

The latest Amnesty International Report on Death Penalty in India, released on 2nd May, brings out the vagaries of the Indian judicial system, the bias against the underprivileged and the violation of human rights of victims made to spend years in prison, to be told after a decade or more about their innocence

tions have been scheduled in the coming six months in six states beginning 6 May, after a United States Supreme Court ruling ended a seven-month moratorium on lethal injections. Texas leads the list with five people and Virginia with four. Louisiana, Oklahoma and South Dakota have also set execution dates.

According to the Death Penalty Information Center, an anti-capital punishment research group the latest death row census in the United States of America is a staggering 3,263. The only other country which continues death penalty with alacrity is China, where executions outnumber those in the rest of the world combined.

According to the latest official figures in India, there were 273 persons under sentence of death as of 31 December 2005. Amnesty International believes this figure to be a gross underestimate. At least 140 people are believed to have been sentenced to death in 2006 and 2007.

The AI report has revealed that from 1947 to 1949, several members of the Constituent Assembly expressed the ideal of abolishing the death penalty, when the Indian constitution was being framed, but no such provision was incorporated.

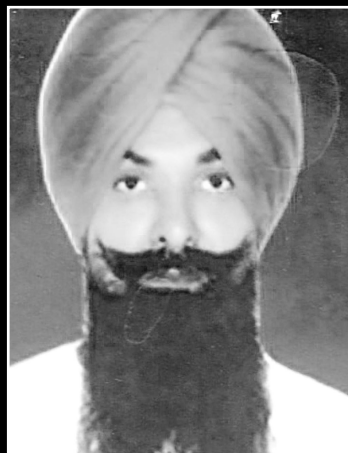
The report by the apex human rights body also points that the apex court of India, has "reversed two practices that had been observed for several decades in capital cases. The first practice was not to impose a death sentence where the judges hearing the case had not reached unanimity on the question of sentence or of guilt. The second was not to impose a death sentence on a person who had previously been acquitted by a lower court."

The Amnesty study found that the hanging of a person by the neck, at the end of a legal process involving the executive and the judiciary at various stages, was profoundly arbitrary. Taken as a whole, the cases indicated abuses of law and procedure throughout the legal process: from the initial collection of evidence (including interrogation of the accused) by police, to the consideration of evidence by the courts, to the process of sentencing and appeals. As regards sentencing, the results of judicial discretion as well the process itself, including the executive process of consideration of mercy petitions was flawed and biased.

Another open secret laid bare by the report is that most death sentences in India are based on circumstantial evidence alone, in the absence of forensic facilities and testimony of true witnesses.

The backbone for death penalty in India today is the Indian Supreme Court's judgment in *Bachan Singh v. State of Punjab*, which talks of taking a life only in

On the Death Row



Balwant Singh



Davinder Pal Singh



Jagtar Singh Hawara

"rarest of the rare cases". However, even in this case, Justice Bhagwati delivered a dissenting judgment (published in 1982), arguing that the death penalty was unconstitutional. He said,

"Our convictions are based largely on oral evidence of witnesses. Often, witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Sometimes they are even got up by the police to prove what the police believe to be a true case. Sometimes there is also mistaken eyewitness identification and this evidence is almost always difficult to shake in court-examination. Then there is also the possibility of a frame up of innocent men by their enemies. There are also cases where an overzealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defense. The possibility of error in judgment cannot therefore be ruled out on any theoretical considerations. It is indeed a very live possibility..."

Of the over 700 cases examined in the Amnesty study, over 100 were found to have resulted in acquittals by the Supreme Court. In a small number of cases the accused were sentenced to life imprisonment by the trial court, the sentence was enhanced to death by the High Court, and the accused were then acquitted by the Supreme Court. Generally the lower courts err, leaving it for the convicts to bring out the errors after spending years in prison before their acquittal.

The large number of accused in capital trials are poor and illiterate, unable to afford legal representation, particularly at the initial stages and that further confounds their problems and decreases the scope of their release.

This is particularly problematic

in cases where political prisoners and others detained under anti-terrorism legislation, allows for long periods in police detention and for confessions, extracted under duress and torture, made to a police officer to be used as evidence. Inadequacy of safeguards for fair trial is paramount in such cases.

