% in 2010 to 24.2% in 2012.⁶⁵ Rather than death penalty, swift arrest and fast-tracked trial leading to conviction alone can instill fear of law in people and deter commission of crimes against women.

Third, the probability of the rape victims being murdered by the criminals in order to destroy evidence or to prevent them from reporting the crime to the police must not be overlooked.

Fourth, the award of death penalty in non-homicidal offences in other provisions of the IPC and laws is a rarity except under the Narcotic Drugs and Psychotropic Substances (NDPS) Act. Pertinently, the Bombay High Court has already read down Section 31A of the NDPS Act, prescribing the death sentence, as an optional rather than a mandatory punishment. Further, the Supreme Court on appeal is currently examining the validity of Section 31A of the NDPS Act.⁶⁶ Death penalty is provided for kidnapping for ransom (Section 364A) of the Indian Penal Code. According to the Ministry of Home Affairs, the number of cases of kidnapping for ransom was 650 cases in 2007, 777 cases in 2008, and 642 cases in 2009.⁶⁷ However, there is no information as to how many persons were awarded the death penalty under Section 364A.

Asian Centre for Human Rights is of the considered opinion that Section 376E in a way admits that punishment “*with imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life*” is indeed an efficacious alternative for death penalty. In fact, the notion that “*imprisonment for life (which) shall mean imprisonment for the remainder of that person’s natural life*” has been introduced for the first time in the Indian Penal Code under the Criminal Law Amendment Act, 2013. Though a number of Supreme Court judges have opined that life imprisonment means till the end of natural life of the person concerned, Section 55 relating to commutation of sentence to life still

65. See NCRB reports ‘Crime in India 2010 & 2012 at: <http://ncrb.nic.in/>

66. See ‘Why mandatory death penalty be not abolished? Supreme Court asks govt, The Times of India, 2 December 2012 at: <http://timesofindia.indiatimes.com/india/Why-mandatory-death-penalty-be-not-abolished-Supreme-Court-asks-govt/articleshow/17446507.cms>

67. Lok Sabha Unstarred question no. 3400 answered by the Minister of State in the Ministry of Home Affairs on 23 August 2011, available at: <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=106636>

remains in the statute.⁶⁸ There is need to consider imprisonment for life for the remainder of that person's natural life as effective alternative to death penalty. As a trade off for abolition of death penalty, necessary amendments could be made to provide that no remission can be provided by the appropriate government in cases where there is no possibility of reform of the convicts and they must serve for the whole of natural life.

Question No. 7. In your opinion, is the crime of murder as severe and abhorring as an act of terrorism?

The Criminal Procedure Code or the Special Laws do not make such a distinction between murder and acts of terrorism. That an act of terrorism is more severe and abhorring than murder are perceptions of individual judges.

India was born out of communal riots in 1947. The communal riots remain an integral part of India. More than 1200 persons, mostly Muslims, were killed in the Gujarat communal riots of 2002⁶⁹ while the Gujarat riots also displaced between 200,000 and 250,000 persons.⁷⁰ In the Khandamal riots in Orissa in August 2008, about 40 persons were killed and⁷¹ about 54,000 persons were displaced due to the riots.⁷² Assam had witnessed communal riots at regular intervals. The 2012 Bodo-Muslim clashes displaced more than 4,85,000 persons⁷³ in Bodoland Territorial Autonomous Districts (BTAD) consisting of Baksa, Chirang, Kokrajhar and Udalgiri districts, and neighbouring Dhubri district of Assam and left 109 dead as per data of the state government of Assam.⁷⁴ The riots in five districts of Muzaffarnagar, Shamli, Saharanpur, Baghpat and Meerut districts in Uttar Pradesh in September 2013 had affected more than 50,000 persons and claimed over 60 lives.⁷⁵

According to the Ministry of Home Affairs, 2307 persons were killed and 27053 persons were injured in as many as 8029 incidents of communal violence in the country during 2002 to 2012.⁷⁶

68. Section 55 of the IPC states, "55. Commutation of sentence of imprisonment for life. In every case in which sentence of imprisonment for life shall have been passed, **[the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years".

69. See '2002 Gujarat riot case: 32 convicted', Business Standard, 30 August 2012, at: http://www.business-standard.com/article/economy-policy/2002-gujarat-riot-case-32-convicted-112083002017_1.html

70. See 'India's Gujarat riots: 10 years on', BBC News, 1 March 2012, available at: <http://www.bbc.co.uk/news/world-asia-india-17200961> and 'In Gujarat's ghettos' By Deepa A for InfoChange News & Features, July 2008, available at: <http://infochangeindia.org/agenda/migration-a-displacement/in-gujarats-ghettos.html>

71. See 2008-09 Annual Report of the Ministry of Home Affairs, Government of India, at: [http://www.mha.nic.in/sites/upload_files/mha/files/pdf/AR\(E\)0809.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/pdf/AR(E)0809.pdf)

72. See All Indian Christian Council, <http://indianchristians.in/news/content/view/2332/45/>

73. See 2012-2013 Annual Report of the Ministry of Home Affairs, Government of India

74. See 'Assam: Clashes in BTC areas claimed 731 lives since 1993', Rediff.com, 11 December 2012, available at: <http://www.rediff.com/news/report/assam-clashes-in-btc-area-claimed-731-lives-since-1993/20121211.htm>

75. See 'Caught in the Crossfire', India Today, 1 November 2013, available at: <http://indiatoday.intoday.in/story/muzaffarnagar-riots-bjp-congress-riot-victims-samajwadi-party-sp-rahul-gandhi/1/321266.html>

76. These included death of 1,130 persons and injuries to 4,375 persons in 722 communal incidents in 2002; death of 193 persons and injuries to 2,261 in 711 communal incidents in 2003; death of 129 persons and injuries to

Undoubtedly the communal riots are equally abhorring and severe as the acts of terrorism. However, the legislature, executive and the judiciary to some extent have turned their jaundiced eyes under which acts of terrorism were put as more abhorrent and severe than the acts of communal riots despite the victims of both the offences being innocent civilians.

Question No. 8. Is it possible to divide murders into different categories for the purpose of sentencing, such that –a) Murders punishable with death and b) Murders punishable with life imprisonment. If so, what murders would you include in category a)?

Asian Centre for Human Rights is of the opinion that any distinction between murder punishable with death and murder punishable with life imprisonment will make judgments judge centric. ACHR believes in complete abolition of death penalty.

Question No. 9. Do you subscribe to the view that under normal circumstances the punishment of life imprisonment is adequate for murder but under aggravating circumstances, the Court may award death penalty?

Once again Asian Centre for Human Rights is of the opinion that any distinction of murder under normal circumstances and aggravating circumstances will make judgments judge centric. ACHR believes in complete abolition of death penalty.

Question No. 10. Is it possible to divide offences into different categories for the purpose of sentencing, such that - a) Terror Offences, and b) Non terror Offences. If so, do you think capital punishment should be retained for category a) and abolished for category b)?

There is no provision in the Indian laws which make distinction between terror offences and non-terror offences even though a number of judges sought to make this distinction without any legal basis. This distinction is a case of judge-centric judgments.

Asian Centre for Human Rights is of the opinion that communal riots are no less aggravating than the acts of terrorism for the purpose of sentencing.

Question No. 11. Do you think the existing framework of police investigation and collection of evidence is full proof and guarantees zero room for erroneous convictions?

The existing framework of police investigation, collection of evidence (including post mortems and forensic examination) can at best be described as shoddy. The police continue to follow the

2022 persons in 640 communal incidents in 2004; death of 124 persons and injuries to 2,066 persons in 779 communal incidents in 2005; death of 133 persons and injuries to 2,170 persons in 698 communal incidents in 2006; death of 99 persons and injuries to 2,227 persons in 761 communal incidents in 2007; death of 167 persons and injuries to 2,354 persons in 943 communal incidents in 2008; death of 125 persons and injuries to 2,424 persons in 826 communal incidents in 2009; death of 116 persons and injuries to 2,138 persons in 701 communal incidents in 2010 (as on December 2010); death of 91 persons and injuries to 1,899 persons in 580 communal incidents in 2011 (as on December); and death of 94 persons and injuries to 3,117 persons in 668 communal incidents in 2012 (as on December). Please see the Annual Reports of the Ministry of Home Affairs, Government of India at: <http://www.mha.nic.in>

old style of conducting investigations, relying on confessional statements and oral evidence. New developments in science and technology are still not fully utilized in the investigation process. The training provided on scientific investigation remained inadequate. As a result, instances of miscarriage of justice are many in India. Recently, the Supreme Court of India in the case of *Dharam Deo Yadav vs State of U.P.*⁷⁷ (14 April 2014) while commuting the death sentence of the appellant to life imprisonment observed that the Indian criminal justice process will immensely benefit from crime investigating agencies adopting scientific investigation methods. The relevant part of the observation read as under:

“28. Criminal Judicial System in this country is at cross-roads, many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. Investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc., whereas forensic evidence is free from those infirmities. Methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc., whereas forensic evidence is free from those infirmities.”

i. Innocents almost hanged!

Highest standards of police investigation and collection of evidence are indispensable in the trial of any criminal case including in capital offences. It is true that criminals have repeatedly escaped punishment in India and there have been a number of cases where innocent persons have actually suffered due to poor standard of police investigations. Police misconduct including corruption, suppression and/or misinterpretation of evidence, community/political pressure to solve a case adds to the problem. This problem is compounded in terror offences where a number of innocent persons have been wrongly awarded the capital punishment on the basis of fabrication of evidence and violation of the legal procedures to be followed during investigation.

On 16 May 2014, the Supreme Court in the case of *Adambhai Suleman Ajmeri & Ors. Vs. State of Gujarat*⁷⁸ while acquitting all the six accused, including two on death sentence, in connection with the 2002 Akshardham Temple attack in Gujarat strongly criticized the police for its investigation. The Court observed as under:

77. The judgment is available at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41403> (accessed on 7 June 2014)

78. The judgment is available at: <http://www.sci.nic.in/outtoday/Crl.AppealNo.2295-2296of2010.pdf>

“136. Before parting with the judgment, we intend to express our anguish about the incompetence with which the investigating agencies conducted the investigation of the case of such a grievous nature, involving the integrity and security of the Nation. Instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing.”

Another shocking instance of miscarriage of justice by the police in terror offences has been noticed in a judgment delivered by a Division Bench of Delhi High Court consisting of Justice Ravindra Bhat and Justice G. P. Mittal on 22 November 2012, i.e. after 16 years. In the judgment⁷⁹ the High Court acquitted two convicts who had been awarded capital punishment by the trial court in a case relating to an explosion in the Lajpat Nagar Market of New Delhi in 1996, in which 13 persons were killed. The High Court also reduced the sentence of another convict to life term. The judgment had noted: *“Police have not maintained minimum standard of probe in the case, test identification parade (TIP) was not conducted, statements of vital witnesses were not recorded. There was also absence of (police) daily diary entry in the case.”* The High Court had also observed that there was ‘casualness’ in the investigation of the case.

Similarly in January 2013, a trial court in Delhi following re-trial acquitted the accused Mohd. Hussain alias Julfikar Ali, a Pakistani national, in connection with the blast triggered in a Blue Line bus near Punjabi Bagh in West Delhi on 30 December 1997. In the fresh trial, the court held that there were *“substantial lapses”* in the Delhi Police investigation, which did not consider taking photographs of the inner portion of the bus and even the site plan was not prepared. Further, exhibits lifted from the spot were not sealed and no effort was made to prepare the sketch of the suspect. During his cross examination Mohd. Hussain told the court that he was picked up by the police from the area of Jama Masjid and detained at some unknown place from where he was produced before the court in March 1998 and implicated in various false cases including the instant case. During retrial, the court observed that *“on the one hand, the probe agency tried to project the accused as a deadly terrorist, who is involved in six bomb blast cases, but simultaneously they had tried to show that they were able to break down the accused immediately after his arrest”*. The court questioned *“If the accused was a deadly terrorist, it was seldom to believe that investigators could break down the accused on cursory interrogation at the place of arrest.”* The case was re-tried on the directions of the Supreme Court which had said that Mohd. Hussain was not given a fair and impartial trial resulting in his conviction by the trial court in 2004. The Delhi High Court upheld the trial court’s verdict.⁸⁰

If the courts had not noticed the wanton miscarriage of justice by the police in the above three cases, these accused persons might have been executed on the basis of questionable evidence. These are not isolated cases. There are several other instances of miscarriage of justice which occurred due to willful fabrication of evidence and violation of the legal procedures required to be followed during the investigation.

79. The judgment is available at: <http://lobis.nic.in/dhc/SRB/judgement/22-11-2012/SRB22112012DSRF22010.pdf>

80. See ‘Sentenced to death, Pak national wins blast case on re-trial’, Deccan Herald, 4 January 2013 at: <http://www.deccanherald.com/content/302969/sentenced-death-pak-national-wins.html>

Another outstanding problem has been the use of torture by investigative agencies to extract confessions. These confessions often result in convictions including in capital offences as demonstrated in the case of *Adambhai Suleman Ajmeri & Ors. Vs. State of Gujarat*⁸¹ decided on 16 May 2014 wherein the Supreme Court while acquitting all the six accused, including two on death sentence stated that “*the confessional statements of the accused persons cannot be relied upon*” as there was no independent evidence on record to prove the guilt of the accused persons beyond reasonable doubt in the face of the retractions and grave allegations of torture and violation of human rights of the accused persons against the police which the trial courts often overlook.

ii. Juveniles given death penalty by the High Courts and the Supreme Court

It is not only the police but the judiciary including the Supreme Court of India at times failed to appreciate the slackness of police investigation even while awarding death penalty to juveniles.

The recording of age is critical for determining juvenility. Police often record the age of juvenile accused as over 18 years, thereby depriving the benefit of the child friendly provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. Instances of juvenile being tried as adults due to the casual and insensitive attitude of the police are many across the country. In an affidavit submitted on 29 April 2014 to the Delhi High Court, the National Commission for Protection of Child Rights (NCPCR) stated that over 2,600 probable juveniles had been identified in Delhi’s jails during visits between 2012 and 2014. The Delhi High Court has been monitoring the issue of juveniles being incarcerated in adult jails after a PIL was filed in 2012. The Delhi High Court had earlier directed periodic visits by a panel constituted by the NCPCR and Delhi Legal Services Authority to various jails to ensure that juveniles can be identified.⁸²

Age determination is not done immediately. By the time, age verification tests are conducted, the juveniles are detained in jails for years. The situation could prove extremely grave in serious offences including which mandate capital punishment.

