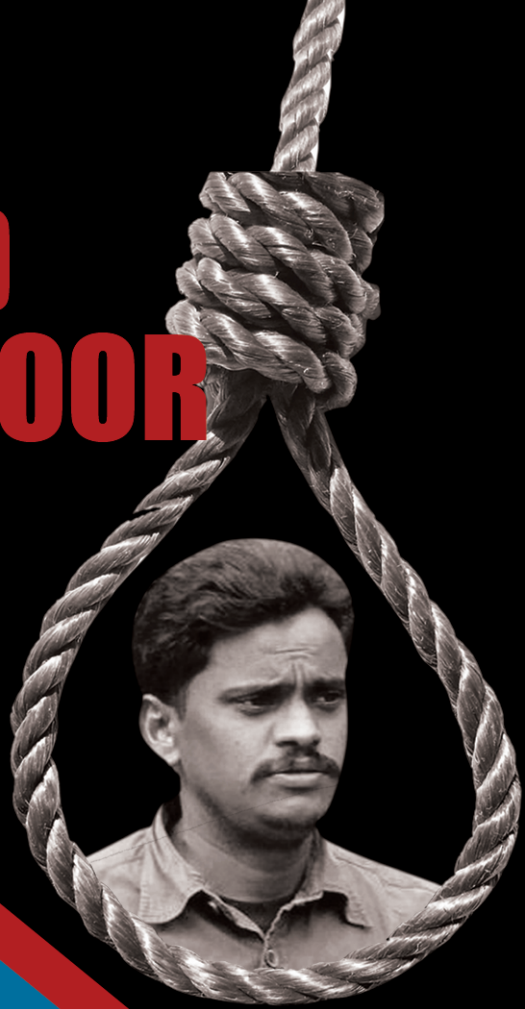


DEATH RESERVED FOR THE POOR



ASIAN CENTRE FOR HUMAN RIGHTS



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Published by:

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First published November 2014

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ISBN: 978-81-88987-49-8

Suggested contribution Rs. 295/-

Acknowledgement: This report is being published as a part of Asian Centre for Human Rights's "National Campaign for Abolition of Death Penalty in India" - a project funded by the European Commission under the European Instrument for Human Rights and Democracy – the European Union's programme that aims to promote and support human rights and democracy worldwide. The views expressed are of the Asian Centre for Human Rights, and not of the European Commission.

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1. Executive summary

The execution of death row convict Surinder Koli stayed by the Allahabad High Court expires on 1 December 2014.¹ A Public Interest Litigation challenging his execution, *inter alia*, on the grounds of delay was admitted on 31 October 2014 after a Supreme Court bench of Chief Justice H L Dattu, Justice Anil R. Dave and Justice S A Bobde, in the first open court hearing of the review petition of death sentence cases, rejected the review petition of Koli on 28 October 2014. Earlier, the Supreme Court had also rejected Koli's plea seeking the recall of its order upholding his death sentence in one of the 16 cases of rape and murder of young women and girls in Nithari village in Uttar Pradesh.² The girls and children were killed over a period of time and skeletal remains of a number of missing children were discovered from a drain near the house of Maninder Singh Pandher at D-5, Sector 31, Noida where Koli was employed as a domestic servant.

The case of Koli who is an co-accused with Pandher is unique: this is the first case where one of the co-accused (Koli) has been sentenced to death and exhausted all the procedures in one case while the trial in 11 cases where both are co-accused are yet to be concluded. Further, Koli is the only witness in all the cases against the co-accused i.e. Pandher, whose trials are yet to be completed.³

As Koli faces the gallows, Pandher had walked free from Dasna jail, Uttar Pradesh on 27 September 2014 after being granted bail by the Allahabad High Court on 24 September 2014.⁴

There is no legal bar to execute Koli at this stage. However, can the Indian justice system, which had already ignored non compliance with the Indian Evidence Act by convicting Koli based on his confessional statement to the police allegedly taken under torture, overlook the consequences of executing

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1. Stay on Koli's death order extended, The Times of India, 25 November 2014, at: <http://timesofindia.indiatimes.com/city/allahabad/Stay-on-Kolis-death-order-extended/articleshow/45276213.cms>
 2. See 'Nithari case: Surinder Koli's execution stayed till Nov 25 by Allahabad HC', India Today, 31 October 2014, at: <http://indiatoday.intoday.in/story/nithari-case-surinder-koli-execution-allahabad-high-court/1/398538.html>
 3. See 'Hanging Koli May Bury The Truth Of Nithari Killings', Tehelka, 2014-08-30, Issue 35 Volume 11, at: <http://www.tehelka.com/nithari-killing-hanging-surinder-kohli-will-bury-the-truth/>
 4. See 'Nithari killings: Co-accused Moninder Singh Pandher released from jail, CNN IBN, 27 September 2014, at: <http://ibnlive.in.com/news/nithari-killings-coaccused-moninder-singh-pandher-released-from-jail/502364-3-242.html>

Koli before the conclusion of the trial in 11 other similar cases in which he is co-accused and the only witness against other co-accused i.e. Pandher? If Koli is executed, there is no doubt that the families of the victims of 11 pending cases in which Koli is an accused shall be denied justice which means nothing less than final conclusion of the trial. Further, if Koli is executed, co-accused Pandher is likely to get inadvertent favour. As Koli remains in jail, he does not pose any threat to society whatsoever. The pertinent question is what warrants his execution before the conclusion of the trials of all the pending cases?

Article 39A of the Constitution⁵ provides fundamental right to equal justice and free legal aid. This right to defence is an inbuilt right to life and liberty envisaged under Article 21 of the Constitution⁶. However, the right to equal justice both in substance and procedure remains highly flawed in India, and it depends almost on a person's socio-economic status.

Criminals coming from poor economic and social strata are simply unable to cope with *“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, it is invariably the marginalized and destitute who suffer the extreme penalty ultimately”*⁷ as noted by the Supreme Court.

On the other hand, the rich and well-connected criminals can sabotage the probe,⁸ intimidate, influence, and induce witnesses, suppress evidence with money and muscle power,⁹ and abuse all the procedural rights.

In the case of Ram Deo Prasad who was sentenced to death, the Supreme Court noted that the appellant (Ram Deo Prasad) *“did not have sufficient resources to engage a lawyer of his own choice and get himself defended up to his*

5. Article 39A says ‘The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities’, available at: [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(7\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(7).pdf)

6. Article 21 says ‘No person shall be deprived of his life or personal liberty except according to procedure established by law, available at: [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(6\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(6).pdf)

7. Mohd. Farooq Abdul Gafur and Anr. v. State of Maharashtra [2009] INSC 1403

8. Santosh Kumar Singh Vs State through CBI, <http://judis.nic.in/supremecourt/imgst.aspx?filename=36948>

9. See ‘Sting heat on Munshi’, The Telegraph, 28 September 2006, at: http://www.telegraphindia.com/1060928/asp/nation/story_6803488.asp

*satisfaction*¹⁰ while in other cases, the apex Court observed that the defence counsel appointed by the Court “*did not appear at the commencement of the trial nor at the time of recording of the evidence of the prosecution witnesses*” and in many cases defending the accused is “*rather proforma than being active*”.¹¹ Lawyers appointed by the Courts to defend those facing death sentence have no experience of conducting a single murder trial and in some cases, the apex Court concluded that “*accused have not been provided with effective and meaningful legal assistance*”.¹² In some cases, critical aspects such as “*the mental condition*” of the death row convicts¹³ or juvenility were not brought before the Court by the lawyers.

