

## DEATH PENALTY

# Hanging Fire

**T**HE QUALITY of justice seemed to be under tremendous strain last fortnight. At issue was the vexatious question of capital punishment. As usual, the shock waves emanated from an indecisive Supreme Court. In November 1981, the court had stayed executions all over the country after it was contended in the case of Kuljit Singh (alias Ranga) that the President's mercy powers under Article 72 of the Constitution were justiciable—only to vacate the stay 10 weeks later, saying it would examine the question when a more appropriate occasion arose.

This time the court grappled with the specific method of meting out justice to a killer under sentence of death. On May 6, Chief Justice Y.V. Chandrachud and Justices E.S. Venkataramiah and Sabyasachi Mukherjee stayed Deendayal's execution after his lawyers contended that death by hanging, the procedure laid down by Section 354(5) of the Criminal Procedure Code (CrPC) was cruel and unconstitutional. Over the following week, the court halted the executions of 12 more convicts—also on the question of hanging.

Predictably, the stay orders stirred protests against what was seen as clemency towards the sentenced killers. Snatched just 24 hours before the hangman's noose was to fall over their necks were Kartar Singh and Ujagar Singh, awaiting death in Delhi's Tihar Jail for Vidya Jain's murder in 1973, and Rajendra Jakkal, Munawar Shah, Dilip Sutar and Shantaram Jagtap, killers of 10 Pune citizens in 1976, who won a new lease of life barely 48 hours before their scheduled executions in Pune's Yerawada Jail.

**Stayed Executions:** The latest series of convulsions over the death sentence began on February 17, when Justices O. Chinnappa Reddy and R.B. Misra ruled on an appeal by sentenced Tamil Nadu convict T.V. Vaitheeswaran that if delay in the execution of death penalty exceeded two years, the sentence was liable to be commuted to one of life imprisonment. In March last year, a three-judge bench of the court had rejected Vaitheeswaran's mercy plea, but 11 months later it suddenly seemed to notice that Vaitheeswaran had been awaiting death since January 1975.

Five weeks later a three-judge bench headed by Chief Justice Chandrachud reversed the ruling of Reddy and Misra when it held that no rule of thumb could be applied in automatically commuting all sentences of death that took over two years to execute.

Statistics showed, said the judges, that at least four or five years elapsed between imposition of a death sentence by a sessions court and its final disposal by the Supreme Court—over and above which the Government of India took its own time in deciding mercy petitions under Articles 72 and 161 of the Constitution—a process beset by bureaucracy and indifference.

Similarly, in the case of Ujagar Singh and Kartar Singh, the Supreme Court had rejected their mercy plea in February last year, and once again on April 6 this year when it held that their clemency petition's rejection by the President was not unfair. The third time around, however, the two killers' executions were stayed by the same court over the question of hanging.

**Differing Views:** Essentially, the debate over the method of execution reflects the wide divergence of views within the judiciary over the constitutionality—and moral correctness—of capital punishment. In *Bachan Singh versus State of Punjab* (1980) the Supreme Court had held by a four-one majority that the death sentence was constitutional, qualifying only that it should be imposed in the "rarest of rare" cases. "But the very term 'rarest of rare' can be misinterpreted by the lower judiciary," says advocate Gobinda Mukhoty, "just as the term 'basic features of the Constitution' has left a vagueness behind it after the *Keshavananda Bharati* case."

Public sentiment has very often governed the imposition of the death penalty. In the Billa-Ranga case, the two killers were hounded from the very beginning by a revengeful public and an unsympathetic press. The halting of the Pune murderers' executions last fortnight similarly evoked strong protests throughout Maharashtra. Pune citizens and the relatives of the Joshi and Abhyankar families—who were the chief victims of Jakkal and his cohorts—sent an appeal to Chief Justice Chandrachud asking him to constitute a special bench to expedite the killers' plea for a less painful death than by hanging.