The following two cases relating to award of death sentence or life imprisonment by the lower courts and which were confirmed by the High Court and the Supreme Court exposes poor investigation leading to miscarriage of justice:

Case 1: Ramdeo Chauhan, Assam

In the case of Ramdeo Chauhan of Assam, the Guwahati High Court confirmed the death sentence awarded to him by the trial court considering the case as the rarest of rare deserving death penalty for the murder of a civil engineer and his family members in 1992. Even the Supreme Court confirmed the death sentence. In 2010, after 18 years, the Supreme Court however finally upheld the grant of clemency by the Governor of State of Assam in accordance with a recommendation by the National Human Rights Commission (NHRC), acknowledging

81. The judgment is available at: <http://www.sci.nic.in/outtoday/Crl.AppealNo.2295-2296of2010.pdf>

82. See ‘Over 2,600 inmates in Delhi jails probably juveniles: Child rights panel’, Indian Express, 30 April 2014 at: <http://indianexpress.com/article/cities/delhi/over-2600-inmates-in-delhi-jails-probably-juveniles-child-rights-panel/>

NHRC's wider role for promotion of human rights as Chauhan was a juvenile at the time of commission of the crime. In a unique case of its kind, the Supreme Court admitted repeated mistakes in not dealing properly with an appeal against the death sentence of Ramdeo Chauhan. The Supreme Court, granted liberty to Ramdeo Chauhan to claim juvenility in appropriate forum. Pursuant to this, Ramdeo Chauhan moved an application claiming juvenility before the Juvenile Justice Board, Morigaon district but determination of the application was inordinately delayed. On 3 July 2011, child rights activist Minna Kabir wrote a letter to the Chief Justice of the Guwahati High Court seeking intervention to expedite the proceedings before the Juvenile Justice Board (JJB), Morigaon, on Chauhan's application claiming juvenility. The Guwahati High Court suo motu converted Ms. Kabir's letter into a public interest litigation (No.39/2011). In the judgment delivered on 9 August 2011, a bench comprising Justice Amitava Roy and Justice C.R. Sharma held that "on a rational and judicious assessment of the evidence available on record as well as the authorities cited at the Bar, we are of the unhesitant opinion that the accused applicant was a juvenile as defined in section 2(k) of the Act on the date of the commission of the offence i.e. 8.3.1992 and is thus entitled to be treated as a juvenile in conflict with law vis-à-vis the charges and was entitled at all relevant points of time to be dealt with as such." The court finally ordered that Ramdeo Chouhan @ Rajnath Chouhan be released forthwith from custody.⁸³

Case 2: Ankush Maruti Shinde, Maharashtra

On 12 June 2006, Ankush Maruti Shinde, a juvenile, and five others were sentenced to death by the trial court in a multiple-murder and rape case in Nashik, Maharashtra. On 22 March 2007, the Bombay High Court confirmed the death sentence of Ankush Maruti Shinde and two others and commuted the sentence of three to life imprisonment.⁸⁴ On 30 April 2009, the Supreme Court set aside the order of the Bombay High Court altering death sentence to life for three convicts and confirmed the death sentence of all the six including the juvenile.⁸⁵ In July 2012, it was confirmed by the Additional Sessions Court in Nashik that Ankush Maruti Shinde was a juvenile at the time of the commission of offence pursuant to an application filed on his behalf by a human rights advocate seeking an inquiry into his age. The Court found that Ankush Maruti Shinde's age on the date of the crime was 17 year, nine months and fifteen days.⁸⁶

Question No. 12. In your opinion, should crimes mandating capital punishment require a higher burden of proof over and above proof beyond reasonable doubt?

Any harsh punishment requires high standards of evidence. It is a known fact that criminal justice system is not perfect in India. There have been instances of grave miscarriage of justice

83. See ACHR's report 'Nobody's children: Juveniles of Conflict Affected Districts of India' March 2013, Page 17, available at: http://www.achrweb.org/reports/india/JJ-Nobodys_Children2013.pdf

84. State Of Maharashtra vs Ankush Maruti Shinde And Ors. on 22 March 2007

85. Ankush Maruti Shinde and Ors. Vs. State of Maharashtra [Criminal Appeal Nos. 1008-09 of 2007 and Criminal Appeal Nos. 881-882 of 2009 (Arising out of SLP (Crl.) Nos. 8457-58 of 2008 decided on 30.04.2009)]

86. See 'After six years on death row, spared for being a juvenile', The Times of India, 21 August 2012 at: <http://timesofindia.indiatimes.com/india/After-six-years-on-death-row-spared-for-being-a-juvenile/articleshow/15577973.cms>

in India due to various factors, among others, shoddy police investigations, inadequate legal representation, eyewitness misidentification, falsified evidence, etc. In crimes mandating death penalty, victims of wrongful convictions pay the ultimate price. Life once snuffed out, cannot be brought back. Across the world, there are instances of innocent persons who have been wrongfully convicted and sentenced to death, and even executed. India is no exception. Innocent people have been convicted and sentenced to death in India.

Asian Centre for Human Rights (ACHR), in principle, is against the death penalty for any crime. However, as the death penalty is still in the statute book and awarded for a number of offences in India, ACHR is of the view that the time tested principle of “proof beyond reasonable doubt” stand questionable in crimes mandating capital punishment. This is illustrated in the recent Supreme Court judgment delivered on 16 May 2014 in *Adambhai Sulemanbhai Ajmeri & Ors vs State of Gujarat*⁸⁷ in connection with 2002 Akshardham Temple terror attack case. In this case, the Supreme Court acquitted all six accused persons, including two on death sentence, who were convicted by the Special Court (POTA) and the Gujarat High Court which found that their guilt were proved beyond reasonable doubt. However, the Supreme Court held that the prosecution has failed to prove beyond reasonable doubt the guilt of the accused persons. The Supreme Court expressing its anguish observed: “.....Instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing.” Clearly, these six innocent persons including two on death sentence had suffered for no fault for over a decade. Therefore, this case demonstrates that in serious offences, in particular, which mandates death sentence calls for a higher burden of proof over and above proof beyond reasonable doubt.

Question No. 13. Do you believe that capital sentencing carries the risk of being judge centric?

The Courts in India have purportedly been applying the rarest of rare doctrine enunciated in *Bachan Singh* case.

Asian Centre for Human Rights has studied a number of judgments of the Supreme Court which establish that sentencing has become judge centric. An analysis of the cases where the death penalty was “commuted” and cases where the death penalty was “confirmed” suggests that sentencing has become judge-centric as provided below:

First, convict’s young age that was given importance for commutation of death penalty in *Amit vs. State of Maharashtra*⁸⁸ (20 years-old at the time of crime) but it was not taken into consideration in the case of *Dhananjay Chatterjee vs. State of West Bengal* (about 27 years of age at the time of the crime).⁸⁹ The Supreme Court, however, subsequently took the convict’s age into account for commutation in the case of *Rameshbhai Chandubhai Rathod vs. State of*

87. The judgment is available at: <http://www.sci.nic.in/outtoday/Crl.AppealNo.2295-2296of2010.pdf>

88. 2003 Supp(2) SCR 285

89. Appeal (crl.) 393-394 of 2004

Gujarat⁹⁰ (28 years at the time of crime) and Amit vs. State of Uttar Pradesh⁹¹ (28 years old at the time crime).

Second, the benefit of possibility of reformation or rehabilitation as a ground for commutation of death penalty was considered in the cases of *Raju v. State of Haryana*⁹², *Bantu @ Naresh Giri vs. State of Madhya Pradesh*⁹³, *Surendra Pal Shivbalakpal vs. State Gujarat*⁹⁴, *Rahul vs. State of Maharashtra*⁹⁵ and *Amit v. State of Uttar Pradesh*⁹⁶. However the benefit of the same was not provided in the cases of *B.A. Umesh v. Registrar General, High Court of Karnataka*⁹⁷ and *Mohd. Mannan Alias Abdul Mannan v. State of Bihar*⁹⁸.

Third, acquittal or life sentence awarded by the High Court was considered good enough by the Supreme Court to commute death sentences in the case of *State of Tamil Nadu v. Suresh*⁹⁹ and *State of State of Maharashtra v. Suresh*.¹⁰⁰ However, the same was considered not good enough reason by the Supreme Court to commute the death sentence in *State of U.P. vs. Satish*¹⁰¹ and *B.A. Umesh v. Registrar General, High Court of Karnataka*¹⁰².

Fourth, circumstantial evidence was held not to be a mitigating factor in *Jumman Khan vs. State of Uttar Pradesh*¹⁰³, *Kamta Tewari Vs State of M.P.*¹⁰⁴, *Molai and Another vs. State of M.P.*¹⁰⁵ and *Shivaji @ Dadya Shankar Alhat vs. State of Maharashtra*¹⁰⁶ but it was so held in *Bishnu Prasad Sinha vs. State of Assam*¹⁰⁷.

Fifth, the benefit of doubt on the voluntariness and truthfulness of the confessional statements allegedly made by the accused under the POTA was given for acquittal of the six accused including three death row convicts in *Adambhai Sulemanbhai Ajmeri & Ors. Vs. State of Gujarat*¹⁰⁸ but the same benefit was not given to Devender Pal Singh Bhullar in *Devender*

90. CRIMINAL APPEAL NO. 575 OF 2007

91. (2012) 4 SCC 107; (2012) 39 SCD 98

92. (MANU/SC/0324/2001 : (2001) 9 SCC 50)

93. Appeal (crl.) 655 of 2001

94. 2004 Supp(4) SCR 464

95. (2005) 10 SCC 322

96. (2012) 4 SCC 107; (2012) 39 SCD 98

97. MANU/SC/0082/2011 : (2011) 3 SCC 85

98. (2011) 5 SCC 317

99. (1998) 2 SCC 372

100. (2000) 1 SCC 47

101. (2005) 3 SCC 114

102. MANU/SC/0082/2011 : (2011) 3 SCC 85

103. (1991) 1 SCC 752

104. (1996) 6 SCC 250

105. (1999) 9 SCC 581

106. (2008) 15 SCC 269

107. (2007) 11 SCC 467

108. Criminal Appeal Nos. 2295-2296 Of 2010 With Criminal Appeal No. 45 Of 2011

*Pal Singh vs. State National Capital Territory of Delhi and Anr*¹⁰⁹ who was convicted solely on the basis of his alleged confessional statements recorded under the TADA. Both TADA and POTA contain identical provision in respect of admissibility of confessions made to the police as evidence during the trial.

Question No. 14. In your opinion, should there be a provision for rehabilitation of families of criminals sentenced to death?

As stated above, the award of death sentence on a convict poses hardship and trauma on the family members. This traumatic impact is suffered by many victims who are innocent but given death sentence. For example, in a recent judgment on the 2002 Akshardham Temple terror attack in Gujarat, the Supreme Court acquitted all the six accused, including two on death row after concluding that they were innocent.¹¹⁰

Asian Centre for Human Rights believes that in cases where convicts are awarded death penalty but acquitted later must be given compensation and rehabilitation.

Question No. 15. Do you agree with the current mode of execution i.e. hanging by the neck until death? Please indicate why. Please suggest any other preferable mode of execution.

There are certain practices which are no longer permissible in civilized societies. For example, torture, even if sanctioned by the *Sharia courts*, is prohibited. In November 2011, the United Nations Human Rights Committee expressed its concerns against “*the continued imposition of corporal punishment by judicial and administrative authorities, in particular amputations and flogging for a range of crimes, including theft, enmity against God (mohareb) and certain sexual acts*” in Iran. The Committee recommended that Iran “*should amend the Penal Code to abolish the imposition of corporal punishment by judicial and administrative authorities and explicitly prohibit all forms of corporal punishment in child-rearing and education, including by repealing the legal defences for its use in article 1179 of the Civil Code, articles 49 and 59 of the Penal Code and article 7 of the Law on the Protection of Children*”.¹¹¹

Death penalty itself is cruel, inhumane and degrading punishment and it should therefore be abolished.

Question No. 16. In your opinion, should mandatory guidelines be laid down for the Governor and President of India to exercise their powers of granting mercy under the Constitution of India in death penalty cases

Asian Centre for Human Rights is firmly of the opinion that mandatory guidelines should be laid down for the Governor and President of India to exercise their powers of granting mercy under the Constitution of India in death penalty cases. The same is required as (i) treatment of

109. AIR2002SC1661

110. See *Adambhai Suleman Ajmeri & Ors. Vs. State of Gujarat* at: <http://www.sci.nic.in/outtoday/CrI.AppealNo.2295-2296of2010.pdf>

111. CCPR/C/IRN/CO/3, dated 29 November 2011

the mercy pleas is a scam and blot on the highest constitutional office; and (ii) the decisions of the President are arbitrary as explained below:

i Treatment of the mercy pleas is a scam and blot on the highest constitutional office

Shoddy treatment of the mercy petitions is nothing sort of a scam. While mercy petitions go missing, a number of death row convicts are actually not able to file mercy petitions.

a. Missing mercy petitions

ACHR has recently found that in at least two cases the mercy petitions filed by the death row convicts have been lost by the authorities. ACHR has filed complaints with the NHRC seeking commutation in these cases as given below:

Case 1. Holiram Bordoloi, Assam

Holiram Bordoloi was one of the accused in connection with the killing of three persons in Morigaon district in Assam on 26 November 1996. On conviction, the trial court awarded him death sentence on 5 May 2003. The Guwahati High Court and the Supreme Court confirmed the death sentence on 9 March 2004 and on 8 April 2005 respectively.¹¹²

In 2005, Holiram Bordoloi filed mercy petition with the President of India. As per RTI information provided to ACHR vide letter dated 9 July 2013 from the office of the Inspector General of Prisons, Assam, the mercy petition of Holiram Bordoloi addressed to the President of India was forwarded from the office of the Inspector General of Prisons, Assam vide letter No.PRI.826 dated 18 April 2005. The mercy petition was also forwarded to the Government of Assam, Judicial Department, Dispur, Assam vide the I.G. of Prisons, Assam vide letter No. PRI.186/89/Pt/96 dated 17 June 2005. The RTI reply received from the office of the Inspector General of Prisons, Assam vide letter dated 9 July 2013 states that the mercy petition of condemned prisoner Holiram Bordoloi (AC/4979) has been pending with the President of India.

However, the “*list of mercy petition cases since 1981*” received by the President of India and provided by the Ministry of Home Affairs, Government of India vide letter dated 28 March 2013 pursuant to an RTI application filed with Secretariat of the President of India does not show the name of Holiram Bordoloi. It is clear that the mercy petition of Holiram Bordoloi has been lost, and therefore, has not been considered by the President of India till date.

It has been more than 8 years since Mr Bordoloi had filed the mercy petition in 2005. There has not only been delay in consideration of the mercy plea but shockingly, his mercy petition seems to have been lost for no fault on his part. This shows the callousness of the Government of India for considering the mercy pleas. In the light of judgment of the Supreme Court in *Shatrughan Chauhan & Anr Vs. Union of India & Ors* it is a fit case for commutation.

Copy of the complaint with NHRC dated 6 February 2014 along with the relevant documents and notice of the NHRC are enclosed as **Annexure-1**.