In the case of Ram Deo Chauhan of Assam, who was represented by *amicus curiae* in the Supreme Court,¹⁴ while considering the Review Petition, the Supreme Court observed that the Court upheld the death sentence on 31.7.2000 as the Supreme Court “*did not advert to the question of age of the petitioner as it was possibly not argued*.”¹⁵ Similarly, in the case of Ankush Maruti Shinde of Maharashtra whose death sentence was upheld by the Supreme Court on 30 April 2009,¹⁶ the issue of juvenility was not raised despite existence of unimpeachable documentary proof of him being a juvenile¹⁷ and it was only in July 2012, the Additional Sessions Court in Nashik ruled that Ankush Maruti Shinde was a juvenile at the time of the commission of offence.¹⁸

Obviously, these are instances of gross miscarriage of justice by the Indian justice system because of the failure of the defence counsels. Ravji alias Ram Chandra defended by an *amicus curiae* was sentenced to death by the Supreme

10. Ram Deo Prasad vs State Of Bihar (Criminal Appeal No. 1354 of 2012 decided on 11 April 2013)

11. Mohd Hussain @ Julfikar Ali vs The State (Govt. Of NCT) Delhi (Criminal Appeal No. 1091 of 2006 decided on 11 January 2012)

12. 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>

13. Durga Domar Vs State of Madhya Pradesh, (2002)10SCC193

14. Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam: AIR2000SC2679

15. Judgement dated 19 November 2010 of the Supreme Court in Review Petition (C) No.1378 OF 2009 in Writ Petition (C) No.457 OF 2005 Remdeo Chauhan @ Rajnath Chauhan Vs. Bani Kant Das & Others

16. 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]

17. See ‘Relief for a juvenile’, Frontline, Volume 29 - Issue 17 :: Aug. 25-Sep. 07, 2012, at: <http://www.frontline.in/static/html/fl2917/stories/20120907291701100.htm>

18. 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>

Court on 5 December 1995.¹⁹ But, in 2009, the Supreme Court held the decision confirming the death sentence on Ravji as *per incuriam* but by then he was already executed in 1996.²⁰

In August 1990, the Supreme Court in the case of *Kishore Chand vs State of Himachal Pradesh* observed that “*Though Art. 39A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the Bar who has either a little experience or no experience is assigned to defend him. It is high time that senior counsel practicing in the court concerned, volunteer to defend such indigent accused as a part of their professional duty.*”²¹

A division bench of the Bombay High Court consisting of Justice Naresh Patil and Shrihari Davare had in October 2009 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.²² On 21 January 2014, the Supreme Court in the *Shatrughan Chouhan* case²³ 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.

However, implementation of these directions remains wanting.

Considering the lack of sufficient resources to engage a defence lawyer of his/her choice by a condemned prisoner and to ensure full compliance with the Article 39A of the Constitution, Asian Centre for Human Rights recommends the following to the Government of India:

- Grant mercy to all those who are defended by legal aid because of poverty in all stages of the trial and appeal; and
- Direct the trial courts to appoint advocate/amicus curiae who have trial practices on the offences that the accused is charged with.

19. Ravji @ Ram Chandra vs State Of Rajasthan [1996 SCC (2) 175]

20. See ‘Take these men off death row’, The Hindu, 6 July 2012 at: <http://www.thehindu.com/opinion/lead/take-these-men-off-death-row/article3606856.ece>

21. Kishore Chand vs State Of Himachal Pradesh [1990 AIR 2140]

22. 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>

23. (2014)35SCC1

2. Surendra Koli and Maninder Singh Pandher: The emblematic case of death sentence on the poor and the rich in India

Between 2005 and 2006, several children had gone missing from Nithari village in Gautam Budh Nagar district, Uttar Pradesh. Several of such children were alleged to have been killed by Surendra Koli, servant of businessman Maninder Singh Pandher at his residence at D-5, Sector 31, Noida.²⁴

Investigations into the serial murders began in December 2006 by the Uttar Pradesh Police when the skeletal remains of a number of missing children were discovered from a drain near Pandher's house. At least 19 girls and women were stated to have been raped and killed. The case was transferred to the Central Bureau of Investigation (CBI) in January 2007.²⁵ The CBI filed chargesheets in 16 out of the 19 cases of abduction, rape and murder. Surendra Koli was charged with rape, abduction and murder in all the cases,²⁶ while Pandher was exonerated by the CBI for lack of evidence. Later, he was summoned as a co-accused in eight cases when the victims' families approached the court.²⁷

Death sentence on Koli as Pandher granted bail

On 13 February 2009, a special trial court in Ghaziabad awarded death sentence to Surendra Koli and Maninder Singh Pandher after convicting them for the rape and murder of 14-year-old girl Rimpa Halder.²⁸ On appeal, the Allahabad High Court upheld the death sentence of Koli but the death sentence of Pandher was set aside and he was acquitted.²⁹ The High Court found no evidence on record against Pandher.³⁰ On 15 February 2011, the Supreme Court confirmed the death penalty on Surendra Koli holding that

24. Surendra Koli Vs State of U.P. Ors, <http://judis.nic.in/supremecourt/imgst.aspx?filename=37556>

25. See 'Justice still far away in 18 Nithari cases', Rediff.com, 28 December 2009, at: <http://news.rediff.com/report/2009/dec/28/noida-justice-still-far-away-for-18-nithari-cases.htm>

26. See 'Nithari killings: Koli guilty of seven-year-old's murder', NDTV, 4 May 2010, at: <http://www.ndtv.com/article/india/nithari-killings-koli-guilty-of-seven-year-old-s-murder-23049>

27. See 'Nithari case: Pandher may walk out of Dasna jail next week', Hindustan Times, 14 August 2014, at: <http://www.hindustantimes.com/india-news/nithari-case-pandher-may-walk-out-of-dasna-jail-next-week/article1-1250964.aspx>

28. See 'Justice still far away in 18 Nithari cases', Rediff.com, 28 December 2009, at: <http://news.rediff.com/report/2009/dec/28/noida-justice-still-far-away-for-18-nithari-cases.htm>

29. Surendra Koli Vs State of U.P. Ors, <http://judis.nic.in/supremecourt/imgst.aspx?filename=37556>

30. Criminal (Capital) Appeal No. 1475 OF 2009, <http://indialawyers.wordpress.com/nithari-high-court-judgement-acquits-pandher/>

*“this case clearly falls within the category of rarest of rare case and no mercy can be shown to the appellant Surendra Koli.”*³¹