**Alternatives:** In contrast, surveys conducted all over the world have demonstrated that retention of the death penalty does not necessarily act as a deterrent as far as the incidence of murder is concerned. As the law in India stands today, in murder cases, life imprisonment is the rule and death penalty the exception. But the question plaguing the judiciary has been: how does a judge choose between the two alternatives? The death penalty should ideally be imposed only after balancing factors like deterrence, retribution and the possible rehabilitation of the murderer. "Social conditions today are such that citizens have to resort to private justice," says R.K. Garg, "but crime has a human

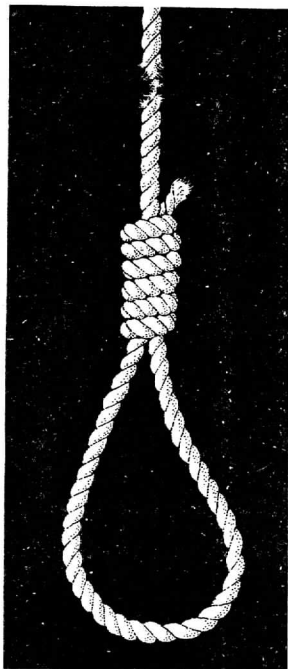
side too. Forgiveness is the social remorse for creating conditions in which murder was committed."

Nowhere was the fickle and arbitrary manner in which even the highest court of the land treats death penalty cases more shockingly evident than in the Jeeta Singh case. Jeeta Singh, Kashmira Singh and Harbans Singh were sentenced to death by the Allahabad High Court in October 1975 for playing equal parts in murdering a family of four persons. Each of these three murderers appealed separately to the Supreme Court.

**Unequal Judgments:** Jeeta Singh's petition was dismissed by Justices Chandrachud, Krishna Iyer and N.L. Untwalia on April 15, 1976. Kashmira Singh's petition was allowed by Justices

Fazal Ali and P.N. Bhagwati, and on April 10, 1977, his sentence was commuted to life imprisonment. Harbans Singh's special leave petition was dismissed by Justices R.S. Sarkaria and P.N. Singhal on October 16, 1978; a review petition filed by him was also dismissed by Justices Sarkaria and A.P. Sen on May 9, 1980.

Meanwhile Jeeta Singh was executed on October 6, 1981, and Harbans Singh would also have been executed along with him, but he filed a desperate writ petition, pointing out that Kashmira Singh had obtained commutation of sentence—and so his case was referred back to the President for reconsideration of his clemency petition. Because of the composition of four different benches of the Supreme Court, one of the three murderers in the case was hanged, another obtained commutation, and the third barely escaped the noose—and this confusion, fatal for Jeeta Singh, occurred despite the same body



of evidence existing against all three.

**T**HE MORAL sanction for imposing the death penalty is also tied inextricably to the social conditions in India. Hundreds of poor murderers, unable to hire expensive legal aid, have been marched to the gallows, and as many murderers from the higher strata of society have escaped death merely because they could pay for expert legal help. Dr. N.S. Jain, who conspired with his paramour Chandresh Sharma to kill his wife Vidya and hired Ujagar Singh and Kartar Singh to commit the murder, obtained commutation to life imprisonment, but the two hired assassins now await death in Tihar Jail. The "mitigating" factor in Jain's case was that he was an eminent eye surgeon, while the two killers were illiterate and poor and so merited extermination. Such discrimination on social lines casts the imposition of the death penalty into a dubious light.

Even in regard to rehabilitation, the Indian penal system has no provisions for attempting to bring a lifer back from the shadows of crime and prison, into the role of a law-abiding citizen. Thousands of prisoners undergoing life sentences throughout the country have been rotting in jails for inhumanly long periods. Section 433(a) of the CrPC, which came into effect from December 18, 1978, stipulated that a life sentence would have to extend over at least 14 years for all murderers convicted after that date, although lifers convicted earlier could claim remissions for good behaviour.

Even this definition of a life sentence left the question of a murderer's period of trial open to vagarious interpretation. On March 3 this year, however, a three-judge bench of the Supreme Court headed by Justice P.N. Bhagwati ruled in the case of *Sukhlal Hansda and others versus State of West Bengal* that the 14 years' minimum could also include the period the prisoner spent as an undertrial. In that case, eight out of 24 prisoners appealing their continued incarceration had already spent over 20 years in the Midnapore Central Jail, and six had been in prison for over 14 years.