How arbitrary can the Indian judicial system be can be gauged from the fact that, "In the same month, different benches of the Supreme Court have treated similar cases differently, often apparently reflecting their own positions for or against the death penalty. While in one case the defendant's youth could be a mitigating factor sufficient to commute the death sentence, in another it could be dismissed as a mitigating factor: In one case the gruesome nature of the crime could be sufficient for the Court to ignore mitigating factors and in another case a similar crime was clearly not gruesome enough."

The social bias and political partiality against minorities is far too evident when the executive deals with clemency petitions. Though the Amnesty Report does not make any allegation in this regard, it does say that "In practice, the exercise of clemency has even more potential for arbitrariness than the judicial process, especially since there is no requirement to give reasons for either accepting or rejecting mercy petitions, and decisions are neither reported widely nor published. The absence of transparency in the clemency process is a serious concern, especially since the executive may be subject to pressures extraneous to the case."

Unmindful of international opprobrium, India continues to violate the International Covenant on Civil and Political Rights (ICCPR), to which it is a state party this and

has put in place many more laws for death sentence since accession to this covenant in 1979. It has also failed to publish data on death penalty and undertake a comprehensive study on its use.

The Amnesty Report is dead right when it says, "Judicial state killing has no place in the modern world and India should abolish the death penalty as soon as is practically possible." Like in India, even in the United States, the resumption of lethal executions will incite public opinion on both sides of the fence. However, as James Acker, a historian of death penalty at the State University of Albany says, "When people confront a new wave of executions, they'll be questioning not only how people are executed but whether people should be executed." Jack Harry Smith, who, at 70, is the oldest of the inmates on the death row for 30 years, in the United States, and who claims to be innocent, put the debate where it started from, when he said "Death is death. If they stick a needle in your arm or shoot you in the head, it's cruel and inhuman punishment, taking a human life." Yet, he said, "a life sentence is a whole lot worse — it's torture." The debate goes on till civilized society evolves a humane criminal jurisprudence system.

In a poll conducted last year, it was found that America is losing confidence in death penalty. The Sikh Diaspora, active in areas of disaster relief, feeding the homeless and countless other community services, should spare time for participating in campaigns against capital punishment in the US and all over the globe, as a matter of commitment and not a routine of expediency.

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Sikhs and the Death Penalty

It is time for every Sikh to openly proclaim his or her opposition to death penalty. Sikhs are compassionate people and in all cases we empathize with the family and friends of victims of all kinds of heinous crimes, but at the same time, we are conscious that killing someone in retribution will neither heal nor resolve the tragedy of such families. There is ample historical and legal evidence to support that the killing of one

human being by another person or state is wrong and that capital punishment is not a deterrent to crime and serves only the purpose of revenge.

The Sikh ethical approach of compassion, forgiveness and scope for reformation of one's life is a prerequisite for a progressive civil society. Maharaja Ranjit Singh in his 40 year reign (1799-1839) did not use the death



penalty.

During the last nearly three decades, Bhai Satwant Singh, Bhai Kehar Singh, Bhai Sukhdev Singh and Bhai Harjinder Singh have been executed by the Indian

state unmindful of the sentiments of the Sikh people. In each case, the judgements of the respective courts, including the apex court have flouted norms of jurisprudence. The evidence against Kehar Singh would have been insufficient to send someone to a day's prison, but he was executed. Bhai Harjinder Singh and Bhai Sukhdev Singh were executed under TADA, while the legality of the law itself was under question in the Indian Supreme Court.

Pursuing the struggle for Sikh independence, three political activists - Devinder Pal Singh Bhullar, Jagtar Singh Hawara and Balwant Singh are presently on the death row. The judgement against Prof. Bhullar is a travesty of norms of criminal jurisprudence. In his dissenting judgement, Justice Shah concluded that there was no evidence to convict Bhullar and that a dubious confession could not be the basis for awarding the death sentence.

The judgement against Jagtar Singh Hawara and Balwant Singh clearly indicates political pressure as there is no evidence whatsoever - direct or circumstantial to establish criminal conspiracy. Their petition for obtaining some prosecution papers is still pending in the Punjab and Haryana High Court, though death penalty has already been pronounced.