On 20 July 2014, the mercy petition of Koli was rejected by the President of India.³² On 24 July 2014, the Supreme Court had rejected Koli’s review petition against confirmation of his death penalty. On 2 September 2014, a Constitution bench of the Supreme Court ruled that the review petitions of convicts facing death sentence warranted an open court hearing since the issue pertained to the right to life.³³ On 3 September 2014, the Ghaziabad sessions court issued a death warrant against Surendra Koli in connection with Rimpa Halder murder case. Surendra Koli was to be hanged at Chaudhary Charan Singh district jail, Meerut on 8 September 2014.³⁴ Koli’s execution was stayed by the Supreme Court in the intervening night of 7 and 8 September 2014.³⁵ On 12 September 2014, the Supreme Court further stayed the execution of Koli till 29 October 2014 while posting the review petition for hearing on 28 October 2014.³⁶ The Supreme Court rejected the review petition of Koli on 28 October 2014 noting *“we are fully satisfied that this court has not committed any error that may persuade us to review the order”* upholding his death sentence.³⁷ On 31 October 2014, the Allahabad High Court stayed the hanging of Koli till 25 November 2014 while hearing a Public Interest Litigation.³⁸

Prior to the confirmation of the death penalty by the Supreme Court in Rimpa Halder murder case, the Special CBI Court awarded death sentence

31. Surendra Koli Vs State of U.P. Ors, <http://judis.nic.in/supremecourt/imgst.aspx?filename=37556>

32. See ‘Statement of Mercy Petition Cases - Rejected’, available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

33. See ‘Nithari case: SC stays Surinder Koli’s execution till Oct. 29’, Business Standard, 12 September 2014, at: http://www.business-standard.com/article/printer-friendly-version?article_id=114091200279_1

34. See ‘SC stays execution of Nithari killer Surinder Koli’, The Times of India, 8 September 2014, at: <http://timesofindia.indiatimes.com/India/SC-stays-execution-of-Nithari-killer-Surinder-Koli/articleshow/41998225.cms>

35. See ‘SC stays execution of Nithari killer Surinder Koli’, The Times of India, 8 September 2014, at: <http://timesofindia.indiatimes.com/India/SC-stays-execution-of-Nithari-killer-Surinder-Koli/articleshow/41998225.cms>

36. See ‘Nithari killer’s execution stayed till Oct. 29’, The Hindu, 12 September 2014, at: <http://www.thehindu.com/news/national/supreme-court-hears-nithari-killings-convict-kolis-plea/article6403787.ece?ref=relatedNews>

37. See ‘Supreme Court rejects Nithari convict Surinder Koli’s review plea’, The Hindu, 28 October 2014, at: <http://www.thehindu.com/news/national/supreme-court-rejects-nithari-murder-case-convict-surinder-kolis-review-plea/article6541300.ece>

38. See ‘Nithari case: Surinder Koli’s execution stayed till Nov 25 by Allahabad HC’, India Today, 31 October 2014, at: <http://indiatoday.intoday.in/story/nithari-case-surinder-koli-execution-allahabad-high-court/1/398538.html>

to Surendra Koli in three other cases. These included rape and murder of Arti (7) on 12 May 2010,³⁹ rape and murder of Rachna Lal (9) on 28 September 2010,⁴⁰ and murder of Dipali Sarkar (12) on 22 December 2010.⁴¹ On 24 December 2012, Surendra Koli was found guilty of rape and murder of Chhoti Kavita (5) and given a fifth death sentence.⁴²

The remaining 11 cases are pending further legal proceedings against Koli and Pandher remains co-accused in eight.⁴³ On 27 September 2014, Maninder Singh Pandher was released from Dasna jail after he was granted bail by the Allahabad High Court on 24 September 2014.⁴⁴ Currently, a petition challenging the acquittal of Maninder Singh Pandher by the High Court in the murder of Rimpa Halder is pending before the Supreme Court.⁴⁵

Legal representation: the wide divide between the rich and poor

Surendra Koli could not hire lawyers of his own choice in all the decided cases where he was found guilty and awarded death penalty. The court provided him *amicus curiae*/lawyers on legal aid panel to defend him. On 31 March 2011, Surendra Koli moved an application before the court seeking a new defence lawyer as he alleged that the lawyer provided to him by the government was not competent enough which resulted in him being awarded the death sentence. On 5 April 2011, the CBI Court allowed his petition and appointed a new defence lawyer.⁴⁶ On the other hand, Maninder

39. See 'Another death sentence for Koli', The Hindu, 13 May 2010 at: <http://www.thehindu.com/todays-paper/another-death-sentence-for-koli/article766406.ece>

40. See 'Rachna Rape-Murder: Surinder Koli Sentenced to Death', Outlook, 28 September 2010, at: <http://www.outlookindia.com/news/article/Rachna-RapeMurder-Surinder-Koli-Sentenced-to-Death/695085>

41. See 'Nithari: Koli handed death in fourth case', The Indian Express, 23 December 2010, at: <http://indianexpress.com/article/cities/delhi/nithari-koli-handed-death-in-fourth-case/>

42. See 'Nithari killer Koli gets death sentence in fifth case', The Hindu, 25 December 2012, at: <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/nithari-killer-koli-gets-death-sentence-in-fifth-case/article4236882.ece>

43. See '7 years on, 11 cases still pending in Nithari killings', Hindustan Times, 30 December 2013 at: <http://www.hindustantimes.com/india-news/newdelhi/7-years-on-11-cases-still-pending-in-nithari-killings/article1-1167597.aspx>

44. See 'Nithari killings: Co-accused Moninder Singh Pandher released from jail, CNN IBN, 27 September 2014, at: <http://ibnlive.in.com/news/nithari-killings-coaccused-moninder-singh-pandher-released-from-jail/502364-3-242.html>

45. See 'SC Notice on Petition Challenging Pandher's Acquittal', Outlook, 10 January 2010 at: <http://www.outlookindia.com/news/article/SC-Notice-on-Petition-Challenging-Pandher's-Acquittal/673078>

46. See 'Nithari killings: Court allows Koli's plea for new lawyer', Sify News, 5 April 2011 at: <http://www.sify.com/news/nithari-killings-court-allows-koli-s-plea-for-new-lawyer-news-national-lefrumgedbgsl.html>

Singh Pandher being an well to do person was able to hire very capable lawyers to defend himself.