Ultimately, the Supreme Court's discretion in capital punishment cases is restricted and selective. There is no guarantee that the sessions courts exercise fairness and impose the death penalty only in the "rarest of rare" cases; nor can the Supreme Court order a retrial and re-examine the evidence already examined by the sessions and high courts. When the bunch of stays of executions granted last fortnight comes up for hearing on July 19, when the court reopens after its summer vacation, these and other unresolved questions will continue to plague what is basically a moral and ethical quandary.

—CHAITANYA KALBAG

## MEDICAL VIEW

# Pain Killer

**T**HE POLICE surgeon told a story. A group of people were lost at sea. One day they spotted land and on getting closer, saw a noose hanging from a tree. They dropped anchor immediately, convinced that there was law and order in that land—the noose was evidence enough.

"This debate about 'hanging a man till death' being a crude method has been whipped up by the lawyers who simply want to complicate matters—criminals have been hanged for many years now and it is the least painful of the methods," said Dr Bharat Singh, police surgeon Delhi. "These days if you want to get acquitted, you should go to the Supreme Court—they never hang anybody," he added.

His premise, as that of many other doctors, stems from the belief that the concept of law is based on fear, and if an element of that is removed, it would



Bharat Singh and Chandra: critics of clemency

become toothless. "Given our social set-up and the facilities available, hanging is the best way. It certainly is not the most unscrupulous way of doing it," said Dr Bishnu Kumar, head of the Department of Forensic Medicine at New Delhi's Maulana Azad Medical College.

**Ancient Method:** But, that is not the issue. Debates about capital punishment have largely been intramural, and whenever there has been any public outcry, passions have ebbed and flowed as a reaction to a particular crime and issues have been confused. Not much is known about the actual process of hanging. "I do believe that justice delayed is justice denied, but hanging is really crude. We have to find a better way of doing it," said Dr S. Padmavati, an eminent cardiologist.

It is generally believed that when a man is hanged, he dies of asphyxiation. What really happens, if it is properly

done, is that the cervical vertebra fractures and crushes the medulla. Situated at the upper end of the spinal cord and the lower end of the brain, the medulla is a vital organ because respiratory and circulatory centres are situated there. "The brain dies immediately and even though the heart and lungs may continue to function, the man is considered dead," said Professor Jagdish Chandra, head of the Department of Forensic Medicine, All India Institute of Medical Sciences, New Delhi.

Chandra, however, conceded that death was either "instantaneous" or "rapid", thus granting currency to the belief that death is not as instantaneous as it is made out to be. Dr Kumar corroborated this when he pointed out that there were instances when death occurred after an extended period.

Before a man is hanged, he is measured and weighed because the crucial factor that will break the neck is the drop—generally between 5 ft and 8 ft, depending on the weight of the person. "Once the brain is dead, a person is considered dead, but the only sure way of ensuring brain-death is by conducting an electroencephalograph (EEG)," Padmavati said. When asked if an EEG was done before a man was pronounced dead, Singh said: "We don't do an EEG but we do carry out various tests that would indicate brain-death and within five to six minutes we are able to pronounce a man dead."

**Brain Power:** Critics of "the rope" allege that if the neck has not broken as it is supposed to, the man goes into deep coma and

might not experience pain because the brain is not able to translate any external stimuli. Studies have also shown that the brain can tolerate five to six minutes of inactivity and still recover its functions and there is no way of finding this out without an EEG.

Electrocution, according to considered opinion, is problematic. "With power cuts every day and power shortages, where in the country do you get 20,000 volts?" asked Chandra.

Not until about 200 years ago did societies question the state's right to kill. Till then, the preoccupation was more with how to do it, and stoning, strangling, burning and crucifixion have all been in vogue at various times. Vengeance is also probably the way a society communicates to itself that justice is alive and well. But, at this point, there are far too many questions and they cannot be wished away.

—CHITRA SUBRAMANIAM