112. Holiram Bordoloi Vs. State of Assam (Appeal (Crl.) 1063 of 2004]

Case 2. Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh, Bihar

The four death row convicts - Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh were accused of killing 35 persons belonging to Bhumihars, a landed caste, at Bara village in Gaya district of Bihar on the night of 13 February 1992. On 8 June 2001, the Sessions Judge, Gaya-cum-Designated Court under Terrorist and Disruptive Activities (Prevention) Act, 1987 awarded death sentence to them on conviction. On 15 April 2002, the Supreme Court [*Krishna Mochi &Ors Vs. State of Bihar (Appeal (Crl.) 761 of 2001)*] confirmed their death sentence though Justice M B Shah had dissented against the award of death sentence.

In 2003, they filed mercy petitions with the President. The prison authorities claimed that they had forwarded the mercy petitions to the President of India on 3 March 2003. However, the “*list of mercy petition cases since 1981*” received by the President of India as provided by the Ministry of Home Affairs, Government of India vide letter dated 28 March 2013 to Asian Centre for Human Rights does not show the names of Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh alias Dharu Singh. It is clear that their mercy petitions have been lost and therefore not considered by the President.

The lack of information on the status of the mercy petitions filed by death row convict Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh shows once again the utter callousness of the government of India in handling cases involving life and death.

Copy of the complaint with NHRC dated 6.2.2014 along with notice of the NHRC are enclosed as **Annexure-2**.

b. Inability to submit mercy petitions by death row convicts

There are a number of cases in which the death row convicts who appear to be not in a position to file mercy petitions before the President of India or Governors of the States either because of the ignorance or lack of proper legal assistance. It has come to the notice of the Asian Centre for Human Rights that a number of convicts have been unable to file mercy petitions.

Case 1: Case of six death row convicts from Maharashtra

The death sentence of the following convicts from Maharashtra has been confirmed by the Supreme Court:

SL No.	Name of death row inmate	Date of confirmation of death penalty by the Supreme Court
01	Narayan Chetanram Choudhary	05.09.2000
02	Jitendra @ Jitu Nayansingh Gehlot	05.09.2000
03	Ambadas Laxman Shinde	30.04.2009
04	Ajitsingh Harnamsingh Gujral	13.09.2011
05	Sudam @ Rahul Kaniram Jadav	04.07.2011
06	Rajendra Pralhadrao Wasnik	29.02.2012

However, these death row convicts were not able to file mercy petitions as on date. The same is established by the following facts:

1. ACHR has filed an RTI application with the President's Secretariat with respect to the mercy petitions pending with the President of India since 1981. The Ministry of Home Affairs vide letter dated 28th March 2013 replied and provided a list of 114 death row convicts who have submitted mercy petition to the President of India. This list shows that none of the above mentioned six death row convicts had filed mercy petitions with the President of India.
2. ACHR has also filed an RTI application with the Governor's Secretariat, Raj Bhavan, Malabar Hill, Mumbai, Maharashtra. Vide letter dated 15th June 2013, the Governor's Secretariat provided a list of names of death row convicts who had submitted mercy petitions to the Governor of Maharashtra from 1st January 1980 to 31st December 2013. This list shows that none of the above mentioned 6 death row convicts had filed mercy petitions with the Governor of Maharashtra.

Copy of the complaint filed with the NHRC dated 27.02.2014 along with the relevant documents is enclosed as **Annexure-3**.

ii. Arbitrariness of the President of India in deciding mercy pleas

The decisions of the President of India either to commute or not to commute the death penalty in respect of mercy petitions remain arbitrary and not guided by any principle. If there has been one consistency, it was with regard to the mercy petitions filed by convicts involved in cases of murder of political personalities or police officials – the President rejected all of the mercy pleas.

ACHR studied 41 cases of mercy pleas considered by the President of India (please refer to **Annexure 4** and **Annexure 5** to this submission). Though opinion of the Government of India advising the President has not been shared with ACHR even under the Right to Information Act, 2005, the nature of the offences and evidence reveal the patterns of arbitrariness of the President of India as given below:

(a) Cases of murder of spouse and children

In cases of mercy petitions by death-row convicts convicted for murder of spouse and children, the President gave different decisions in different cases of similar circumstances and evidence.

Death penalty was commuted into to life imprisonment in *Sunil Baban Pingale vs. State of Maharashtra*¹¹³, where death row convict has been convicted for murder of his mother-in-law and his sister-in-law. The convict also attempted to kill his wife and father-in-law. The conviction was based on accounts of the eyewitness and documentary evidence. Similarly, death penalty of Kheraj Ram has been commuted in *State of Rajasthan vs. Kheraj Ram*¹¹⁴. The accused was

113. 2000 (1) ALD Cri 72, JT 1999 (10) SC 273, (1999) 5 SCC 702

114. 2003(3)ACR2905(SC), AIR2004SC3432

convicted for murder of his wife, his two children and brother in law on suspicion of infidelity on the part of his wife. Though the conviction was based on circumstantial evidence but the same conclusively established the guilt of the accused.

However, the President of India rejected mercy petitions of a several death row convict who had been convicted of similar offences committed in similar circumstances. For example, in *Bheru Singh vs. State of Rajasthan*¹¹⁵, the accused has been convicted for the murder of his wife and his five minor children; in *Saibanna vs. State of Karnataka*¹¹⁶ the accused has been convicted for murder of his wife and his minor daughter on suspicion of infidelity on the part of his wife while on parole in a life imprisonment term; and in *Jafar Ali vs. Union of India and Ors.*¹¹⁷, the accused has been convicted for the murder of his wife and five daughters.

(b) Cases of murder by servants for gains

In two exactly similar cases, the President gave contradictory decisions.

Death penalty on Omprakash was commuted in *Omprakash @ Raja vs. State of Uttaranchal*¹¹⁸ where the accused, a domestic servant, had committed the murder of his master, his son and sister-in-law and also attempted on the life of his master's wife. The conviction was based on oral and documentary evidence. On the other hand, the President rejected the mercy petition of the death-row convict in *Amrutlal Someshwar Joshi Vs. State of Maharashtra*¹¹⁹ where the condemned prisoner, a domestic male servant, was convicted for committing murder of three members of a Sindhi family living in a flat in Bombay City, where he was employed. His conviction was also based on oral and documentary evidence.

(c) Cases of murder due to enmity

In cases of murder due to enmity, the President of India commuted the death penalty in some cases while rejected in other similar cases and circumstances. The President commuted the death penalty of six death-row convicts into life imprisonment in *Shri Ram and Shiv Ram and Anr. Vs. State of UP and Ors*¹²⁰, of five death-row convicts in *Gurdev Singh and Anr. Vs. State of Punjab*¹²¹, of two death-row convicts in *Shobit Chamar and Anr. Vs. State of Bihar*¹²², of two death-row convicts in *Karan Singh and Anr. Vs. State of UP*¹²³, of one death-row convict in *Darshan Singh @ Bhasuri in Darshan Singh alias Bhasuri and Ors. Vs. State*

115. 1994()ACR491(SC),1994(1)ALT(Cri)695

116. 2005(2)ACR1836(SC), 2005(2)ALD(Cri)39

117. Writ Petition (Crl.) No. 190 of 2013

118. 2003(2)ACR1639(SC), 2003(1)ALD(Cri)84

119. AIR1994SC2516, 1995CriLJ400

120. CRIMINAL APPEAL NO.593 OF 1997

121. AIR2003SC4187, 2003(2)ALD(Cri)476

122. 1998(2)Crimes5(SC)

123. 2006(1)ACR912(SC), AIR2006SC210

of Punjab¹²⁴ and of one death-row convict and another death-row convict in *Prajeet Kumar Singh vs. State of Bihar*¹²⁵. Convictions in all these cases were based on oral and documentary evidences.

In contrary, the President rejected the mercy petitions of death-row convicts who have been awarded death penalty for charges as stated above. The President rejected the mercy petitions of two death-row convicts in *Mahesh and Ram Narayan vs. State of Madhya Pradesh*¹²⁶ and one death-row convict in *Sundar Singh Vs. Union of India and Ors.*¹²⁷

(d) Cases of murder by relatives

In most cases of this kind, the President of India rejected the mercy petitions of the death-row convicts. Mercy petition of – one death-row convict in *Praveen Kumar vs. Union of India & Ors.*¹²⁸, two death-row convicts in *Sonia and Sanjeev vs. Union of India*¹²⁹ and one death-row convict in *Suresh Chandra Bahri vs. State of Bihar*¹³⁰, two death-row convicts in *Asharfi Lal and Sons vs. State of U.P.*¹³¹, one death-row convict in *Smt. Shashi Nayar vs. Union of India and Ors.*¹³², one death-row convict in *Surja Ram vs. State of Rajasthan*¹³³ and two death-row convicts in *Suresh and Anr. vs. State of U.P.*¹³⁴ have been rejected.

On the other hand, the President commuted the death penalty of death-row convicts convicted on similar charges. The President converted the death penalty on one death row convict in *Atbir vs. Govt. of NCT of Delhi*¹³⁵ and Jai Kumar in *Jai Kumar vs. State of M.P.*¹³⁶ into life imprisonment.

(e) Cases of rape and murder of minor girls

The decisions of the President of India differed in mercy petitions by the death-row prisoners convicted in cases of rape and murder of girls. The President commuted the death penalty of Santosh and Molai Ram in *Molai and Anr. vs. State of Madhya Pradesh*¹³⁷, Satish in *State of U.P. vs. Satish*¹³⁸, and Bantu in *Bantu vs. State of U.P.*¹³⁹

124. AIR1983SC554, 1983CriLJ985

125. 2008(2)ACR1483(SC), 2008(2)ALD(Cri)434

126. AIR 1987 SC 1346 = (1987) 3 SCC 80

127. Writ Petition (Crl.)No. 192 of 2013

128. 2004(1)ACR503(SC), 2003(4)Crimes358(SC)

129. 2007(2)ACR1708(SC), AIR2007SC1218

130. AIR1994SC2420

131. AIR 1987 SC 1721, (1987) 3 SCC 224

132. 1992()ACR110(SC)

133. AIR1997SC18

134. 2001(2)ACR1020(SC), AIR2001SC1344

135. AIR2010SC3477

136. AIR1999SC1860

137. (1999) 9 SCC 581

138. . (2005) 3 SCC 114

139. . (2008)11SCC113

Whereas in similar cases of rape followed by murder, the President declined to commute the death penalty of Jumman Khan in *Jumman Khan vs. State of UP*¹⁴⁰, Laxman Naik in *Laxman Naik vs. State of Orissa*¹⁴¹ and Shivu & Jadeswamy in *Shivu and Jadeswamy*¹⁴².

(f) Cases of murder of political personalities/police officials

The President have maintained consistency by rejecting all mercy petitions filed by convicts involved in cases of murder of political personalities or police officials. The rejection includes that of- Kehar Singh, Balbir Singh and Satwant Singh in *Kehar Singh and Ors. Vs The State (Delhi Administration)*¹⁴³, Devender Pal Singh Bhullar in *Devender Pal Singh Bhullar Vs. State (NCT of Delhi)*¹⁴⁴, Simon, Gnana Prakash, Madaiah & Bilavendra in *Simon and Ors vs. State of Karnataka*¹⁴⁵, Mohd. Afzal in *State (N.C.T of Delhi) Vs. Najvot Sandhu @ Afsan Guru And Shaukat Hussain Guru Vs. State (N.C.T. of Delhi)*¹⁴⁶, Sukhdev Singh and Harjinder Singh in *State of Maharashtra vs. Sukhdev Singh and Harjinder Singh*¹⁴⁷ and Santhan, Murugan and Arivu in *State through Superintendent of Police, CBI/SIT vs. Nalini and Ors*¹⁴⁸.

(g) Cases of kidnapping followed by murder for gains

It is found that even in cases of murder after kidnapping, the decision of the President was not uniform. The President's decision on mercy petitions by accused convicted in such cases differed from case to case. In *Henry Westmuller Roberts vs. State of Assam*¹⁴⁹, the President rejected the mercy petition of the condemned prisoner, Henry Westmuller Roberts who had been convicted for kidnapping and murder of a 10-year-old boy. The accused along with three others, wanted to extract ransom from the deceased's father. His conviction was based on oral and documentary evidence.

The President however commuted the death penalty on a death-row convict in *Mohan and Ors. Vs. State of Tamil Nadu*¹⁵⁰ and another death-row convict in *Sushil Murmu vs. Sate of Jharkhand*¹⁵¹.

In *Mohan and Ors. Vs. State of Tamil Nadu*¹⁵², two real brothers, along with two others, abducted a 10-year-old boy for huge ransom but killed even before receiving the ransom money.

140. (1991) 1 SCC 752

141. AIR1995SC1387

142. 2007(2)ACR1387(SC)

143. AIR 1989 SC 653 = (1989) 1 SCC 204

144. AIR2002SC1661

145. (2004)2SCC694

146. AIR2005SC3820

147. AIR1992SC2100

148. AIR1999SC2640

149. AIR 1985 SC 823, (1985) 3 SCC 291

150. AIR1998SC2238

151. AIR2004SC394

152. AIR1998SC2238

In this case also, the dead body of the deceased has been recovered at the instance of the accused and their conviction was based on oral and documentary evidence. In *Sushil Murmu vs. State of Jharkhand*,¹⁵³ the death row convict was convicted of kidnapping and murder of a boy in 1996 to please Goddess Kali. His conviction was also based on oral and documentary evidence.

iii. ACHR's 10-Point Principles for Consideration of Mercy Pleas by the Governors of the States and the President of India

Though Asian Centre for Human Rights believes in abolition of death penalty, it is acutely aware that death penalty shall be imposed till it is in the statute books, and the Governors of the States and President of India shall continue to consider mercy pleas against imposition of death penalty.

This submission proves that consideration of the mercy pleas by the Governors and President of India has been reduced to a scam and a blot on the highest constitutional office. The analysis of the 41 mercy pleas considered by the President of India under this submission show that the decisions of the President have been absolutely arbitrary.