As on date, Surendra Koli has been sentenced to death in five cases out of which the Supreme Court confirmed the death sentence in one case. However, the only clinching evidence against him till date is his confession to the magistrate under Section 164 of the Criminal Procedure Code, where he repeated what he had told the police in custody. Surendra Koli allegedly informed his lawyers that he was tortured before his confession and had been threatened with more if he did not repeat it before the magistrate. In his letter to the apex court, Surendra Koli mentioned that the magistrate failed to notice the telltale signs of torture. His fingernails and toenails were allegedly missing due to torture. Surendra Koli's confessional statement was made before a magistrate in Delhi and not in Ghaziabad. However, Surendra Koli alleged that it was done so that the investigators could have a magistrate of their choice. The police claimed that the reason was an attack by lawyers when he was brought to a Ghaziabad court. However, the police had taken him to the same court in Ghaziabad twice after the said attack. It was also alleged that the statement was taken down in English, a language Surendra Koli does not understand. Further, the stenographer was not examined in court. Surendra Koli was not allegedly medically examined before or after the confessional statement.⁴⁷

47. See 'Hanging Koli May Bury The Truth Of Nithari Killings', *Tehelka*, 2014-08-30 , Issue 35 Volume 11, at: <http://www.tehelka.com/nithari-killing-hanging-surinder-kohti-will-bury-the-truth/>

3. Death sentences in cases defended by amicus curiae before the Supreme Court

A significant, if not majority, number of death row convicts belong to economically and socially backward groups and they are often unable to defend at the stage of trial leading to award of death sentence. This report examines 26 cases in which death row convicts were defended by *amicus curiae* because of the inability of the accused to hire their own lawyers because of poor socio-economic conditions. The cases examined in this report pertain to the period 1993 and 2013.

3.1 Death sentences defended by amicus curiae and confirmed by the Supreme Court

Case 1: Sunder Singh, 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 upheld the death sentence on the appellant. An *amicus curiae* represented appellant Sunder Singh in the Supreme Court.⁴⁸ On 21 January 2014, the Supreme Court in the case of *Shatrughan Chauhan & Anr vs Union Of India & Ors* commuted the death sentence of Sunder Singh to life imprisonment on the ground of mental illness. His mercy petition was rejected by the President on 31 March 2013.⁴⁹

Case 2: Sattan and Upendra, Uttar Pradesh

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, a Supreme Court bench consisting of Justices Arijit Pasayat and Justice Mukundam Sharma restored death sentence on Sattan and Upendra in its judgment delivered on

48. Sunder Singh Vs. State of Uttaranchal, (2010)10SCC611

49. (2014)355CC1

27 February 2009. Both could not hire lawyers in the Supreme Court and were represented by an *amicus curiae*.⁵⁰ Both filed mercy petitions and the President of India commuted their death sentences to life imprisonment.⁵¹

Case 3: Shivaji, Maharashtra

On 5 September 2008, the Supreme Court confirmed the death sentence of Shivaji who was found guilty of 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. Shivaji was defended by an *amicus curiae*.⁵² This case was held as *per incuriam* by the Supreme Court in *Santosh Kumar Satishbhushan vs State Of Maharashtra* decided on 13 May 2009.⁵³ The death-row convict filed a mercy petition before the Governor of Maharashtra on 17 June 2010 and the same is pending final disposal.⁵⁴

Case 4: Bantu, 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. He was represented by an *amicus curiae*.⁵⁵ This case was held as *per incuriam* by the Supreme Court in *Santosh Kumar Satishbhushan vs State Of Maharashtra* decided on 13 May 2009.⁵⁶ The President commuted the death sentence of Bantu to life imprisonment on 2 June 2012.⁵⁷

Case 5: Gurmeet Singh, 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

50. State of U.P. Vs. Sattan @ Satyendra and Ors, (2009)4SCC736

51. Reply dated 28.03.2013 received by ACHR under the Right to Information Act, 2005 from the Judicial Division of the Ministry of Home Affairs, Government of India

52. Shivaji @ Dadya Shankar Alhat Vs. State of Maharashtra, (2008) 15 SCC 269

53. See the judgment at: <http://judis.nic.in/supremecourt/imgst.aspx?filename=34632>

54. Reply dated 15 June 2013 under the Right to Information A,ct, 2005 received from the Secretariat of the Governor of Maharashtra

55. Bantu Vs. State of Uttar Pradesh, (2008)11SCC113

56. See the judgment at: <http://judis.nic.in/supremecourt/imgst.aspx?filename=34632>

57. See 'President Pratibha Patil goes on mercy overdrive', The Times of India, 22 June 2012, at: <http://timesofindia.indiatimes.com/india/President-Pratibha-Patil-goes-on-mercy-overdrive/articleshow/14330594.cms>

Court on 29 February 1996. The Supreme Court upheld the death sentence on 28 September 2005. Gurmeet Singh was represented by an *amicus curiae* in the Supreme Court.⁵⁸ On 21 January 2014, the Supreme Court in the case of *Shatrughan Chauhan & Anr vs Union Of India & Ors* commuted the death sentence of Gurmeet Singh to life imprisonment on the ground of delay in disposal of his mercy petition. The President had rejected his mercy petition on 1 March 2013.⁵⁹

Case 6: Mohan Anna Chavan, 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 an *amicus curiae* in the Supreme Court.⁶⁰ This case was held as *per incuriam* by the Supreme Court in *Santosh Kumar Satishbhushan vs State Of Maharashtra* decided on 13 May 2009.⁶¹ The mercy petition filed before the Governor of Maharashtra on 17 June 2010 was pending final disposal as on 31 March 2013.⁶²

Case 7: Prajeet Kumar Singh, Bihar

Prajeet Kumar Singh of Bihar was charged under Section 302 and 307 of Indian Penal Code (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 an *amicus curiae* in the Supreme Court.⁶³ The appellant filed mercy petition and the President of India commuted his death sentence to life imprisonment.⁶⁴

58. Gurmeet Singh Vs. State of Uttar Pradesh, (2005)12SCC107

59. (2014)35SCC1

60. Mohan Anna Chavan Vs. State of Maharashtra, (2008)7SCC561

61. See the judgment at: <http://judis.nic.in/supremecourt/imgst.aspx?filename=34632>

62. Reply dated 15 June 2013 under the Right to Information Act, 2005 received from the Secretariat of the Governor of Maharashtra

63. Prajeet Kumar Singh Vs. State of Bihar, (2008)4SCC434

64. Reply dated 28.03.2013 received by ACHR under the Right to Information Act, 2005 from the Judicial Division of the Ministry of Home Affairs, Government of India

Case 8: Praveen Kumar, 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 an *amicus curiae* in the Supreme Court.⁶⁵ On 21 January 2014, the Supreme Court in the case of *Shatrughan Chauhan & Anr vs Union Of India & Ors* commuted the death sentence of Praveen Kumar to life imprisonment on the ground of delay in disposal of his mercy petition. The President had rejected his mercy petition on 26 March 2013.⁶⁶

Case 9: Sushil Murmu, 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 an *amicus curiae* in the Supreme Court.⁶⁷ On 9 February 2012, the President commuted the death sentence of Sushil Murmu to life imprisonment.⁶⁸

Case 10: Om Prakash @ Raja, Uttaranchal

Om Prakash was accused of killing three members of a family where he was working as domestic 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. He was defended by an *amicus curiae* in the Supreme Court.⁶⁹ In May 2012, the President commuted the death sentence of Om Prakash to life imprisonment.⁷⁰

65. Praveen Kumar Vs. State of Karnataka, 2004(1)ACR503(SC)

66. (2014)355CC1

67. Sushil Murmu Vs. State of Jharkhand, (2004)2SCC338

68. Reply dated 28.03.2013 received by ACHR under the Right to Information Act, 2005 from the Judicial Division of the Ministry of Home Affairs, Government of India

69. Om Prakash @ Raja Vs. State of Uttaranchal, (2003)1SCC648

70. See 'Prez commutes death sentence of child rapist-killer', The Indian Express, 31 May 2012, at: <http://archive.indianexpress.com/news/prez-commutes-death-sentence-of-child-rapistkiller/956272/>

Case 11: Narayan Chetanram Chaudhary and Jitendra, 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 an *amicus curiae* in the Supreme Court.⁷¹ Currently, the mercy petitions for the two convicts are under consideration of the Ministry of Home Affairs.

