

## Capital Punishment

# Cheating The Hangman

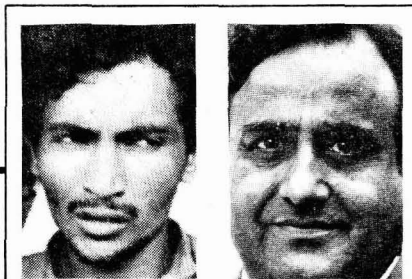
**C**ONVICTED killers Billa and Ranga were expected to make headlines last fortnight. Make news, they certainly did, but not the way everybody anticipated. Instead of being walked to the gallows on the morning of Sunday, November 8, 1981, in retribution for the brutal murder of Gita and Sanjay Chopra on August 26, 1978, the two found their case at the crux of an unexpected Supreme Court decision staying all executions till January. The reprieve, albeit temporary, came just hours before their scheduled execution, one week after President Neelam Sanjiva Reddy turned down their plea for clemency.

That, precisely, was what the stay of execution was all about. In an extraordinary sitting, a special three-member bench of the Supreme Court consisting of Chief Justice Y.V. Chandrachud and Justices Baharul Islam and A.P. Sen, stayed all executions until the court made up its mind—whether or not the grant or denial of clemency by the President could be scrutinised in court. Ranga's defence counsel Rajendra Kumar Garg, 51, argued that Article 72 of the Constitution needed to be examined in terms of the scope it gave the President to grant mercy, a pardon, remit or abridge sentences.

Said the judges in their decision, "We do not know whether the Government of India has formulated any uniform standard or guidelines by which the exercise of constitutional power under Article 72 is intended to be or is governed." The bench also passed another order giving permission to five correspondents, including one from INDIA TODAY (see box), to interview the condemned prisoners—if the prisoners were willing.

**Questions:** The two orders set off ripples of conjecture in the legal community and the public. Popular reaction was that the two convicts had escaped the gallows—a misinformed view since the court had merely put off the hangings while it examined the ramifications of Article 72. Legal opinion was more measured. Said Garg: "The Supreme Court is not, let us be very clear, questioning the verdict of the courts imposing the death sentence, nor is it casting aspersions on the President or on why he did not commute the sentence." The court, according to Laxmi Mall Singhvi, 51, a senior Supreme Court advocate, wanted to consider whether the power to pardon and show mercy are accountable in judicial terms. Said Singhvi, who is currently chairman of the National Committee for the Abolition of the Death Penalty: "The question will be whether the exercise of mercy power should be justiciable in courts of law, and if so to what extent."

The Supreme Court stay was based on these novel arguments, and may mark a milestone in jurisprudence. It was the second of its kind and entirely in keeping with the court's 1979 stay of all executions to decide the constitutional validity of capital punishment. In upholding the death penalty, the Supreme Court ruled, however, that it should be applied only in the "rarest of rare cases" with "special reasons" in writing. Garg's arguments were a logical if unusual extension of this ruling.



Billa (left) and Garg: legal milestone

## Billa

### Angry Prisoner

**W**ARD 16 of Tihar Jail has eight cells which look out into a large courtyard. This is the dreaded Death Row where five men wait for the law to take its course.

The cells themselves come as something of a surprise. Billa's was roomy, clean, and starkly empty. At the rear of the cell was a toilet and a small bathing-space. Hardly the popular picture of a dank, dark and close space in which a man awaits death. Billa, Ranga, and the three other inmates of Death Row (Ujagar Singh, Kartar Singh and Moham-

mad Maqbool Butt) are hardly starved of human contact: each of them is eyeball-to-eyeball with a prison guard all day.

The interview with Billa turned out to be an anti-climax. (Ranga had refused, in writing, to meet the press). Through 45 minutes of dogged questioning, and the cynical guffaws of a bunch of 14 prison guards and officials who crowded around the tiny enclosed space in front of Billa's cell, the wiry convict refused to crack. Five feet nothing, his hair closely cut, a

At the back of the arguments ran a strong feeling that the executive needs to be much more rationally guided in its exercise of discretion in such cases. To take the most recent case, the death sentence on convicted killer Sunil Batra was commuted to life imprisonment while Kartar Singh and Ujagar Singh, convicted for the murder of Vidya Jain in 1973, continue in Death Row.

**Formula:** "One of the basic principles underlying our Constitution is that no power is arbitrary," says veteran jurist Vithal Mahadev Tarkunde, 72. "So this is not really a question of the Supreme Court's interference with executive power, but whether power is absolute and arbitrary or whether it is subject to certain norms and rules." In fact, since the President is constitutionally bound by the advice of the council of ministers, it is the Government which decides whether or not to show mercy. Jurists recognise that no rigid formula can be prescribed but want some uniformity of standards to ensure that the executive takes its decisions after carefully considering all relevant facts. "The outcome of this case, which we should not speculate about, will nevertheless exert a civilising influence on criminology," said a constitutional expert.

What is possibly the most significant feature of the case is that if the Supreme Court is able to enunciate the accountability of executive power, it could pave the way for an aggrieved party of any social or economic standing to apply to the court whenever, in future, the President rejects a mercy petition or, conversely, grants mercy to an undeserving criminal. But this carries its own pitfalls. As Singhvi argues: "The integrity of executive power should not be shattered."

The two men, whose case prompted these arguments, have at least another two months to live. But lodged in their sparse cells in the capital's Tihar Jail, they are oblivious of the legal battle they have inadvertently set afoot. —CHAITANYA KALBAG

sparse beard framing his ferret-like teeth, Jasbir Singh (that is Billa's real name) only uttered a series of cocky Billa-isms, echoing countless lines of dialogue in the manner of a derring-do Hindi film hero.

Billa did not exhibit a trace of remorse. His only emotion was anger—a sudden flash of fury when pressed too hard by a questioner. He said he had not killed the Chopra children and by a weird twist of logic, said he was being hanged because of a conspiracy. His defiant performance, however, was marred by one inescapable fact: that he and Ranga had brutally and cold-bloodedly destroyed the lives of two innocent teenagers. If they make that final walk to the gallows, few, if any, will mourn their passing.