Though India does not execute juveniles, pregnant women and those who are mentally unsound, until death penalty is abolished, Asian Centre for Human Rights requests the Law Commission of India to consider the following 10-Point Recommendations on Consideration of Mercy Pleas for Reduction of Death Penalty in India:

Principle 1. *The consequences of inordinate and unexplained delay in the disposal of mercy pleas of condemned prisoners should be considered as grounds for granting mercy, i.e. the commutation of the death sentence into life imprisonment.*

Explanation: Statutory limitations are a part of the administration of justice both in civil and criminal cases. The principle of limitation and inordinate delay in the consideration of mercy pleas by the President must be accepted as grounds to commute death sentences to life imprisonment. The Supreme Court of India has expressed this in a number of judgments, including in the case of *Shatrughan Chauhan v. Union of India*.¹⁵⁴

The death penalty must not be considered only through the prism of the right to life,¹⁵⁵ but also through the absolute prohibition of torture, and other cruel, inhumane and degrading treatment. India has ratified the International Covenant on Civil and Political Rights (ICCPR), and Article 7 of the ICCPR states that, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Further Article 4.2 of the ICCPR provides that “No derogation from articles 6, 7, 8 (paragraphs I and 2),

153. AIR2004SC394

154. (2014) 3 SCC 1

155. Article 21 of the Constitution of India and Article 6 of the International Covenant on Civil and Political Rights

11, 15, 16 and 18 may be made even in time of public emergency which threatens the life of the nation”.¹⁵⁶

The European Court of Human Rights (ECHR) in the case of *Soering v. the United Kingdom*¹⁵⁷ of 7 July 1989 held that “the likelihood of the feared exposure of the death-row convict to the ‘death row phenomenon’” is in breach of Article 3 of the European Convention on Human Rights relating to prohibition of torture. The ECHR considered, among others, the (i) length of detention prior to execution, (ii) conditions on death row and (iii) age and mental state of the convicts. The ECHR held that that “the very long period of time spent on death row (six years in Virginia in the United States) in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant’s extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3 (art. 3).”

The Inter-American Court of Human Rights and Inter-American Commission on Human Rights in a number of judgments such as *Paul Lallion Vs Grenada*¹⁵⁸, *Denton Aitken Vs Jamaica*¹⁵⁹ and *Hilaire v. Trinidad and Tobago*¹⁶⁰ held that prison conditions, together with the anxiety and psychological suffering caused by prolonged periods on death row, constitute a violation of the prohibition of torture and other cruel, inhuman and degrading treatment.

Principle 2. Possibility of reform of the condemned prisoner should be considered as a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Explanation: In the case of *Bachan Singh v. State of Punjab*¹⁶¹, the Supreme Court of India held that one of the principles of “the rarest of rare” doctrine is the requirement that “the State shall by evidence prove that the accused cannot be reformed and rehabilitated”.

In the adjudication of the cases and mercy pleas, neither Supreme Court nor the President of India/Governors of the States have considered the possibility of the convict reforming. For example, death-row convict Mahendra Nath

156. International Covenant on Civil and Political Rights available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

157. Case of *Soering v. the United Kingdom*, (Application no. 14038/88), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"dmdocnumber":\["695496"\],"itemid":\["001-57619"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{)

158. *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 551 (2002) (Paras. 86-90) available at <http://www1.umn.edu/humanrts/cases/55-02.html>

159. *Denton Aitken v. Jamaica*, Case 12.275, Report No. 58/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 763 (2002) (paras. 133-134) available at <http://www1.umn.edu/humanrts/cases/58-02.html>

160. Case of *Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago* (paras.167,168) available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf

161. *Bachan Singh vs State Of Punjab* [AIR 1980 SC 898], [1980 CriLJ 636]

Das¹⁶² was being prosecuted for an offence under Section 302 of the Indian Penal Code on the allegation that he had murdered Rajen Das, Secretary of Assam Motor Workers Union, on 24.12.1990. While he was out on bail in the same case, Mr Das murdered Hare Kanta Das, a truck owner. He was convicted for both murders and awarded the death penalty. His mercy petition was dismissed by the President of India while the Supreme Court held the rejection of the mercy plea to be illegal and commuted the sentence to life imprisonment.

As Mr Das was a repeat offender of murder, it can be said that the possibility of Mr Das being reformed was less than those who have been convicted for the first time offence. Devender Pal Singh Bhullar¹⁶³ had no criminal record but was convicted for terrorism offences solely based on his confession made before a police officer without any corroborating evidence. Though Bhullar had a strong case for possibility of reform than Das, his mercy plea was rejected both by the President and the Supreme Court.

Principle 3. A dissenting judgement at any stage of the proceeding before the Court should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Explanation: The death penalty should be imposed only where there is unanimity among the judges adjudicating the case and considering the highest standards of proof.

There have been a number of instances where the death penalty has been imposed despite dissenting judgments, such as in the following cases:

- 1) In *Devender Pal Singh Bhullar vs. State National Capital Territory of Delhi and Anr.*¹⁶⁴ Justice M.B. Shah of the Supreme Court of India dissented and acquitted Bhullar;
- 2) In *Gurmeet Singh vs. State of Uttar Pradesh*,¹⁶⁵ one of the two judges in the Allahabad High Court were in favour of acquitting Gurmeet Singh contending that the evidence against him was insufficient to prove guilt;
- 3) In *Saibanna Natikar vs. State of Karnataka*,¹⁶⁶ where one of the Karnataka High Court judges was in favour of sentencing Saibanna to life imprisonment arguing that it was “*not a fit case to award death sentence*”;¹⁶⁷
- 4) In *Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh vs. State of Bihar*; Justice M B Shah of the Supreme Court held that the case was not a fit case to

162. Sri Mahendra Nath Das @ Sri Gobinda Das vs. State of Assam [AIR1999SC1926], [1999CriLJ2873]

163. W.P. (CrL.) No. 993 of 2001 decided on 22.03.2002

164. W.P. (CrL.) No. 993 of 2001 decided on 22.03.2002

165. Criminal Appeal No. 1371 of 2004 decided on 28.09.2005

166. Saibanna vs. State of Karnataka (Criminal Appeal No.497 of 200)

167. Saibanna vs. State of Karnataka (Criminal Appeal No.497 of 200)

impose the death penalty on Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and commuted their sentences to life imprisonment and further acquitted Dharmendra Singh @ Dharu Singh;¹⁶⁸ and

- 5) In Ram Deo Chouhan¹⁶⁹ case, Justice K. T. Thomas questioned the death sentence on the ground that the accused's age could not be established to be above 16 years old on the date of the commission of the crime.

Principle 4. Denial of the right to appeal because of the enhancement of punishment by the Supreme Court in the form of death penalty should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Explanation: The right to appeal before the Higher Court is an inherent and integral part of a fair trial. The United Nations safeguards guaranteeing protection of the rights of those facing the death penalty specifically provide: “6. *Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.*”¹⁷⁰

The right to appeal is denied if the Supreme Court enhances the lesser punishment or acquittal by the lower courts into the death penalty. The review petition or curative petition filed subsequently cannot be considered as an appeal before a court of higher jurisdiction.

There are a number of cases in which the Supreme Court has enhanced acquittal by the lower courts into death penalty.

Kheraj Ram was convicted for killing his wife Amru, two children and brother in law in 1992 and was sentenced to death by the trial court. On appeal, the Rajasthan High Court acquitted Kheraj Ram. However, the Supreme Court set aside the acquittal and restored the death sentence awarded by the Trial Court vide its order dated 22 August 2003.¹⁷¹

Similarly, on 8 February 2008, the Supreme Court restored the death sentence awarded by the trial court on Satish of Uttar Pradesh after convicting him in a rape and murder of a minor girl committed in 2001. Satish was acquitted by the High Court.¹⁷²

168. Krishna Mochi & Ors vs. State of Bihar (Appeal (Crl.) 761 of 2001), Supreme Court of India

169. Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam in Criminal Appeal No. 4 of 2000, 31.7.2000

170. Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984 and available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

171. State of Rajasthan Vs. Kheraj Ram (Criminal Appeal No. 830 of 1996 decided on 22.08.2003)

172. State of U.P. vs. Satish [Criminal Appeal Nos. 256-257 of 2005 (Arising out of S.L.P. (Crl.) Nos. 1666-1667 of 2004 decided on 08.02.2005]

The President of India had commuted death sentences of Kheraj Ram and Satish into life imprisonment in 2006 and 2012 respectively¹⁷³ but the condemned prisoners had to go through another procedure to file the mercy pleas following enhancement of sentence by the Supreme Court.

There are a number of cases in which the Supreme Court has enhanced lesser sentences into death penalty.

For example, Simon, Gnanaprakasham, Meesekar Madaiah and Bilavendran were convicted in September 2001 by a special court set up under the Terrorist and Disruptive Activities Prevention Act (TADA) for their involvement in a land mine blast in 1993 that killed 22 people. The special court sentenced them to life imprisonment, but on appeal the Supreme Court increased their sentences to the death penalty in January 2004.

Similarly, **Sonia Choudhary** and **Sanjeev Choudhary**¹⁷⁴ were convicted in May 2004 of the murder of eight relatives in August 2001 and sentenced to death. On appeal, the Punjab and Haryana High Court commuted their sentences to life imprisonment in April 2005. However, the Supreme Court enhanced the life sentence into death penalty in February 2007.

Principle 5. Conviction based on self-incrimination should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Explanation: Article 14(g) of the ICCPR provides that in the determination of any criminal charge against him or her, each person shall, in full equality, “[n]ot to be compelled to testify against himself or to confess guilt”.¹⁷⁵ Section 25 of the Indian Evidence Act provides that any confession made to a police officer is inadmissible. However, the Terrorists and Disruptive Activities (Prevention) Act provides for the admissibility of such confessions. Subsequently, the Unlawful Activities Prevention Act was enacted as the anti-terror legislation and this provision was not included. As a result, in cases where convictions are based solely on confessional statements, no death penalty shall be imposed.

Devender Pal Singh Bhullar’s trial fell far short of international standards for a fair trial. He had no access to a lawyer during his initial detention and trial. He was found guilty on the basis of an unsubstantiated confession made to the police, which he later retracted, claiming it was a false confession made under pressure.

173. See ‘Kalam OKs mercy plea of Jaipur Death Row convict’, *The Indian Express*, 19 October 2006, at: <http://archive.indianexpress.com/news/kalam-oks-mercy-plea-of-jaipur-death-row-convict/15009/>; and ‘Angel of mercy’ Pratibha Patil commutes 30 death row sentences, *India Today*, 4 June 2012, at: <http://indiatoday.intoday.in/story/pratibha-patil-commutes-30-death-row-sentences/1/198933.html>

174. *Sonia and Sanjeev vs. Union of India*, 2007(2)ACR1708(SC), AIR2007SC1218

175. International Covenant on Civil and Political Rights available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Principle 6. *Inability to defend oneself by hiring own lawyer as reflected from appointment of amicus curiae or lawyers from legal aid services by the Courts in all stages of the proceedings should be a mitigating ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.*

Explanation: The Supreme Court of India on more than one occasion has expressed concern that a large majority of those sentenced to death belong to economically and socially backward groups like Scheduled Castes, Scheduled Tribes, and religious minorities. This view can be found in a number of cases, including in *Rajendra Prasad, Etc. vs. State Of Uttar Pradesh* (1979), dissenting judgment in the *Bachan Singh* case¹⁷⁶ (1982), and more recently in *Mohd. Farooq Abdul Gafur and Anr. vs. State of Maharashtra* (2009). In *Shatrughan Chauhan v. Union of India*, the Supreme Court of India¹⁷⁷ stated, “Most of the death row prisoners are extremely poor and do not have copies of their court papers, judgments, etc. These documents are must for preparation of appeals, mercy petitions and accessing post-mercy judicial remedies, which are available to the prisoner under Article 21 of the Constitution. Since the availability of these documents is a necessary pre-requisite to the accessing of these rights, it is necessary that copies of relevant documents should be furnished to the prisoner within a week by the prison authorities to assist in making mercy petition and petitioning the courts.”¹⁷⁸

Principle 7. *Conviction based on per incuriam cases should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.*

Explanation: The Supreme Court has acknowledged that the death penalty has been imposed on the basis of precedents which were declared *per incuriam*, i.e. a decision, which a subsequent court found to be a mistake, occurring through ignorance or forgetfulness of some inconsistent statutory provision or of some binding judicial precedent.

In the case of *Sangeet & ANR vs. State of Haryana*,¹⁷⁹ Justices Madan B. Lokur and K.S. Radhakrishnan recorded the latest admission of error. There are a number of *per incuriam* cases, including the following:

- 1) Dayanidhi Bisoi (*Dayanidhi Bisoi vs. State of Orissa*)¹⁸⁰;
- 2) Mohan Anna Chavan (*Mohan Anna Chavan vs. State of Maharashtra*)¹⁸¹;
- 3) Shivaji @ Dadya Shankar Alhat vs. State of Maharashtra¹⁸²;

176. The dissenting judgment of Justice P N Bhagwati in the *Bachan Singh* case is available at: <http://www.indiankanoon.org/doc/1201493/>

177. (2014) 3 SCC 1

178. (2014) 3 SCC 1

179. *Sangeet v. State of Haryana*, (2013) 2 SCC 452

180. *Dayanidhi Bisoi v. State of Orissa*, AIR2003SC3915

181. *Mohan Anna Chavan V. State of Maharashtra* (CRIMINAL APPEAL NO. 680 OF 2007)

182. *Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra* [(2008) 15 SCC 269]

- 4) Bantu (Bantu vs. state of U.P.)¹⁸³;
- 5) Sattan @ Satyendra and Upendra (State of U.P. vs. Sattan @ Satyendra and Ors.)¹⁸⁴;
- 6) Saibanna (Saibanna vs. State of Karnataka)¹⁸⁵; and
- 7) Ankush Maruti Shinde, Ambadas Laxman Shinde, Babu Appa Shinde, Raju Mashu Shinde, Rajya Appa Shinde and Surja @ Suresh Shinde (Ankush Maruti Shinde and Ors. vs. State of Maharashtra)¹⁸⁶.

Principle 8. Imposition of mandatory death penalty should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Explanation: The Supreme Court of India held that a mandatory death penalty is illegal. However, judgments are delivered routinely, which tantamount to imposition of mandatory death penalty.

For example, Saibanna Natikar was sentenced to death by a trial court in January 2003 for the murder of his second wife and daughter in 1994. At the time of the crime, he had been free on parole from a life sentence for the murder of his first wife. The Karnataka High Court upheld the sentence in October 2003, and the Supreme Court also upheld his sentence in April 2005.

In the case of *Santosh Bariyar vs. State of Maharashtra*, (2009) 6 SCC 498, the Supreme Court observed that the underlying reasoning for the confirmation of Saibanna's death sentence in the 2005 Supreme Court judgment appeared to be that if a person was currently serving a life sentence and convicted of a second offence that merited a life sentence, then the death penalty was mandatory. The Supreme Court stated that such reasoning violated an earlier decision, which had ruled that mandatory death sentences were unconstitutional.

Even though mandatory death penalty has been held illegal by the Supreme Court, the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act (SUA), 2002¹⁸⁷ and the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989¹⁸⁸ continue to provide mandatory death sentence to accused on conviction.