Case 12: Ram Deo Chauhan, 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 an *amicus curiae* in the Supreme Court.⁷² Appellant Chauhan's juvenility at the time of commission of the offences was subject matter of subsequent litigation before the Supreme Court and the Guwahati High Court. Vide judgement dated 19 November 2010 in Review Petition (C) No.1378 OF 2009 in Writ Petition (C) No.457 OF 2005, a Supreme Court Bench comprising Justice Ashok Kumar Ganguly and Justice Aftab Alam observed as under:

“11. The appeal from the High Court judgment was dismissed by a Bench of this Court, comprising K.T. Thomas and R.P. Sethi, JJ, on 31.7.2000 and death sentence was upheld. In that judgment, this court did not advert to the question of age of the petitioner as it was possibly not argued.”

Vide this judgement the Supreme Court among others, restored the order of the Governor dated 28.1.2002 passed under Article 161 of the Constitution commuting the death penalty of Chauhan.⁷³

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

72. Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam: AIR2000SC2679

73. Judgement dated 19 November 2010 of the Supreme Court in Review Petition (C) No.1378 OF 2009 in Writ Petition (C) No.457 OF 2005 Remdeo Chauhan @ Rajnath Chauhan Vs. Bani Kant Das & Others

Chauhan was released later as he was found to be juvenile at the time of the commission of the offence.⁷⁴

Case 13: Jai Kumar, Madhya Pradesh

In 1997, Jai Kumar was convicted and sentenced to death for committing murder of his sister-in-law and niece in Rewa, Madhya Pradesh. The death sentence was confirmed by the High Court of Madhya Pradesh at Jabalpur. Appellant Jai Kumar was represented by an *amicus curiae* before the Supreme Court.⁷⁵ Vide judgment dated 11 May 1996, the Supreme Court bench of Justice A.S. Anand, Justice M. Srinivasan and Justice Umesh C. Banerjee confirmed the death sentence.⁷⁶ The President of India commuted the death penalty on Jaikumar to life imprisonment.⁷⁷

Case 14: Shyam Manohar and six others, 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 convicts but also enhanced the sentence of life imprisonment imposed upon another three accused namely Prakash, Rajender and Ravindra to death penalty. 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 accused Rajender whose death sentence was commuted to life imprisonment. The Supreme Court appointed an *amicus curiae* to represent the seven condemned prisoners.⁷⁸ On 15 June 2010, the mercy petitions of the death row convicts were converted to life imprisonment by the President of India.⁷⁹

Case 15: Ravji alias Ram Chandra, 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

74. Judgement dated 9 August 2011 of the Hon'ble Gauhati High Court in public interest litigation (No.39/2011); available at: <http://ghconline.nic.in/Judgment/PIL392011.pdf>

75. Jai Kumar Vs. State of Madhya Pradesh, AIR1999SC1860

76. Jai Kumar Vs. State of Madhya Pradesh, AIR1999SC1860

77. Reply dated 28.03.2013 received by ACHR under the Right to Information Act, 2005 from the Judicial Division of the Ministry of Home Affairs, Government of India

78. Shri Ram & Shiv Ram & Anr. Etc vs State Of U.P. & Ors [1997AIR1997SC3996]

79. See 'President grants mercy to eight', The Indian Express, 27 June 2010, at: <http://archive.indianexpress.com/news/president-grants-mercy-to-eight/639071/>

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 an *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 an *amicus curiae* for him.⁸⁰ The President rejected his mercy plea and he was executed in 1997. In *Santosh Kumar Satishbhusan Bariyar vs. State of Maharashtra*, the Supreme Court declared the decision in of Ravji's case as *per incuriam* in 1999.⁸¹

3.2. Death sentences defended by *amicus curiae* and commuted by the Supreme Court

Case 1: Haru Ghosh, West Bengal

On 27 August 2009, a division bench of the Supreme Court consisting of Justice V. S. Sirpurkar and Justice Deepak Verma commuted the death sentence of Haru Ghosh, appellant to life imprisonment for a period not to be less than 35 years of actual jail sentence. On 7 May 2005, Haru Ghosh killed a 30-year-old woman Anima Pramanik and her 12-year-old son Shubhankar Pramanik alias Keval in broad daylight in West Bengal. Haru Ghosh also tried to kill a 60-year-old man, Jeevan Krishna Chakraborty. On conviction, the trial court sentenced him to death, which was upheld by the High Court. An *amicus curiae* appointed by the Supreme Court, represented the appellant Haru Ghosh.⁸²

Case 2: Mulla and Guddu, Uttar Pradesh

On 21 December 1995, five persons, Hari Kumar Tripathi, Nanhakey, Ram Kishore @ Chhotakey Naney, Chhotakkey and Ganga Dai were kidnapped by armed miscreants and later killed in Sitapur district of Uttar Pradesh. On 30 April 2005, the trial Court convicted Mulla and Guddu under Section 302 read with Section 149 IPC and sentenced them to death. Challenging the trial court judgment, Guddu filed Criminal Appeal (No. 698 of 2005) and Mulla filed Criminal Appeal (No. 701 of 2005) before the High Court from Jail and both of them jointly filed Criminal Appeal (No. 713 of 2005)

80. Ravji alias Ram Chandra Vs. State of Rajasthan, 1996 AIR 787

81. See the judgment at: <http://judis.nic.in/supremecourt/imgst.aspx?filename=34632>

82. Haru Ghosh Vs. State of West Bengal, (2009)155CC551

through counsel. On 3 March 2006, the High Court dismissed their appeals and confirmed the death sentence. On 8 February 2010, a division bench of the Supreme Court consisting of Justice P. Sathasivam and Justice H. L. Dattu confirmed the conviction but commuted the death sentence to life imprisonment extending to their full life, subject to any remission by the Government for good reasons. The Supreme Court noted that the appellants, Mulla and Guddu belong to extreme poor background and were represented by amicus curiae Ms. Ranjana Narayan at the trial court, high court and the Supreme Court.⁸³

Case 3: Purna Chandra Kusal, Orissa

On 14 November 2002, Purna Chandra alias Chotu of Orissa was accused of rape and murder of a girl. The trial court convicted the accused and awarded death penalty and the sentence was confirmed by the High Court of Orissa. On 12 July 2011, a division bench of the Supreme Court consisting of Justice Harjit Singh Bedi and Justice Gyan Sudha Misra affirmed the conviction but commuted the death sentence to life imprisonment. The appellant was represented by amicus curiae.⁸⁴

Case 4: Ram Deo Prasad, Bihar

In September 2008, Ram Deo Prasad was awarded death penalty by the trial court for the rape and murder of a four year old, Laila Khatoon in Siwan district of Bihar on 20 December 2004. The Patna High Court confirmed the death sentence on 17 September 2009. On 11 April 2013, the Supreme Court commuted the death sentence to life imprisonment. While commuting the sentence, the division bench of Justice Aftab Alam and Justice Ranjana Prakash Desai noted that Ram Deo Prasad “*did not have sufficient resources to engage a lawyer of his own choice and get himself defended up to his satisfaction*” and further observed that these “*facts and circumstances are also relevant factors to be taken into consideration while confirming the death penalty given to an accused*”. Ram Deo Prasad was represented before the trial court by a lawyer appointed by the trial court from the panel of advocates for undefended accused. Despite facing death penalty, he could not file an appeal before the High Court. However, the High Court while accepting the death reference made by the trial court had brushed aside the fact that no appeal was filed by

83. Mulla and Anr. Vs. State of Uttar Pradesh, (2010)3SCC508

84. Purna Chandra Kusal Vs. State of Orissa, 2012CriLJ615

Ram Deo Prasad by observing as under.

“The Respondent has not preferred an appeal, understandably because he could challenge the findings upon which the orders of conviction and sentence are based as if he had preferred an appeal”.

The Supreme Court rightly did not accept the above view of the High Court. It observed:

“In our view, the High Court, attributed to the Appellant, knowledge of law and the court procedure for which there does not appear to be any basis. To our mind, the Appellant filed no appeal before the High Court either because of the lack of resources or because he did not fully realize the gravity of his position and we are unable to accept the view taken by the High Court for the Appellant filing no appeal against the judgment of the trial court giving him the death penalty.”

In the Supreme Court, Ram Deo Prasad was represented by an *amicus curiae*.⁸⁵

Case 5: Bishnu Prasad Sinha and Putul Bora, Assam

On 12 July 2002, Bishnu Prasad Sinha and Putul Bora were accused of rape and murder of a minor girl, one Barnali Deb @ Poppy in Guwahati, Assam. On conviction, the trial court sentenced them to death, which was confirmed by the Guwahati High Court. On 16 January 2007, a division bench of the Supreme Court consisting of Justices S. B. Sinha and Markandey Katju commuted their death sentence to life imprisonment. The appellants were represented by *amicus curiae* appointed by the Supreme Court. While commuting the death sentence to life imprisonment, the Supreme Court in its landmark ruling held that death sentences should not be given if the conviction is based on circumstantial evidence. The Court stated “[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

85. Ram Deo Prasad Vs. State of Bihar, 2013(5)SCALE544

*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.....*⁸⁶

Case 6: A. Devendran, Tamil Nadu

On 21 October 1997, a division bench of the Supreme Court consisting of Justices G. N. Ray and G. B. Pattanaik commuted the death sentence of appellant A. Devendran to life imprisonment. On 14 July 1995, A. Devendran was sentenced to death by the trial court in Sessions Case No. 91 of 1994 for committing murders in Tamil Nadu on 24 November 1992. On 31 October 1995, the High Court of Madras upheld the death sentence in Criminal Appeal No. 717 of 1995. A. Devendra was represented by *amicus curiae* in the Supreme Court.⁸⁷

Case 7: Bantu @ Naresh Giri, Madhya Pradesh

On 17 October 2001, a division bench of the Supreme Court consisting of Justices M. B. Shah and Doraiswamy Raju commuted the death sentence of Bantu @ Naresh to life imprisonment. Bantu was convicted for the rape and murder of a six-year old girl, Jyoti in Umaria district, Madhya Pradesh in January 1999. The trial court had awarded death sentence to Bantu under Sections 302 and 376 of Indian Penal Code. On 19 March 2001, the High Court of Judicature at Jabalpur, Madhya Pradesh confirmed the death sentence awarded to the appellant Bantu @ Naresh by the trial court. The appellant was represented by an *amicus curiae* in the Supreme Court.⁸⁸

Case 8: Brij Mohan, Gulla and Barchia, Rajasthan

Brij Mohan, Gulla and Barchia were sentenced to death by the trial court for the murder of four persons while committing dacoity at a village in Dausa district, Rajasthan in October 1983. The High Court of Rajasthan confirmed the death sentence against each of the three appellants. On 16 October 1993, the Supreme Court confirmed the conviction but the sentence of death was substituted by imprisonment for life. *Amicus curiae* R. K. Garg represented the appellant before the Supreme Court.⁸⁹

86. Appeal (crl.) 453 of 2006 decided on 16 January 2007

87. A. Deivendran Vs. State of T.N, (1997)11SCC720

88. Bantu Vs. State of Uttar Pradesh, (2008)11SCC113

89. Brij Mohan and others Vs. State of Rajasthan, (1994) 1 SCC 413

Case 9: Dharmendrasinh, Gujarat

On 24 August 1998, Dharmendrasinh @ Mansing Ratansinh was accused of killing his two minor sons, Jigarsinh and Virnalsinh in Bhadresar village in Sabar Kantha District, Gujarat. On conviction, the trial court sentenced him to death which was confirmed by the Gujarat High Court in July 2001. On 17 April 2002, the Supreme Court commuted the death sentence to life imprisonment. The appellant was represented by an *amicus curiae* before the Supreme Court.⁹⁰

Case 10: Durga Domar, Madhya Pradesh

Durga Domar was accused of killing five persons, all of them children and relatives in a very ferocious manner in Madhya Pradesh. On conviction, the accused was awarded death sentence by the trial court and confirmed by the High Court. In its order dated 17 July 2001 a division bench of the Supreme Court consisting of Justices K. T. Thomas and R. P. Sethi called for a report within two months on the mental condition of the appellant from the Government Medical College at Jabalpur after it found that the High Court and the trial court did not consider his mental condition at any stage of the case. The Supreme Court observed that “*The mental condition of the appellant has not been considered at any stage of the case - whether he was afflicted by any schizophrenic paranoia - or any other mental illness. Looking at the conspectus of the facts of the case we have a feeling that we should first exercise our mind on the question whether the accused was mentally sound or not at the relevant time. He had no counsel of his own in the trial court. Even after his conviction and sentence of death, he could not engage a counsel in the High Court of his own. The High Court appointed an advocate on State brief. Hence he, perhaps, had no occasion to communicate to his counsel and consequently the counsel who had defended the case would not have had any occasion to ascertain the mental disposition of the accused either at the relevant time or during the succeeding periods. As this is a case where he is sentenced to death our judicial conscience compels us to get a medical report regarding his mental condition.*” The observation of the Supreme Court made it clear that the accused had no counsel of his choice to defend him and the counsel provided by the State in the High Court fail to ascertain his mental condition. Subsequently, the medical report disclosed that appellant suffers from Schizophrenia and accordingly the Supreme Court altered the death

90. Dharmendrasinh @ Mansing Ratansinh Vs. State of Gujarat, (2002)4SCC679

sentence to life imprisonment maintaining the conviction. The appellant was represented by an *amicus curiae* in the Supreme Court.⁹¹