183. Bantu vs. State of U.P (2008)11SCC113

184. State of U.P. v. Sattan @ Satyendra and Ors. (2009)4SCC736

185. Saibanna vs. State of Karnataka [2005(2)ACR1836(SC)], [2005(2)ALD(Cri)39]

186. Ankush Maruti Shinde and Ors. v. State of Maharashtra, AIR2009SC2609

187. Section 3(1)(g)(i) of the SUA Act read as under: “3 Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.- (1) Whoever unlawfully and intentionally-.....(g) in the course of commission of or in attempt to commit, any of the offences specified in clauses (a) to (d) in connection with a fixed platform or clauses (a) to (f) in connection with a ship- (i) causes death to any person shall be punished with death.” The SUA Act, 2002 can be accessed at: http://www.nia.gov.in/acts/The_Suppression_of_Unlawful_Acts_Against_Safety_of_Maritime_Navigation_Act_2002.pdf

188. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 also provides mandatory death sentence. Section 3(2)(i) of the Act provides:

“3.(2). Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

Principle 9. Death penalty imposed solely based on circumstantial evidence should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Explanation: In *Bishnu Prasad Sinha & Anr Vs State of Assam*,¹⁸⁹ a landmark judgment delivered on 16 January 2007, the Supreme Court held that death sentences should not be given if the conviction is based on circumstantial evidence. Justices S. B. Sinha and Markandey Katju delivered the two-bench judgment. The judgment commuted the death sentence to life imprisonment of two appellants, Bishnu Prasad Sinha and Putul Bora, who had been convicted of the rape and murder of a minor girl in Assam. The justices observed “[o]rdinarily, this Court, having regard to the nature of the offence, would not have differed with the opinion of the learned Sessions Judge as also the High Court in this behalf, but it must be borne in mind that the appellants are convicted only on the basis of the circumstantial evidence. There are authorities for the proposition that if the evidence is proved by circumstantial evidence, ordinarily, death penalty would not be awarded.....” [Emphasis supplied]

Principle 10. Making orphan should be a ground for granting mercy, i.e. the commutation of the death sentence into life imprisonment.

Explanation: The Governor of Tamil Nadu commuted death sentence of Ms Nalini, who had been convicted in the Rajiv Gandhi murder case on the ground that “Nalini has a daughter who would become an orphan” if both Nalini and her husband Murugan, who was convicted in the same case were to be executed.¹⁹⁰

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death.”

189. The judgment is available at: <http://indiankanoon.org/doc/1589218/>

190. Letter No. 406 dated 24.04.2000 from Tmt Santha Sheela Nair, Secretary, Home Department to Government of Tamilnadu to Tmt Nalini, Special Prison for Women, Vellor (through the Superintendent, Special Prison for Women, Vellor provided to the Asian Centre for Human Rights vide RTI reply dated 27.8.2013.

Annexure-1: Copy of the complaint with NHRC dated 6 February 2014 on missing mercy plea of Holiram Bordoloi

NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION)
MANAV ADHIKAR BHAWAN, BLOCK-C, G.P.O. COMPLEX,
INA, NEW DELHI- 110023

Fax No.: 011-2465 1332
Home Page : <http://nhrc.nic.in>

Case No. 52/3/0/2014/UC

NOTICE

To

THE SECRETARY
DEPARTMENT OF HOME, GOVT. OF ASSAM,
GUWAHTI

WHEREAS the complaint/intimation dated 06/02/2014 received from SUHAS CHAKMA, DIRECTOR in respect of HOLIRAM BORDOLOI was placed before the Commission on 25/02/2014 .

AND WHEREAS upon perusing the complaint the Commission has passed the following order.

The complainant, an office bearer of Asian Centre for Human Rights, has alleged that a mercy petition was filed by death row convict Holiram Bordoloi of Assam with the President of India, which was forwarded from the office of the Inspector General of Prisons, Assam vide letter No.PRI.826 dated 18.04.2005. The mercy petition was also forwarded to the Government of Assam, Judicial Department vide Inspector General of Prisons letter dated 17.06.2005. A reply received from office of the Inspector General of Prisons, Assam vide letter dated 09.07.2013 states that the mercy petition is still pending with the President of India. However, the "list of mercy petition cases since 1981" received by the President of India from the Ministry of Home Affairs, Government of India vide letter dated 28.03.2013 does not bear the name of the Holiram Bordoloi. The complainant has

requested to trace and consider the mercy petition of Holiram Bordoloi in the light of the rulings given by the Supreme Court of India on 21.01.2014.

Let notice be issued to the Secretary, Ministry of Home Affairs, Government of India, New Delhi and the Secretary, Home, Government of Assam calling for a report in the matter within four weeks.

NOW THEREFORE TAKE NOTICE that you are required to submit the requisite information / Report within 4 weeks from the date of receipt of this notice.

TAKE FURTHER NOTICE that in default the Commission may proceed to take such action as it deems proper.

Given under my hand and seal of the Commission, this the day of 27 February 2014.



(BY ORDER)

ASSISTANT REGISTRAR(LAW)

Encl: Copy of the complaint

Note -> 1. The information / report shall be furnished only by the authority which is called upon to do so.

2. Please quote the **Case No.** referred above in all future correspondence / reports.

CC to:

NNNN

NNNN

✓
SUHAS CHAKMA, DIRECTOR
ASIAN CENTRE FOR HUMAN RIGHTS, C-3/441-C,
(2ND FLOOR), JANAKPURI,
WEST DELHI, DELHI.


ASSISTANT REGISTRAR(LAW)



ASIAN CENTRE FOR HUMAN RIGHTS

C-3/441-C (2nd Floor), Janakpuri, New Delhi - 110058, INDIA

Tel/fax: +91-11-25620583, 25503624; Email: director@achrweb.org; Website: www.achrweb.org

ACHR has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC)

Shri Justice K G Balakrishnan
Chairperson
National Human Rights Commission
Manav Adhikar Bhawan Block-C
GPO Complex, INA,
New Delhi - 110023



6th February 2014

Subject: Complaint against the refusal/failure to consider the mercy petition filed by death row convict, Holiram Bordoloi of Assam since April 2005 till date as a consequence of the mercy petition apparently being lost

Sir,

I am writing to seek the urgent intervention of the National Human Rights Commission against the refusal/failure of the President of India and the State Government of Assam to consider the mercy petition filed by death row convict, Holiram Bordoloi of Assam in April 2005 until today. As it relates to the right to life as well as torture and other cruel, inhuman or degrading treatment of the death row convict, the NHRC must intervene.

The mercy petition of Holiram Bordoloi was forwarded to the President of India from the office of the Inspector General of Prisons, Assam vide letter No.PRI.826 dated 18 April 2005. However, the "list of mercy petition cases since 1981" by the President of India as provided by the Ministry of Home Affairs, Government of India vide letter dated 28 March 2013 pursuant to an RTI application filed by Asian Centre for Human Rights does not include the name of Holiram Bordoloi.

Asian Centre for Human Rights has the reason to believe that the mercy petition of Holiram Bordoloi was lost. This extreme callousness constitutes a gross violation of human rights and must not be condoned under any circumstances.

I. Brief summary of the case

Holiram Bordoloi was one of the accused in connection with the killing of three persons at Nayagaon under Boribazar Outpost in Morigaon district in Assam on 26 November 1996. He was tried by the Sessions Judge, Morigaon in Sessions Case No. 47/99 and 47A/99 found guilty of various offences punishable under Sections 147, 148, 436, 326 and 302 read with Section 149. For the main offence under Section 302 read with Section 149, Holiram Bordoloi was awarded the death sentence by the Sessions Judge on 5 May 2003.

Holiram Bordoloi filed an appeal before the Guwahati High Court of Assam against the death penalty imposed on him. The Guwahati High Court confirmed the death sentence on 9 March 2004.

On 8 April 2005, the Supreme Court [*Holiram Bordoloi Vs. State of Assam* (Appeal (Crl.) 1063 of 2004)] upheld the death sentence of Holiram Bordoloi and vacated the interim stay of execution of the sentence.

II. Mercy petition of Holiram Bordoloi appears to have been lost

Following the confirmation of the death sentence by the Supreme Court, Holiram Bordoloi filed mercy petition with the President of India in 2005. As per RTI information received vide letter dated 9 July 2013 from the office of the Inspector General of Prisons, Assam, the mercy petition of Holiram Bordoloi addressed to the President of India was forwarded from the office of the Inspector General of Prisons, Assam vide letter No.PRI.826 dated 18 April 2005. The mercy petition was also forwarded to the Government of Assam, Judicial Department, Dispur, Assam vide the I.G. of Prisons, Assam vide letter No. PRI.186/89/Pt/96 dated 17 June 2005. The RTI reply received from the office of the Inspector General of Prisons, Assam vide letter dated 9 July 2013 states that the mercy petition of condemned prisoner Holiram Bordoloi (AC/4979) has been pending with the President of India.

A copy of the RTI reply dated 9 July 2013 received from the Office of Inspector General of Prisons, Assam is enclosed as **Annexure-I**.

However, the “list of mercy petition cases since 1981” as received by the President of India as provided by the Ministry of Home Affairs, Government of India vide letter dated 28 March 2013 pursuant to an RTI application filed with Secretariat of

the President of India does not show the name of Holiram Bordoloi. It is clear that the mercy petition of Holiram Bordoloi has been lost.

A copy of the RTI reply 28 March 2013 of the Under Secretary (J-II), Ministry of Home Affairs, Government of India is enclosed as **Annexure-II**.

III. Holiram Bordoloi death penalty a fit case for commutation

Holiram Bordoloi has been in death row since 2003. It has been more than 8 years since he filed the mercy petition in 2005. Clearly, there has been a delay of over eight years in deciding his mercy petition. Shockingly, the status of his mercy petition remains unknown as on date.

As the NHRC is aware, the Supreme Court of India in its landmark judgement on 21 January 2014 in the case of *Shatrughan Chauhan & Anr Vs. Union of India & Ors. (Writ Petition (Criminal No. 55 of 2013))* commuted the death sentences of 15 death row convicts to life imprisonment on the ground of delay in deciding their mercy pleas by the President of India, ranging between 5 and 12 years. The Supreme Court, among others, held that:

“263) It is well established that exercising of power under Article 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every Constitutional duty must be fulfilled with due care and diligence; otherwise judicial interference is the command of the Constitution for upholding its values.”

A copy of the judgment dated 21 January 2014 of the Supreme Court is enclosed as **Annexure-III**.

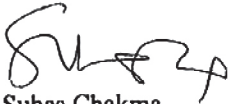
It is clear that the death sentence of Holiram Bordoloi is a fit case for commutation to life imprisonment on the ground of delay as ruled by the Supreme Court of India on 21 January 2014.

Asian Centre for Human Rights therefore requests the National Human Rights Commission to take the following measures:

- Direct the President of India and the Government of Assam to provide all the information relating to the mercy petition filed by death row convict Holiram Bordoloi, and reasons for non-consideration of the mercy petition till date;
- Direct the President of India to consider the mercy petition of Holiram Bordoloi in the light of the Supreme Court judgment dated 21 January 2014 and commute the death sentence to life imprisonment on the ground of delay; and
- Take any other action that the NHRC deems fit and proper.

With kind regards,

Yours sincerely,



Suhas Chakma
Director

Encl: As above.

RTI/Urgent



**GOVERNMENT OF ASSAM
OFFICE OF THE INSPECTOR GENERAL OF PRISONS, ASSAM**

NO.PRI.62/2013/65

Dated, Guwahati, the 9th July, 2013.

To : The Deputy Secretary Govt. of Assam
Home (B) Deptt.

Sub : Information under RTI Act, 05

Ref : Govt. letter No.HMB.258/2007/25 dtd. 10-06-2013.

Sir,

With reference to the subject cited above, I have the honour to state that due to inadvertent mistake the reply to the RTI question has been sent directly and where some of the information could not be furnished, as these are not available in this office. In enclosing copies of the information furnished along with the reply of the RTI question, it is requested to kindly furnish the detailed information from Government.

1. Name of death row convicts who submitted mercy petitions to the Governor of Assam, from 1st January, 1980 to 31st December, 2013. (copy enclosed as Annexure-A).
2. Copy of Govt. vide letter No.HMB.27/2011/161-A.
3. Awaiting orders.

Yours faithfully

Registrar (i/c) & S.P.I.O

O/o Inspector General of Prisons, Assam

Memo NO.PRI.62/2013/65-A

Dated, Guwahati, the 9th July, 2013.

✓ Copy to : Shri Tejang Chakma, C-3/441-C Janakpuri, New Delhi- 110058 for information.

Registrar (i/c) & S.P.I.O

O/o Inspector General of Prisons, Assam

Superintendent
Office of the
Inspector General of Prisons
Assam, Guwahati

26 June 2013



GOVERNMENT OF ASSAM
OFFICE OF THE INSPECTOR GENERAL OF PRISONS::: ASSAM.

NO.PRI.62/2013/62

Dated Guwahati, the 26th June, 2013.

✓ To : Sri Tejang Chakma
C- 3/441-C, Janakpuri,
New Delhi-110058.

Sub : Information under R.T.I.Act.05.

Sir,

With reference to the subject cited above, I am to furnish herewith the following information as sought for :

1. Names of death-row convicts who submitted Mercy petitions to the governor of Assam from 1 January, 1980 to 31st December, 2013 copy enclosed (at Annexure- 1).
2. Not available.
3. Awaiting orders.

Yours faithfully

[Signature]
26/6/13

Registrar (i/c) & S.P.I.O

[Signature]
26-6-13
O/o Inspector General of Prisons, Assam

Superintendent
Office of the

Inspector General of Prisons
Dated Guwahati, the 26th June, 2013.

Memo NO.PRI.62/2013/62-A

Copy to :

1. The Deputy Secretary Govt. of Assam, Home (B) Deptt. Dispur for information with reference to govt. letter No.HMB.258/2007/25 DTD. 10-06-2013.