Case 11: Lehna, Haryana

On 5 August 1998, Lehna of Haryana was accused of killing his mother, brother and sister-in-law. He was tried for offences punishable under Section 302, 458 and 324 of the IPC. The trial court, Sonapat found him guilty and awarded death sentence which was confirmed by the Punjab and Haryana High Court. On 22 January 2002, a three judges bench of the Supreme Court consisting of Justices M. B. Shah, B. N. Agrawal and Dr. Arijit Pasayat commuted the death sentence of Lehna to life imprisonment. The appellant was represented by an *amicus curiae* before the Supreme Court.⁹²

91. Durga Domar Vs. State of Madhya Pradesh, (2002)10SCC193

92. Lehna Vs. State of Haryana, (2002)3SCC76

4. The case for setting standards for appointing amicus curiae to defend the death row convicts

Article 39(A) of the Constitution provide effective defence. In August 1990, the Supreme Court in the case of *Kishore Chand vs State of Himachal Pradesh* observed “*The right to defence includes right to effective and meaningful defence at the trial. The poor accused cannot defend effectively and adequately. Assigning an experienced defence counsel to an indigent accused is a facet of fair procedure and an inbuilt right to liberty and life envisaged under Arts. 19 and 21 of the Constitution*”.⁹³

The justice system in India is imperfect and the inability to defend at the stage of trial often leads to award of death sentence. The Supreme Court in *Mohd. Farooq Abdul Gafur and Anr. v. State of Maharashtra* 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, ... it is invariably the marginalized and destitute who suffer the extreme penalty ultimately.*”⁹⁴

There is no doubt that the courts in India appoint lawyers to defend the unrepresented accused. However, not many have been fortunate enough to get competent lawyers particularly at the trial courts. Presently, there is no standard on the provision of legal representation being provided to unrepresented accused.

The Supreme Court in *Kishore Chand vs State Of Himachal Pradesh* also observed that “*Though Art. 39A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the Bar who has either a little experience or no experience is assigned to defend him. It is high time that senior counsel practicing in the court con- cerned, volunteer to defend such indigent accused as a part of their professional duty.*”

93. *Kishore Chand vs State Of Himachal Pradesh* [1990 AIR 2140]

94. [2009] INSC 1403

A Division Bench of Justice Naresh Patil and Shrihari Davare of the Bombay High Court had in October 2009 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 court and asked the judge to appoint an experienced advocate to examine five witnesses in the case.⁹⁵

Clearly, the life and death of accused in capital cases depend on the competence and commitment of appointed lawyers. Yet, there is no standard procedure in legal representation. At times, some crucial evidence or witnesses are not examined or there was lack of communication between the counsels and the accused. These factors sometimes contribute to weakening of the cases of the accused and thereby increase the risk of being awarded the capital punishment as is illustrative from the below given cases:

**Case 1: Convict without legal knowledge conducting cross examination:
The case of Afzal Guru**

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.

95. 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>

Afzal Guru, who had no training in law, had to cross-examine most of the witnesses himself.⁹⁶

Case 2: Acquittal of Mohd. Hussain @ Julfikar Ali, Delhi

On 30 December 1997, a blast was triggered in a Blueline bus near Punjabi Bagh in West Delhi, leaving four persons dead and 24 others injured. On 3 November 2004, the trial court convicted Mohd. Hussain @ Julfikar Ali for murder, criminal conspiracy under IPC and also under the Explosive Substances Act and imposed the death penalty, which was confirmed by the Delhi High Court on 4 August 2006. On 11 January 2012, a division bench of the Supreme Court consisting of Justices H. L. Dattu and Chandramauli Kr. Prasad gave a split verdict on his appeal with one judge directing a fresh trial and the other holding the trial as illegal and ordering Mohd. Hussain's deportation to Pakistan. Both the judges agreed that the accused was denied a fair trial. Justice H. L. Dattu in his order stated as under:⁹⁷

“.....In this casual manner, the trial, in a capital punishment case, was concluded by the Trial Court. It will, thus, be seen that the trial court did not think it proper to appoint any Counsel to defend the Appellant/accused, when the Counsel engaged by him did not appear at the commencement of the trial nor at the time of recording of the evidence of the prosecution witnesses. The accused did not have the aid of the Counsel in any real sense, although, he was as much entitled to such aid during the period of trial. The record indicates, as I have already noticed, that the appointment of Learned Counsel and her appearance during the last stages of the trial was rather proforma than active. It cannot seriously be doubted at this late date that the right of cross-examination is included in the right of an accused in a criminal case, to confront the witnesses against him not only on facts but also to discredit the witness by showing that his testimony-in-chief was untrue and unbiased. The purpose of cross examination of a witness has been succinctly explained by the Constitution Bench of this Court in *Kartar Singh v. State of Punjab* MANU/SC/1597/1994 : (1994) 3 SCC 569.”

96. State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru [(2005)11SCC600]

97. AIR2012SC750

Thereafter the case was heard by a three-judge bench of the Supreme Court, which had in its order on 31 August 2012 set aside the conviction and the death sentence and ordered fresh trial noting that the accused's right to have a free and fair trial had been impeded because he had no legal counsel to represent him during the trial. The retrial started on 8 November 2012 and Mohd. Hussain was acquitted of all charges in January 2013.⁹⁸

Case 4: Juvenile awarded death sentence without age determination: Ramdeo Chauhan, 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* in the Supreme Court.⁹⁹ Ramdeo Chauhan's juvenility at the time of commission of the offences was subject matter of subsequent litigation before the Supreme Court and the Gauhati High Court. Vide judgement dated 19 November 2010 in Review Petition (C) No.1378 OF 2009 in Writ Petition (C) No.457 OF 2005, a Supreme Court Bench comprising Justice Ashok Kumar Ganguly and Justice Aftab Alam observed as under¹⁰⁰:

"11. The appeal from the High Court judgment was dismissed by a Bench of this Court, comprising K.T. Thomas and R.P. Sethi, JJ, on 31.7.2000 and death sentence was upheld. In that judgment, this court did not advert to the question of age of the petitioner as it was possibly not argued."

In 2010, after 18 years, the Supreme Court 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 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

98. See 'Delhi blast case: Pak convict acquitted in retrial', Rediff.com, 4 January 2013, available at: <http://www.rediff.com/news/report/delhi-blast-case-pak-convict-acquitted-in-retrial/20130104.htm>

99. Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam: AIR2000SC2679

100. Judgement dated 19 November 2010 of the Supreme Court in Review Petition (C) No. 1378 OF 2009 in Writ Petition (C) No. 457 OF 2005 Remdeo Chauhan @ Rajnath Chauhan Vs. Bani Kant Das & Others

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.¹⁰¹

Case 5: Juvenile awarded death sentence without age determination: 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.¹⁰² 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.¹⁰³ Ankush was sentenced to death by the trial court, the High Court and the Supreme Court without any attempt being made to ascertain his age on the date of offence even though unimpeachable documentary proof was available showing him to be a juvenile.¹⁰⁴ In July 2012, it was confirmed

101. 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

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

103. *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]

104. See 'Relief for a juvenile', Frontline, Volume 29 - Issue 17 :: Aug. 25-Sep. 07, 2012, at: <http://www.frontline.in/static/html/fl2917/stories/20120907291701100.htm>

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.¹⁰⁵ Ankush Maruti Shinde had to spend more than nine years in prison, six of which were spent in a solitary cell as a death-row convict.¹⁰⁶

Ankush Maruti Shinde belongs to poor background and it is not known whether he was defended by his own lawyers or by lawyers from the legal aid. However, it is a matter of record that neither the accused himself nor any counsel appearing on his behalf could bring into the notice of the courts the factum of his juvenility at any stage of trial or during the pendency of the appeal, which resulted in miscarriage of justice.

105. 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>

106. See 'Relief for a juvenile' Frontline, Volume 29 - Issue 17, August 25-September 7, 2012 at: <http://www.frontline.in/static/html/fl2917/stories/20120907291701100.htm>

5. Emblematic cases involving rich and influential people

In an interview with Amnesty International on 17 April 2013, Justice A. P. Shah, Chairman of the Law Commission of India stated *“In India, it is largely cases involving the poor and the down-trodden - who are the victims of class-bias - which result in an imposition of a death penalty. Here one hardly finds a rich or affluent person going to the gallows”*.¹⁰⁷

While the poor and downtrodden are unable to even cross examine the witnesses, there are allegations that the rich and well-connected criminals can sabotage the probe,¹⁰⁸ intimidate, influence, and induce witnesses, suppress evidence with money and muscle power,¹⁰⁹ and abuse all the procedural rights through barrage of senior lawyers. Some of the emblematic cases in which such allegations were made are discussed below:

Case 1: Rape and murder of Priyadarshini Mattoo, Delhi

Santosh Kumar Singh, son of a former senior IPS officer in Delhi, was accused of rape and murder of Delhi University law student Priyadarshini Mattoo on 23 January 1996. Prior to the incident, Priyadarshini Mattoo was repeatedly harassed by the accused for almost two years. On 3 December 1999, the trial court acquitted the accused on benefit of doubt because of lack of evidence. However, the Delhi High Court reversed the trial court decision and sentenced the accused to death for the offence of rape and murder. On 6 October 2010, the Supreme Court upheld the conviction recorded by the Delhi High Court but reduced the death sentence to life imprisonment noting some mitigating circumstances in favour of Santosh Kumar Singh.¹¹⁰ Pertinently, the acquittal by the trial court had led to strong public reaction following which the CBI filed a petition for an early hearing of the appeal. The High Court had given its decision in a record time of just after 11 hearings. The High Court held that it was clear that the police had initially tried to sabotage the probe under

107. The interview is available at: <http://www.amnesty.org/en/news/death-penalty-india-one-hardly-finds-rich-or-affluent-person-going-gallows-2013-04-17>

108. Santosh Kumar Singh Vs State through CBI, <http://judis.nic.in/supremecourt/imgst.aspx?filename=36948>

109. See ‘Sting heat on Munshi’, The Telegraph, 28 September 2006, at: http://www.telegraphindia.com/1060928/asp/nation/story_6803488.asp

110. Santosh Kumar Singh Vs State through CBI, <http://judis.nic.in/supremecourt/imgst.aspx?filename=36948>

the influence of Santosh Kumar Singh's father, then an IPS officer. Some key witnesses were not examined to help the accused.¹¹¹ Ironically, the trial court also noted "*The influence of the father of the accused resulting in deliberate spoiling of the case*".¹¹²

Case 2: Murder of Jessica Lal, Delhi

On 30 April 1999, Jessica Lal, a model, was shot dead by Siddharth Vashist @ Manu Sharma after she had refused to serve him liquor at a restaurant at Qutub Colonnade in Mehrauli, South Delhi. Manu Sharma, son of former Union Minister Venod Sharma, was acquitted by the trial court on 21 February 2006. However, the Delhi High Court reversed the acquittal and awarded life imprisonment to Manu Sharma on conviction on 20 December 2006. The Supreme Court had upheld the High Court order on 19 April 2010.¹¹³ The trial, which ran for seven years, had gross inadequacies in the investigation and shoddy prosecution lapses that led to Manu Sharma and a number of others being acquitted. There was intense media and public outcry following the acquittal. On appeal, the Delhi High Court conducted proceedings on a fast track with daily hearings conducted over 25 days.¹¹⁴ Sting operation by *Tehelka* revealed that money and muscle power were used to suppress evidence against Manu Sharma.¹¹⁵

Case 3: Murder of Shivani Bhatnagar, Delhi

On 23 January 1999, Shivani Bhatnagar, a correspondent with English daily *Indian Express* was killed at her home in Delhi. On 24 March 2008, the trial court awarded life imprisonment to four accused Ravi Kant Sharma (a senior police officer), Bhagwan, Satya Prakash and Pradeep Sharma on conviction under Section 120-B read with Section 302 IPC.¹¹⁶ The trial court found Ravi Kant Sharma guilty of hiring hitmen to murder Shivani Bhatnagar because he

111. See 'HC: Santosh Kumar Singh raped and murdered Priyadarshini', Hindustan Times, 17 October 2006, at: <http://www.hindustantimes.com/news-feed/nm18/hc-santosh-kumar-singh-raped-and-murdered-priyadarshini/article1-162693.aspx>

112. Santosh Kumar Singh Vs State through CBI, <http://judis.nic.in/supremecourt/imgst.aspx?filename=36948>

113. Sidhartha Vashisht @ Manu Sharma Vs State (NCT of Delhi), <http://judis.nic.in/supremecourt/imgst.aspx?filename=36237>

114. See 'The Ghost of Jessica Lal', Hindustan Times, 18 May 2008, at: <http://www.hindustantimes.com/india-news/newdelhi/the-ghost-of-jessica-lal/article1-311644.aspx>

115. See 'Sting heat on Munshi', The Telegraph, 28 September 2006, at: http://www.telegraphindia.com/1060928/asp/nation/story_6803488.asp

116. Ravi Kant Sharma vs State, Delhi High Court, <http://lobis.nic.in/dhc/BDA/judgement/12-10-2011/BDA12102011CRLA3572008.pdf>

was worried she would go public with details of their relationship. The police claimed that Ravi Kant Sharma used his senior position to influence witnesses and to extricate himself from the case.¹¹⁷ However, the Delhi High Court in its decision delivered on 12 October 2011 while confirming the conviction of Pradeep Sharma acquitted Ravi Kant Sharma, Bhagwan Sharma and Satya Prakash of all charges giving them benefit of doubt.¹¹⁸

117. See 'Shivani Bhatnagar murder: Former police officer Ravi Kant Sharma acquitted', NDTV, 12 October 2011, at: <http://www.ndtv.com/article/india/shivani-bhatnagar-murder-former-police-officer-ravi-kant-sharma-acquitted-140569>

118. Ravi Kant Sharma vs State, Delhi High Court, <http://lobis.nic.in/dhc/BDA/judgement/12-10-2011/BDA12102011CRLA3572008.pdf>

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