[Signature]

Registrar (i/c) & S.P.I.O
O/o Inspector General of Prisons, Assam

(Annexure - 1)

Sl. No.	Name of Jail	(a)				NAME OF THE PERSON (S) Awaiting Death Sentence and the offence for which awarded death sentence	WHETHER DEATH SENTENCE CONFIRMED BY THE HIGH COURT DATE WHEN CONFIRMED	ANY MERCY PETITION/ REVIEW PETITION PENDING YES/ NO	BRIEF DETAILS OF THE CASE
		NAME OF THE PERSON EXECUTED	DATE OF EXECUTION	OFFENCE FOR WHICH SENTENCE	BRIEF BACKGROUNDS OF THE CASE				
1	Central Jail, Jorhat	Nil	Nil	Nil	Nil	(i) SRI TOTE DEWAN @ Man Bahadur Dewan - MURDER - Two cases were tried under 1.Session.No.70(S-CJ/03 & 2.Session C/No.71(S-CJ/03 by the Hon'ble Court of Session Judge Sivasagar and finally sentenced the accused to Death Hanging till death.	On 08-08-2005 the Hon'ble Supreme Court India Ref. Special Leave to Criminal Appeal No. 3342/05	Yes Mercy Petition pending	Two cases were registered at I. Moranhat PS C/No.87/2002. Under Sec 302 IPC II Moranhat PS C/No.68/2002 Under sec 447/302 IPC for the offence of gruesomely slaughtering two women and two tender-aged boys and done to death in the early morning of 30-9-2002 while they were asleep at home. Death sentence confirmed vide Cri death sentence No.01/2004 analogous with Cri. Appeal No. 38 (I)/2004 by Judgment order passed on 28-4-2005 by the Hon'ble Gauhati High Court, Guwahati.
2	Special Jail Nagaon	Nil	Nil	Nil	Nil	(ii) AC/979 HOURAM BORDOLOI	Death sentence confirmed by the Hon'ble Gauhati High Court. Dtd. of confirmation on 9-3-2004	Mercy petition pending to the Excellency, the president of India	The Death sentence awarded to accused Houram Bordoloi by the Hon'ble Session Judge Morigan Assam on 5-5-2003 in Session c/no.47 (A)/99 (GR No.731/96) U/S 147/148/436/326/324/302/149 Death Sentence confirmed by the Hon'ble Gauhati High Court on 9-3-2004 and also confirmed by the Hon'ble Supreme Court of India on 15-7-2004. The mercy petition of the condemned prisoner AC/4979 Houram Bordoloi address to the Excellency the president of India forwarded to the I.G of Prisons, Assam vide this office letter No. PBI/836 dtd.18-4-2005 and the mercy petition forwarded to the Govt. of Assam Judicial Deptt. Dispur Assam by the I G of Prisons, Assam vide letter No PBI.186/89/P/96 dtd.17-06-2005
3	District Jail Golaghat	Nil	Nil	Nil	Nil	(iii) JITU PEGU	Appeal petition pending before the Hon'ble Gauhati High Court vide Cri. Appeal No. [1] No.13/2011	No Mercy petition/ review petition pending for disposal	Session case No. 50 (DH)2000/U/S 302 IPC. Sentence awarded by the Hon'ble Session Judge, Dhemajori 4-3-2002

MP Pending with Govt.

✓

Annexure-2: Copy of the complaint with NHRC dated 6 February 2014 on missing mercy plea of Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh

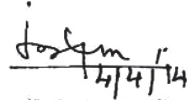
By Speed Post

NO.14/1/2014-JUDICIAL CELL
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIHA MANTRALAYA
(JUDICIAL DIVISION)

NDCC-II, 4th Floor,
Jai Singh Road, New Delhi-110001
Dated 4th April, 2014

Subject: Complaint of Shri Suhas Chakma, Director, Asian Centre for Human Rights, New Delhi in the matter of mercy petitions of death convicts Krishna Mochi & others of Bihar-reg.

In reference to the NHRC's notice dated 21.02.2014 in case No. 684/4/5/2014 on the above matter it is stated that as per records of Ministry of Home Affairs, no mercy petition of the said death convicts have been received till now. However, the Government of Bihar is being requested to forward the mercy petitions, if any, alongwith other documents of the case so that the mercy petitions may be disposed of on merit.

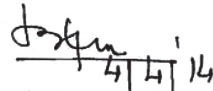


(J. P. Agrawal)
Joint Secretary (Judicial)
Tele: 23438113

To
Assistant Registrar (Law),
National Human Rights Commission
(Law Division)
Manav Adhikar Bhawan,
Block- C, GPO Complex,
INA, New Delhi- 110023

Copy to:

✓ X. Shri Suhas Chakma, Director, Asian Centre for Human Rights,
C-3/441-C(2nd Floor), Janakpuri, New Delhi- 110058



(J. P. Agrawal)
Joint Secretary (Judicial)

2/20/14

www.nhrc.nic.in/display.asp?inc=684/4/5/2014

HOME COMPLAINTS GALLERY CONTACT US

National Human Rights Commission
New Delhi, India

Case Details of File Number: 684/4/5/2014

Diary Number	21988
Name of the Complainant	SUHAS CHAKMA, DIRECTOR
Address	ASIAN CENTRE FOR HUMAN RIGHTS, C-3/441-C, (2ND FLOOR), JANAKPURI, WEST DELHI, DELHI
Name of the Victim	KRISHNA MOCHI,NANHE LAL MOCHI,BIRKUER PASWAN,DHARM
Address	BHAGALPUR CENTRAL JAIL, BHAGALPUR, BIHAR
Place of Incident	BHAGALPUR CENTRAL JAIL BHAGALPUR, BIHAR
Date of Incident	1/1/1991
Status on 2/20/2014	The Complaint is under consideration.

Note: For further details kindly contact National Human Rights Commission, Manav Adhikar Bhawan Block-C, GPO Complex, INA, New Delhi - 110023

Tel.No. 24651330 Fax No. 24651329 E-Mail: [covdnhrc\[at\]nic\[dot\]in](mailto:covdnhrc[at]nic[dot]in), [ionhrc\[at\]nic\[dot\]in](mailto:ionhrc[at]nic[dot]in)

नोट: अन्य जानकारी हेतु कृपया संपर्क करे राष्ट्रीय मानव अधिकार आयोग, मानव अधिकार भवन, ब्लॉक-सी, जी.पी.ओ. कॉम्प्लेक्स, आई.एन.ए., नई दिल्ली - 110023,

फोन नं. 24651330 फैक्स नं. 24651329 ई-मेल : [covdnhrc\[at\]nic\[dot\]in](mailto:covdnhrc[at]nic[dot]in), [ionhrc\[at\]nic\[dot\]in](mailto:ionhrc[at]nic[dot]in)

Disclaimer: Neither NHRC nor NIC is responsible for any inadvertent error that may have crept in the information being published on NET.

अस्वीकरण : नोट पर प्रकाशित सूचना में, अनजाने में हुई किसी भी त्रुटि के लिए न तो एन.एच.आर.सी. या ही एन.आई.सी. जिम्मेदार है।



ASIAN CENTRE FOR HUMAN RIGHTS

C-3/441-C (2nd Floor), Janakpuri, New Delhi - 110058, INDIA

Tel/fax: +91-11-25620583, 25503624; Email: director@achrweb.org; Website: www.achrweb.org

ACHR has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC)

Shri Justice K G Balakrishnan
Chairperson, National Human Rights Commission
Manav Adhikar Bhawan Block-C
GPO Complex, INA,
New Delhi - 110023



Subject: Complaint against the refusal/failure to consider the mercy petitions filed by four death row convicts, Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh of Bihar from March 2003 till date as a consequence of the mercy petition apparently being lost

Sir,

I am writing to seek urgent intervention of the National Human Rights Commission against the refusal and/or failure to consider the mercy petitions filed by four death row convicts, Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh of Bihar in March 2003 until today. As it relates to the right to life as well as torture and other cruel, inhuman or degrading treatment of the four death row convicts, the NHRC must intervene.

The condemned prisoners are currently being held at the Bhagalpur Central Jail, Bihar.

I. Brief summary of the case

The four death row convicts - Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh were accused of killing 35 persons belonging to Bhumihars, a landed caste, at Bara village in Gaya district of Bihar on the night of 13 February 1992.

On 8 June 2001, the Sessions Judge, Gaya-cum-Designated Court under Terrorist and Disruptive Activities (Prevention) Act, 1987 found Krishna Mochi,

Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh alias Dharu Singh guilty and awarded the death sentence. On 15 April 2002, the Supreme Court [*Krishna Mochi & Ors Vs. State of Bihar (Appeal (Crl.) 761 of 2001)*] confirmed their death sentence though Justice M B Shah had dissented against the award of death sentence.

II. Status of mercy petition unknown

Following the confirmation of the death sentence, Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh alias Dharu Singh filed mercy petitions with the President in 2003. The prison authorities claimed that they had forwarded the mercy petitions to the President of India on 3 March 2003.

However, the “list of mercy petition cases since 1981” received by the President of India as provided by the Ministry of Home Affairs, Government of India vide letter dated 28 March 2013 to Asian Centre for Human Rights does not show the names of Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh alias Dharu Singh. **It is clear that their mercy petitions have been lost.**

A copy of the RTI reply 28 March 2013 of the Under Secretary (J-II), Ministry of Home Affairs, Government of India is enclosed as **Annexure-I**.

The lack of information on the status of the mercy petitions filed by death row convict Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh shows the utter callousness of the government in handling cases involving life and death.

III. Death penalty of four convicts fit case for commutation

Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh have been in death row since 2001. They have filed the mercy petitions in March 2003. Clearly, there has been a delay about 11 in deciding their mercy petitions. Shockingly, the status of their mercy petitions remains unknown at present.

As the NHRC is aware, the Supreme Court of India in its landmark ruling on 21 January 2014 in the case of *Shatrughan Chauhan & Anr Vs. Union of India & Ors. (Writ Petition (Criminal No. 55 of 2013)* commuted the death sentences of 15 death row convicts to life imprisonment on the ground of delay in deciding their mercy pleas by the President of India, ranging between 5 and 12 years. The

Supreme Court, among others, held that:

“263) It is well established that exercising of power under Article 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every Constitutional duty must be fulfilled with due care and diligence; otherwise judicial interference is the command of the Constitution for upholding its values.”

A copy of the judgment dated 21 January 2014 of the Supreme Court is enclosed as **Annexure-II**.

It is clear that the death sentence of Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh is a fit case for commutation to life imprisonment on the ground of delay as ruled by the Supreme Court of India on 21 January 2014.

Asian Centre for Human Rights therefore requests the National Human Rights Commission to take the following measures:

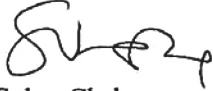
- Direct the President of India and the State Government of Bihar to provide all the information relating to the mercy petitions filed by death row convicts, Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and Dharmendra Singh @ Dharu Singh and reasons for non-consideration of the mercy petition and/or loss of the mercy petitions until today;
- Direct the President of India to consider the mercy petitions of death row convicts, Krishna Mochi, Nanhe Lal Mochi, Bir Kuer Paswan and

Dharmendra Singh @ Dharu Singh in the light of the Supreme Court judgment dated 21 January 2014 and commute their death sentences to life imprisonment on the ground of delay; and

- Any other action that the NHRC deems fit and proper.

• With kind regards,

Yours sincerely,



Suhas Chakma
Director

Encl: As above.

Annexure – 3: Complaint to the NHRC with respect to six death row convicts from Maharashtra who have not been able to file mercy pleas



ASIAN CENTRE FOR HUMAN RIGHTS

C-3/441-C (2nd Floor), Janakpuri, New Delhi - 110058, INDIA
Tel/fax: +91-11-25620583, 25503624; Email: director@achrweb.org; Website: www.achrweb.org

ACHR has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC)

By Hand Delivery

Justice Shri K G Balakrishnan
Chairman, National Human Rights Commission
Manav Adhikar Bhawan Block-C,
GPO Complex, INA
New Delhi - 110023



Subject: Submission of Additional information in NHRC Case No. 1456/30/0/2013 (Prisoners Death Row Convicts) - Maharashtra

Sir,

This refers to our above captioned complaint dated 20th February 2013 in respect to inability of certain death row convicts not being in a position to file their mercy petitions before the President of India or the Governor of the State either because of the ignorance or lack of proper legal assistance. ACHR appreciates the time extended by the NHRC.

In the meantime, ACHR has been able to collect information from Maharashtra that certain death row-convicts were not able to file their mercy petitions.

As ACHR submits information about the inability of certain death row convicts from the State of Maharashtra to file mercy pleas herewith, ACHR urges the NHRC to take progressive position on the issue of death penalty, especially in the light of the Supreme Court judgement dated 21 January 2014 in the case of *Shatrughan Chauhan & Anr Vs. Union of India & Ors. [Writ Petition (Criminal No. 55 of 2013)]*. ACHR believes that NHRC's action in the case of Ram Deo Chauhan was highly appreciated across the spectrum.

ACHR strongly believes that NHRC's intervention on behalf of the death-row convicts who have not been able to file their mercy petitions before the President of India or the Governor of the State either because of the ignorance or lack of proper legal assistance will go a long way to further add to the credibility and standing of the NHRC.

i. Details of death-row convicts who have not been able to file mercy pleas from Maharashtra

The death sentence of the following convicts from Maharashtra has been confirmed by the Supreme Court:

SL. No	Name of death row inmate	Date of confirmation of death penalty by the Supreme Court
01	Narayan Chetanram Choudhary	05.09.2000
02	Jitendra @ Jitu Nayansingh Gehlot	05.09.2000
03	Ambadas Laxman shinde	30.04.2009
04	Ajitsingh Harnamsingh Gujral	13.09.2011
05	Sudam @ Rahul Kaniram Jadav	04.07.2011
06	Rajendra Pralhadrao Wasnik	29.02.2012

However, these death row convicts were not able to file mercy petitions. The same is established by the following facts/evidence:

1. ACHR has filed an RTI application with the President's Secretariat with respect to the mercy petitions pending with the President of India since 1981. The Ministry of Home Affairs vide letter dated 28th March 2013 replied and provided a list of 114 death row convicts who have submitted mercy petition to the President of India. This list shows that none of the above mentioned six death row convicts had filed mercy petitions with the President of India.

The list of Mercy Petition cases received from the Ministry of Home Affairs vide letter dated 28th March 2013 as **Annexure-I**

2. ACHR has also filed an RTI application with the Governor's Secretariat, Raj Bhavan, Malabar Hill, Mumbai, Maharashtra. Vide letter dated 15th June 2013, the Governor's Secretariat provided a list of names of death row convicts who had submitted mercy petitions to the Governor of Maharashtra from 1st January 1980 to 31st December 2013. This list shows that none of the above mentioned 6 death row convicts had filed mercy petitions with the Governor of Maharashtra.

The list of Mercy Petition cases received from the Governor's Secretariat, Raj Bhavan, Maharashtra vide letter dated 15th June 2013 as **Annexure-II**.

3. The death sentence of death row convict Narayan Chetanram Choudhary was confirmed by the Supreme Court on 05.09.2000; Jitendra @ Jitu

Nayansingh Gehlot on 05.09.2000; of Ambadas laxman Shinde on 30.04.2009; of Ajitsingh Harnamsingh Gujral on 13.09.2011; of Sudam @ Rahul Kaniram Jadav on 04.07.2011; and of Rajendra Pralhadrao Wasnik on 29.02.2012.

However, the Annual Reports of the National Crime Records Bureau for the Year 2000 to 2012 show that no death row convict from Maharashtra with the exception of Mr Ajmal Kasab had been hanged/executed during this period. This implies that none of these six death row convicts has been executed till date. Please find attached the NCRB Reports as **Annexure-III (Colly.)**

The above evidence obtained from the Government of India and the State Government of Maharashtra establish beyond any reasonable doubt that the above six death row-convicts have not been able to file their mercy pleas.

The judgments of the Supreme Court of India on the six death row convicts are appended as below:

SL. No	Name of death row convict	Annexure No.
01	Narayan Chetanram Choudhary	Annexure-IV
02	Jitendra @ Jitu Nayansingh Gehlot	Annexure-IV
03	Ambadas Laxman Shinde	Annexure-V
04	Ajitsingh Harnamsingh Gujral	Annexure-VI
05	Sudam @ Rahul Kaniram Jadav	Annexure-VII
06	Rajendra Pralhadrao Wasnik	Annexure-VIII

ii. Requests for interventions

The inability to file mercy pleas because of the ignorance or lack of proper legal assistance is a violation of the right to equality and denial of access to justice. The State has the obligation to provide aid assistance to those who cannot file mercy pleas either before the President of India or the Governors of the State. Further, this denial constitutes a continuing violation. This further reflects the state of criminal justice system where prisoners are locked away forever without any review.

Therefore, I request the NHRC to pass the following orders:

- I. Direct the State Government of Maharashtra to inform the NHRC in which prisons the six death row convicts i.e. Narayan Chetanram Choudhary;

Jitendra @ Jitu Nayansingh Gehlot; Ambadas Laxman Shinde; Ajitsingh Harnamsingh Gujral; Sudam @ Rahul Kaniram Jadav; and Rajendra Pralhadrao Wasnik are currently being held;

2. Direct the State Government of Maharashtra to inform the NHRC as to whether the six death row convicts i.e. Narayan Chetanram Choudhary; Jitendra @ Jitu Nayansingh Gehlot; Ambadas Laxman Shinde; Ajitsingh Harnamsingh Gujral; Sudam @ Rahul Kaniram Jadav; and Rajendra Pralhadrao Wasnik have been able to file mercy pleas;
3. Take necessary measures to ensure that these six death row convicts are able to file mercy petitions either before the President of India or the Governor of the State; and
4. Pass any other order(s) that the NHRC deems fit and proper in the circumstances.

With kind regards,

Yours sincerely,



Suhas Chakma
Director

Encl: As above.



No. RB-2013/Admin/RTI/23805.



GOVERNOR'S SECRETARIAT
RAJ BHAVAN
MALABAR HILL
MUMBAI 400 035

15 June, 2013.

To

✓
Shri Tejang Pradip Kumar Chakma,
C-3/441-C, Janakpuri,
New Delhi 110 058.

Subject : Regarding an application for providing information under
the Right to Information Act 2005 ...

Sir,

With reference to your application dated 26th April, 2013 under Right to Information Act, 2005 received by this office as on 29th April, 2013 requesting to provide information as per points (1 to 3) mentioned in the application.

Point 1, as you required information about the names of death-row convicts who had submitted Mercy Petitions to the Governor of Maharashtra from 1st January 1980 to 31st December, 2013. As per this office available record the following information is as follows.

Sr. No.	Names of death-row convicts	Date of Mercy Petitions received by this office
01	Convict Seema Mohan Gavit	10-10-2008
02	Convict Renuka alias Rinku Kiran Shinde	17-06-2009
03	Convict Ashrat Ansari & Others	04-12-2009
04	Convict Surya Suresh Shinde	17-06-2010
05	Convict Mohan Anna Chavan	17-06-2010
06	Convict Ankush Maruti Shinde	17-06-2010
07	Convict Shivaji alias Dayashankar Alhat	17-06-2010
08	Convict Raju Mhasu Shinde	17-06-2010
09	Convict Rajya Appa Shinde	17-06-2010
10	Convict Bapu Appa Shinde	17-06-2010

Point 2, the required information falls within the jurisdiction of the Home Department, therefore, as required the copy of your application is transferred to the Public Information Officer, Home Department, Mantralya, Mumbai and requested to seek out the said information from the same.

Point 3, the required information falls within the jurisdiction of the President's Secretariat, New Delhi, therefore, as required the copy of your application is transferred to the Public Information Officer, President's Secretariat, Rashtrapati, New Delhi and requested to seek out the said information from the same.

If you desire to prefer an appeal against this decision, you may file the appeal within 30 days after receipt of this letter, to the Appellate Authority & the Deputy Secretary to the Governor (Admin), Raj Bhavan, Malabar Hill, Mumbai 400 035.

Yours,


(Ujjwala S. Dandekar)

Public Information officer and
Under Secretary to Governor (Admin)
Raj Bhavan, Malabar Hill, Mumbai 35.

प्रत आवश्यक कार्यवाहीसाठी:-

राज्य शासकीय जन माहिती अधिकारी,
गृह विभाग, महाराष्ट्र शासन, मंत्रालय,
हुतात्मा राजगुरु चौक, मादाम कामा मार्ग,
मुंबई ४०० ०३२.

महोदय,

उपरोक्त विषयासंदर्भात, श्री तेजंग प्रदीपकुमार चकमा यांचा दिनांक २६ एप्रिल, २०१३ च्या माहिती अर्जाची छायांकित प्रत (सहपत्रासह) सोबत जोडली आहे.

त्या अनुषंगाने, श्री चकमा यांचा दिनांक २६ एप्रिल, २०१३ च्या माहिती अर्जाची छायांकित प्रत माहितीचा अधिकार अधिनियम, २००५ च्या कलम ६(३) मधील तरतूदीनुसार पुढील आवश्यक त्या कार्यवाहीसाठी तसेच अर्जदारांस माहिती अवगत करण्याच्या विनंतीसह आपल्या विभागाकडे हस्तांरित करण्यात येत आहे.

आपली,

सही/-

(उज्वला सं. दांडेकर)

जन माहिती अधिकारी तथा
राज्यपालांच्या अवर सचिव (प्रशासन)
राजभवन, मलबार हिल, मुंबई ०३५.

Copy for necessary action:-

The Public Information Officer,
The President's Secretariat,
Rashtrapati Bhavan,
NEW DELHI - 110 004.

Sir,

I am directed to forward herewith a copy of an application dated 26 April, 2013, received by this office under the **Right to Information Act, 2005** from Shri Tejang Pradip Kumar Chakma, New Delhi of the Right to Information Act, 2005, with a request to send information sought by him if available under intimation to this office.

Yours,


(Ujjwala S. Dandekar)

Public Information Officer and
Under Secretary to Governor (Admin),
Raj Bhavan, Malabar Hill, Mumbai 035.

By Speed Post

F.No.16/01/2013-Judl. Cell
Government of India
Ministry of Home Affairs
(Judicial Division)

4th Floor, NDCC-II Building,
Jai Singh Road, New Delhi- 110001,
Dated 28 March, 2013

To

Shri Tejang Chakma,
C-3/441-C,
Janakpuri,
New Delhi- 110058

Subject: Information sought under RTI Act, 2005 -reg.

Sir,

I am directed to refer to your application dated 18.02.2013, received in Judicial Division of this Ministry on 01.03.2013 through President's Secretariat on the above subject and to furnish the point-wise information as available as under:-

Reply to point 1: List of the death row convicts of which the mercy petitions have been received since 1981 is enclosed as **Annexure**.

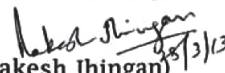
Reply to points 2: The requisite information is privileged under Article 74(2) of the Constitution and cannot be provided under RTI Act. In this regard you may see the order dated 11.07.2012 of Hon'ble Delhi High Court in WP(C) No 13090 of 2006.

Reply to point 3: No order is passed separately, the approval of the President has been received in the original file of mercy petition cases and the same is privileged under Article 74(2) of the Constitution. However, the decision, if any taken, has been given in the above **Annexure**.

2. Under the Right to Information Act, 2005, Shri Satpal Chouhan, Joint Secretary (C & PG), Ministry of Home Affairs, North Block, New Delhi (Tele. No. 23092392) is the Appellate Authority in respect of information furnished by me.

3. This issues with the approval & direction of Joint Secretary (Judl.) & CPIO.

Yours faithfully,


(Rakesh Jhingan)
Under Secretary (J-II)
Tele: 23438101

Encl: as above.

List of mercy petition cases received since 1981

(As on 15.03.2013)

Sl. No.	Name of the condemned Prisoner(s)	Name of the State	Remarks
1.	V.Periasamy	Tamil Nadu	Rejected
2.	Bachan Singh	Punjab	Rejected
3.	Ajmail Singh	Punjab	Rejected
4.	Rajandra Yallappa Jakkal and 3 ors	Maharashtra	Rejected
5.	Kundasamy	Tamil Nadu	Commuted to Life Imprisonment
6.	H.L. Mallayar	Karnataka	Rejected
7.	Guruswamy	Tamil Nadu	Rejected
8.	Raghunath Divtya and one other	Maharashtra	Rejected
9.	Amar Singh and other	Madhya Pd.	Rejected
10.	Joginder Singh	Punjab	Rejected
11.	Persuram Dhanak and other	Bihar	Rejected
12.	Marimuthu Thever	Tamil Nadu	Rejected
13.	Chandru	Tamil Nadu	Rejected
14.	S.K.Parmar	Gujarat	Rejected
15.	Meharchand	Rajasthan	Rejected
16.	Chinnaraj	Tamil Nadu	Commuted to Life Imprisonment
17.	Balbir Singh	Punjab	Rejected
18.	Mahali Nadar and two others	Tamil Nadu	Rejected
19.	Gurtej Singh	Punjab	Rejected
20.	Jagir Singh and two others	Punjab	Rejected
21.	Javad Ahmad Abdul Hamid Pawale	Maharashtra	Rejected
22.	Lal Chand Misra	Uttar Pradesh	Rejected
23.	C.K.Banker	Maharashtra	Commuted to Life Imprisonment
24.	Harbhajan Singh	Jammu & Kashmir	Commuted to Life Imprisonment
25.	Nana Bhai charmale	Maharashtra	Commuted to Life Imprisonment
26.	Raj Kumar	Chandigarh	Rejected
27.	Gurcharan Singh and other	Punjab	Rejected
28.	Bhagwan Patilba Palve	Maharashtra	Rejected
29.	Tukaram and other	Maharashtra	Rejected
30.	Shivaji Jaysing Babar	Maharashtra	Rejected
31.	Sukhvinder Singh and other	Haryana	Rejected
32.	Sawai Singh	Rajasthan	Rejected
33.	H.W.Roberts	Assam	Rejected
34.	Lok Pal Singh	Madhya Pd.	Commuted to Life Imprisonment
35.	Umaid Singh	Rajasthan	Rejected
36.	Ekambaran Chettiar	Tamil Nadu	Rejected
37.	Jayaprakash	Tamil Nadu	Rejected
38.	Haja Mohideen	Tamil Nadu	Rejected
39.	Bhajan Singh and other	Punjab	Rejected
40.	Samai Pal	Uttar Pd.	Rejected
41.	Subramani	Tamil Nadu	Rejected
42.	Balyogi Avdhoot	Rajasthan	Rejected
43.	Bhola Sao	Bihar	Rejected
44.	Lakhmi	Haryana	Rejected
45.	Paramhans Yadav	Bihar	Rejected
46.	Mahesh and other	Madhya Pd.	Rejected
47.	Jumman	Uttar Pd.	Rejected
48.	Natraya Gounder and other	Tamil Nadu	Rejected
49.	Darshan Singh	Punjab	Rejected
50.	Satwant Singh & Kehar Singh	Delhi	Rejected
51.	Gulab Singh	Haryana	Rejected
52.	Daya Ram	Uttar Pd..	Commuted to Life Imprisonment
53.	Asharfi Lal and Babu	Uttar Pd.	Rejected
54.	Krishna	Uttar Pd.	Rejected
55.	Balakrishnan	Kerala	Rejected
56.	Raj Gopal	Jammu & Kashmir	Rejected
57.	Konpai Buragohan	Assam	Rejected
58.	Muthukutty Chandran	Kerala	Rejected
59.	Sukumar Burman & Karthik	West Bengal	Rejected
60.	Sevakaperumal & Esakimuthu	Tamil Nadu	Rejected
61.	Ramjeet Singh & Shayolal	Rajasthan	Rejected
62.	Sukhdev Singh & Harjinder Singh	Maharashtra	Rejected
63.	Tayappa Yellappa Mallade	Maharashtra	Rejected

64.	R. C. Jadhav, V. R. Jadhav C.R.Jadhav	Maharashtra	Rejected
65.	Laxman Nayak	Orissa	Rejected.
66.	Bheru Singh	Rajasthan	Rejected
67.	A.S.Joshi	Maharashtra	Rejected.
68.	T.G.Shankar	Tamil Nadu	Rejected.
69.	Suresh Bahri	Bihar	Rejected.
70.	Ravji @ Ram Chander	Rajasthan	Rejected
71.	Uma Shankar	Madhya Pd.	Rejected
72.	Surja Ram	Rajasthan	Rejected
73.	Kanta Tiwari	Madhya Pd.	Rejected
74.	G.V. Rao & S.C.Rao	Andhra Pd.	Commuted to life Imprisonment
75.	Dhananjay Chatterjee	West Bengal	Rejected
76.	Kheraj Ram	Rajasthan	Commuted to Life Imprisonment
77.	R. Govindasamy	Tamil Nadu	Commuted to Life Imprisonment
78.	Shyam Manohar,Sheo Ram, Prakash, Suresh,Ravinder and Harish	Uttar Pradesh	Commuted to life imprisonment
79.	Dharmender Kumar and Narendra Yadav	Uttar Pradesh	Commuted to life imprisonment.
80.	Piara Singh,Sarabjit Singh, Gurdev Singh and Satnam Singh	Punjab	Commuted to life imprisonment
81.	Shobhit Chamar	Bihar	Commuted to life imprisonment
82.	Mohan & Gopi	Tamil Nadu	Commuted to life imprisonment
83.	Molai Ram and Santosh Yadav	Madhya Pradesh	Commuted to life imprisonment
84.	S. B. Pingale	Maharashtra	Commuted to life imprisonment
85.	Jaikumar	Madhya Pradesh	Commuted to life imprisonment
86.	Mahendra Nath Das	Assam	Rejected
87.	Devender Pal Singh	Delhi	Rejected
88.	Sattan & Guddu	Uttar Pradesh	Commuted to life imprisonment
89.	Santhan, Murugan and Arivu	Tamil Nadu	Rejected
90.	Sushil Murmu	Jharkhand	Commuted to life imprisonment
91.	Shiek Meeran, Selvam and Radhakrishnan	Tamil Nadu	Commuted to life imprisonment
92.	Om Prakash	Uttarakhand	Commuted to life imprisonment
93.	Satish	Uttar Pradesh	Commuted to life imprisonment
94.	Karan Singh & Kunwar Bahadur Singh	Uttar Pradesh	Commuted to life imprisonment
95.	Prajeet Kumar Singh	Bihar	Commuted to life imprisonment
96.	Laliya Doom and Shivlal	Rajasthan	Commuted to life imprisonment
97.	Bandu Baburao Tidake	Karnataka	Commuted to life imprisonment
98.	Bantu	Uttar Pradesh	Commuted to life imprisonment
99.	Mohd. Ajmal Mohd. Amir Kasab	Maharashtra	Rejected
100.	Atbir	Delhi	Commuted to life imprisonment
101.	Saibanna	Karnataka	Rejected
102.	Mohd. Afzal Guru	Delhi	Rejected
103.	Simon,GnanaPrakash, Madaiah & Bilavendra	Karnataka	Rejected
104.	Suresh & Ramji	Uttar Pradesh	Rejected
105.	Gurmeet Singh	Uttar Pradesh	Rejected
106.	Jafar Ali	Uttar Pradesh	Pending
107.	Dharam Pal	Haryana	Pending
108.	Praveen Kumar	Karnataka	Pending
109.	Sonia and Sanjeev	Haryana	Pending
110.	Sunder Singh	Uttarakhand	Pending
111.	Shivu and Jadeswamy	Karnataka	Pending
112.	B.A.Umesh	Karnataka	Pending
113.	Balwant Singh Rajoana	Chandigarh	Pending
114.	Maganlal	Madhya Pradesh	Pending

Annexure–4: List of mercy pleas of 41 condemned prisoners considered by the President of India and analysed by ACHR for this submission

S I . No.	Name of condemned prisoner	Name of State	Remarks
1	Kehar Singh, Balbir Singh and Satwant Singh	NCT of Delhi	Rejected
2	Devender Pal Singh Bhullar	NCT of Delhi	Rejected
3	Simon, Gnana Prakash, Madaiah & Bilavendra	Karnataka	Rejected
4	Mohd. Afzal	NCT of Delhi	Rejected
5	Sukhdev Singh and Harjinder Singh	Maharashtra	Rejected
6	Santhan, Murugan and Arivu	Tamil Nadu	Rejected
7	Amrutlal Someshwar Joshi	Maharashtra	Rejected
8	Sunil Baban Pingale	Maharashtra	Accepted
9	Mohd. Ajmal Mohd. Amir Kasab	Maharashtra	Rejected
10	Javed Ahmed Abdul Hamid Pawala	Maharashtra	Rejected
11	Mahesh and Ram Narayan	Madhya Pradesh	Rejected
12	Jumman Khan	Uttar Pradesh	Rejected
13	Asharfi Lal & Babu	Uttar Pradesh	Rejected
14	Raj Gopal Nayar	Jammu & Kashmir	Rejected
15	Laxman Naik	Orissa	Rejected
16	Bheru Singh	Rajasthan	Rejected
17	Suresh Chandra Bahri	Jharkhand	Rejected
18	Surja Ram	Rajasthan	Rejected
19	Gentele Vijayavar-dana Rao & Challap-athy Rao	Andhra Pradesh	Accepted
20	Kheraj Ram	Rajasthan	Accepted
21	Shyam Manohar, Sheo Ram, Prakash, Suresh, Ravinder and Harish	Uttar Pradesh	Accepted
22	Gurdev Singh, Satnam Singh, Piara Singh, Sarabjit Singh and Jasvinder Singh	Punjab	Accepted
23	Shobit Chamar & Shiv Prakash	Bihar	Accepted
24	Mohan	Tamil Nadu	Accepted
25	Santosh and Molai Ram	Madhya Pradesh	Accepted

26	Jai Kumar	Madhya Pradesh	Accepted
27	Sushil Murmu	Jharkhand	Accepted
28	Omprakash	Uttaranchal	Accepted
29	Satish	Uttar Pradesh	Accepted
30	Karan Singh & Kanwar Bahadur Singh	Uttar Pradesh	Accepted
31	Prajeet Kumar	Bihar	Accepted
32	Bantu	Uttar Pradesh	Accepted
33	Atbir	NCT of Delhi	Accepted
34	Saibanna	Karnataka	Rejected
35	Suresh & Ramji	Uttar Pradesh	Rejected
36	Gurmeet Singh	Uttar Pradesh	Rejected
37	Praveen Kumar	Karnataka	Rejected
38	Sonia & Sanjeev	Haryana	Rejected
39	Sundar Singh	Uttaranchal	Rejected
40	Shivu & Jadeswamy	Karnataka	Rejected
41	Maganlal Barela	Madhya Pradesh	Rejected
42	Jafar Ali	Uttar Pradesh	Rejected
43	Darshan Singh @ Bhasuri, Joga Singh, Sadha Singh, Bakhshish Singh, Sarbjit Singh, Manohar Singh, Darshan Singh & Swaran Singh	Punjab	Rejected

Annexure 5: Briefs of the cases of mercy pleas of 41 condemned prisoners considered by the President of India and analysed by ACHR for this submission

i. Brief of cases of murder due to enmity commuted by President

In *Shri Ram and Shiv Ram and Anr. Vs. State of UP and Ors.*¹⁹¹ the six death-row convicts had committed the murder of five persons including a boy of ten years who had been assaulted and thrown into the fire and roasted alive while three of the deceased were beheaded and the 5th deceased who sustained firearm injuries died in the hospital subsequently. Conviction of the accused was based on oral & documentary evidence.

In *Gurdev Singh and Anr. Vs. State of Punjab*¹⁹², the five death-row convicts were convicted for murder of 15 persons, four of them children in the age group of 7-15 years, besides causing grievous injuries to eight others. The conviction was based on oral & documentary evidence.

In *Shobit Chamar and Anr. Vs. State of Bihar*¹⁹³, the two death row convicts - Shobit Chamar & Shiv Prakash- along with their accomplices attacked the deceased's house during the night intervening between January 1 and 2, 1989, looted the valuables and murdered six male members of the deceased family, including two minor boys, and also assaulted the female members to take revenge for murders of brother and a nephew of Shobit Chamar. Their conviction was based on oral and documentary evidence .

In *Karan Singh and Anr. Vs. State of UP*¹⁹⁴, Karan Singh & Kanwar Bahadur Singh were convicted for murder of five persons out of long standing enmity and their conviction was based on oral and documentary evidence.

In *Darshan Singh alias Bhasuri and Ors. Vs. State of Punjab*¹⁹⁵ the death-row convict along with others, was convicted for murder of five persons and injuries to three others of the family of one Mohinder Singh in an attack at his farm house in the village of Kaile in Punjab. His conviction was based on oral and documentary evidence.

In *Prajeet Kumar Singh vs. State of Bihar*¹⁹⁶, Prajeet Kumar, the death-row convict was convicted for murder of minor boy, son of the family where the accused has been staying as paying guest, simply for grudge he had with the deceased's father for asking him to clear his outstanding dues in respect of food and room rent. He had also attacked the family head and his wife, his elder

191. CRIMINAL APPEAL NO.593 OF 1997

192. AIR2003SC4187, 2003(2)ALD(Cri)476

193. 1998(2)Crimes5(SC)

194. 2006(1)ACR912(SC), AIR2006SC210

195. AIR1983SC554, 1983CriLJ985

196. 2008(2)ACR1483(SC), 2008(2)ALD(Cri)434

son Prakash Kumar, daughter Kiran Kumari and niece Pooja Kumari, with the murder weapon. His conviction was based on oral and documentary evidence.

ii. Brief of cases of murder due to enmity confirmed by President

In *Mahesh and Ram Narayan vs. State of Madhya Pradesh*¹⁹⁷, the father-son duo, Ram Narayan and his son Mahesh, was convicted for murder of five persons namely Puran Baraua, his wife, Narbad Bai, his mother, Mula Bai, his daughter Kumari Nanhi Bai and his neighbour Gulab. Their conviction was based on oral and documentary evidence.

*Sundar Singh Vs. Union of India and Ors*¹⁹⁸ is a case where the death-row convict, Sundar Singh, was convicted for murder of five members of a family by setting their house of fire while he killed another family member who sustained grievous burn injuries and tried to escape the fire. His conviction was also based on oral and documentary evidence.

iii. Brief of cases of murder by relatives rejected by the President

In *Praveen Kumar vs. Union of India & Ors*¹⁹⁹, the death-row convict, Praveen Kumar, was convicted for murder of his aunt, her son Govinda, her daughter Sakuntala and her minor grand-daughter Deepika. He has been convicted based on circumstantial evidence and recoveries at his behest.

*Sonia and Sanjeev vs. Union of India*²⁰⁰ is a case where the death-row convicts, Sonia & Sanjeev, were convicted for murder of Sonia's father Relu Ram, mother Krishna, brother Sunil, sister-in-law Shakuntala, sister Priyanka @ Pamma, nephew Lokesh, her nieces Shivani and Preeti for gain of Sonia's paternal properties. Their conviction was based on circumstantial evidence.

In *Suresh Chandra Bahri vs. State of Bihar*²⁰¹, Suresh Chandra Bahri, the death-row convict, was convicted for murder of his wife Urshia Bahri and his two children- Richa Bahri and Saurabh Bahri- for gain. His conviction was based on circumstantial evidence.

In *Asharfi Lal and Sons vs. State of U.P.*²⁰², the two accused namely, Asharfi Lal & Babu, were convicted for the murder of two daughters of his cousin over a property dispute. Their conviction was based on oral and documentary evidence.

In *Smt. Shashi Nayar vs. Union of India and Ors*²⁰³, Raj Gopal Nayar, the accused, was convicted for committing murder of his father and step-brother and his conviction was based on oral and documentary evidence.

197. AIR 1987 SC 1346, (1987) 3 SCC 80

198. Writ Petition (Crl.)No. 192 of 2013)

199. 2004(1)ACR503(SC), 2003(4)Crimes358(SC)

200. 2007(2)ACR1708(SC), AIR2007SC1218

201. AIR1994SC2420

202. AIR 1987 SC 1721, (1987) 3 SCC 224

203. 1992()ACR110(SC)

In *Surja Ram vs. State of Rajasthan*²⁰⁴, the death-row convict Surja Ram was convicted for murder of his two nephews and his sister Niko Bai. He also attempted on the lives of his niece and sister-in-law Phoola Devi over a dispute over a piece of land. His conviction was based on oral and documentary evidence.

In *Suresh and Anr. vs. State of U.P.*²⁰⁵, Suresh & his brother-in-law Ramji were convicted for murder of the former's brother and wife and their three minor children for gain; and their convictions were based on oral and documentary evidence.

iv: Brief of cases of murder by relatives commuted by the President

In the following cases convictions were based on oral and documentary evidences. In *Atbir vs. Govt. of NCT of Delhi*²⁰⁶, the death-row convict had been convicted for committing the murder of his step-mother, step-brother and step-sister over dispute over division of properties by his father while in *Jai Kumar vs. State of M.P.*²⁰⁷, the accused has been convicted for murder of his sister-in-law and niece when the sister-in-law resisted his attempt to rape her.

v: Brief of cases of rape and murder of minor girls commuted by the President

In *Molai and Anr. vs. State of Madhya Pradesh*²⁰⁸, the two death-row prisoners were convicted for rape on a 16-year-old followed by her murder. Their conviction was based on oral and documentary evidence.

*State of U.P. vs. Satish*²⁰⁹ is a case where the accused committed rape on a five year old girl and killed her to avoid detection. His conviction was based on circumstantial but conclusive evidence. In *Bantu vs. State of U.P.*²¹⁰, the accused was convicted for rape and killing a five-year-old girl. He was caught red-handed inserting a long wood stick into the vagina to kill her.

vi: Brief of cases of rape and murder of minor girls rejected by the President

*Jumman Khan vs. State of UP*²¹¹ is a case where the accused was convicted for committing rape and murder of a six-years-old girl. His conviction was based on oral and documentary evidence. In *Laxman Naik vs. State of Orissa*²¹², the accused has been convicted for rape and murder of his 7 year-old niece. His conviction was based on circumstantial evidence. In *Shivu and Jadeswamy*²¹³, the two accused were convicted for rape and murder of a young girl of below 18 years. Their conviction was based on circumstantial evidence.

204. AIR 1997SC18

205. 2001(2)ACR1020(SC), AIR2001SC1344

206. (2010) 9 SCC 1

207. The judgment is available at: <http://indiankanoon.org/doc/1178821/>

208. (1999) 9 SCC 581

209. (2005) 3 SCC 114

210. (2008)11SCC113

211. (1991) 1 SCC 752

212. AIR1995SC1387

213. 2007(2)ACR1387(SC)

vii: Brief of cases of murder of political personalities/police officials

In *Kebar Singh and Ors. Vs The State (Delhi Administration)*²¹⁴, the accused were convicted for criminal conspiracy and murder of late Prime Minister Indira Gandhi to avenge the lurching of Bluestar Operation on the Golden Temple at Amritsar in Punjab. Their conviction was based on oral and documentary evidence. *Devender Pal Singh Bhullar Vs. State (NCT of Delhi)*²¹⁵ is a case where the accused Devender Pal Singh Bhullar along with other accused viz. Kuldeep, Sukhdev Singh, Harnek, Devenderpal Singh and Daya Singh Lahoria were branded as being members of a terrorist organization called Khalistan Liberation Force, and carrying out assassination attempt on the life of Mr. Bitta by causing bomb blasts on 11.09.1993 in which 9 persons were killed. Bhullar's conviction was based on an alleged confessional statement by him under the Terrorist and Disruptive Activities Act. In this case, delivering a dissenting view, MB Shah, J. held that the accused should be acquitted on the ground that the alleged confessional statements based on which the accused has been convicted were not voluntary or truthful.

In *Simon and Ors vs. State of Karnataka*²¹⁶, the accused who were alleged members of the infamous Veerappan gang, were convicted for killing 22 government officials in land mine explosions and subsequent gun attack. Their conviction was considered to be based on oral and documentary evidence.

In *State (N.C.T of Delhi) Vs. Najvot Sandhu @ Afsan Guru And Shaukat Hussain Guru Vs. State (N.C.T. of Delhi)*²¹⁷, Mohd. Afzal who has been executed in 2013, along with others was convicted for involvement in the infamous 13th December 2001 attack on the Indian parliament House in which five heavily armed persons practically stormed the Parliament House complex and inflicted heavy casualties on the security men on duty. Nine persons including eight security personnel and one gardener succumbed to the bullets of the terrorists and 16 persons including 13 security men received injuries. The five terrorists were ultimately killed. His conviction was based on circumstantial evidence.

*State of Maharashtra vs. Sukhdev Singh and Harjinder Singh*²¹⁸ is a case where the accused, Sukhdev Singh and Harjinder Singh, were convicted for murder of then Chief of the Armed Forces, General A.S. Vaidya on 10th August, 1986 at Pune allegedly to avenge the killing of Sikh militants in the Blue Star Operation at the Golden Temple in Amritsar. Their conviction was also based on circumstantial evidence.

In *State through Superintendent of Police, CBI/SIT vs. Nalini and Ors.*²¹⁹, Santhan, Murugan and Arivu along with others were convicted under the TADA for conspiracy and killing 19 persons including former Prime Minister Rajiv Gandhi in a suicide bomb explosion on 21-5-1991 at a place called Sriperumpudur in Tamil Nadu. Their conviction was based on confessional statements and circumstantial evidences.

214. AIR 1989 SC 653 = (1989) 1 SCC 204

215. AIR2002SC1661

216. (2004)2SCC694

217. AIR2005SC3820

218. AIR1992SC2100

219. AIR1999SC2640

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