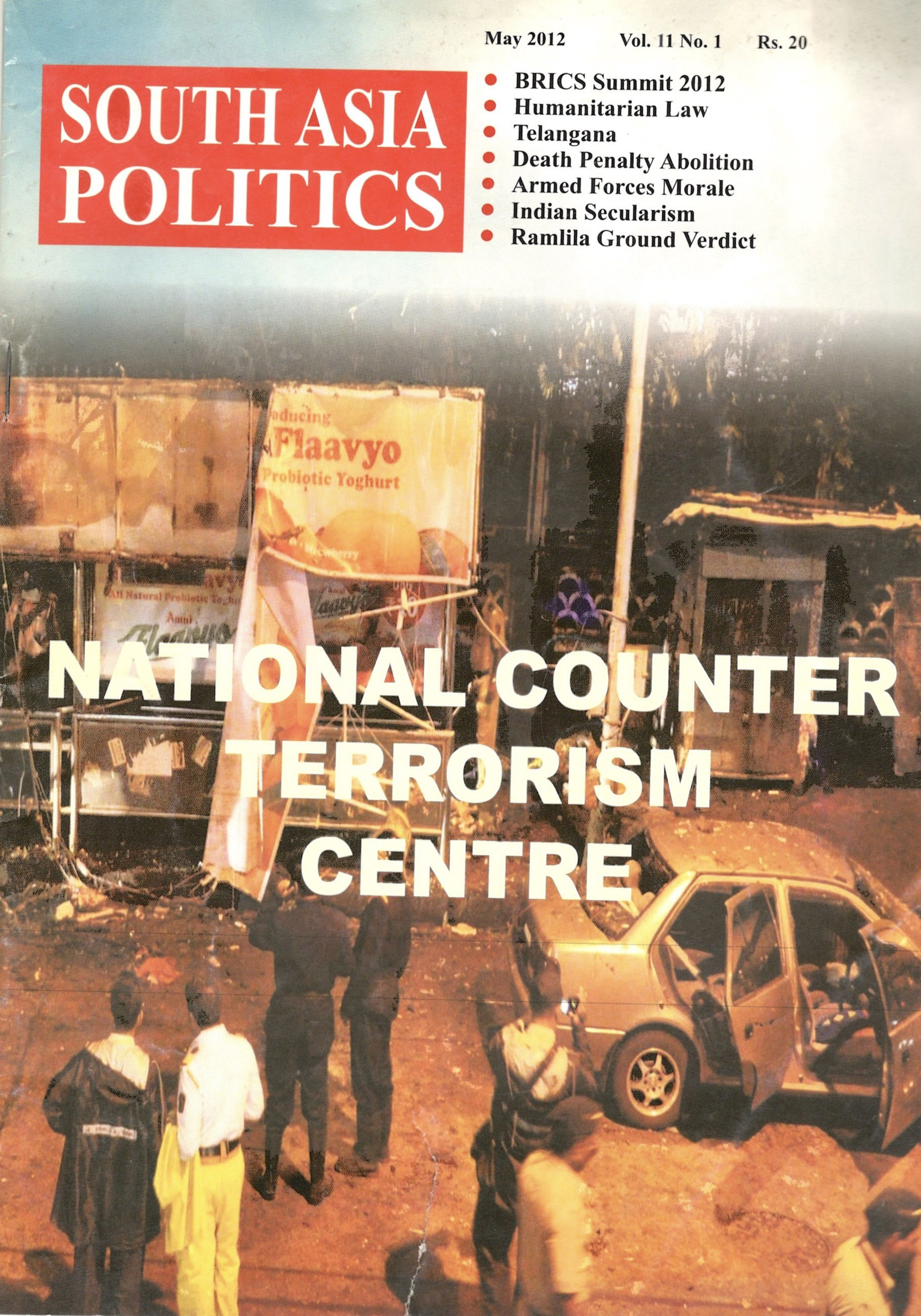


SOUTH ASIA POLITICS

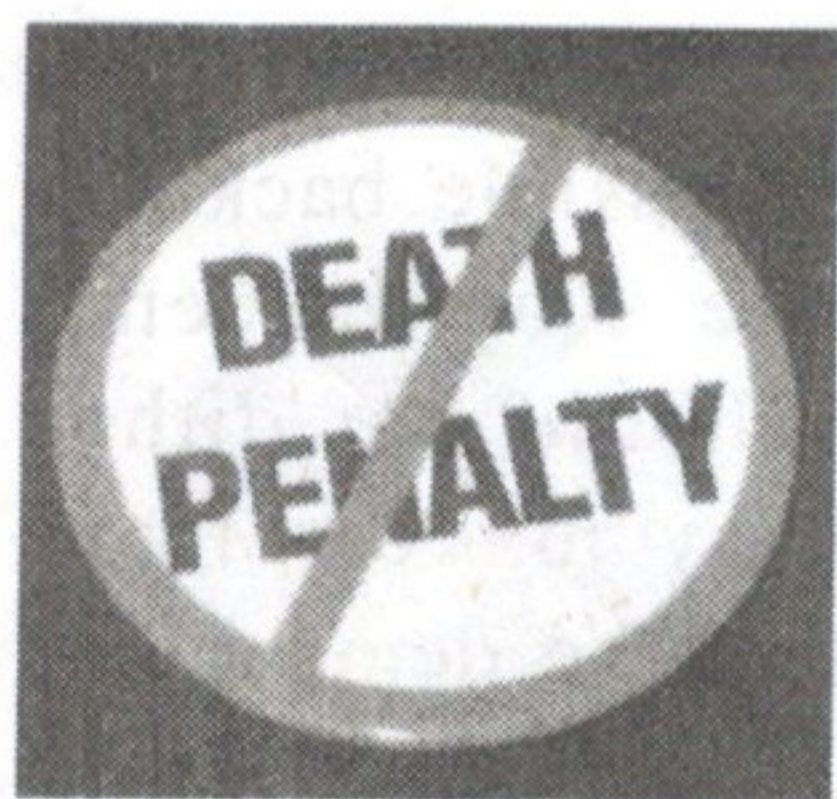
- BRICS Summit 2012
- Humanitarian Law
- Telangana
- Death Penalty Abolition
- Armed Forces Morale
- Indian Secularism
- Ramlila Ground Verdict



NATIONAL COUNTER TERRORISM CENTRE

A New Opening for Abolition Death Penalty

Rajindar Sachar



Punjab Government should have a law passed by the Punjab Assembly amending the Indian Penal Code and providing that punishment for death will be life imprisonment

INDIA is persisting in retaining death penalty notwithstanding that so far 139 countries, from all regions of the world, have abolished the death penalty and 150 have put a moratorium on death penalty. UN has passed a resolution on 20th September, 2010 appealing to all nations to observe moratorium on death penalty if they are not agreeable to pass a legislation abolishing death penalty.

Recently by a curious turn of events a slight clink seems to have crept in against a look like formidable wall of opposition to the abolition of death penalty. I am referring to the case of Balwant Singh Rajoana who was awarded death penalty for assassination of the Punjab Chief Minister Beant Singh in 1995. Rajoana did not appeal against his conviction nor did he file a mercy petition before the President for commutation of his sentence. High Court confirmed his death sentence in 2007.

Badal Government did not take any interest in this case nor was this an issue in the recent election in Punjab. But recently the Jathedars of the holy and universally respected Akal Takhat chose to give a Hukumnana to Badal to commute the sentence of Rajoana. From press reports it appears that Rajoana made it clear that he was not asking for mercy and wanted to be hanged. Why the Jathedars so acted is a

matter which I am quite sure all well wishers and devotees of Akal Takhat will consider seriously considering that Punjab has witnessed disturbing scenes and lot of tension and even Police have had to intervene in some places.

Obviously because of political compulsion the Punjab Chief Minister Badal met the President seeking mercy so as not to hang Rajoana and the execution has been stayed for the time being.

Another petition filed in the Supreme Court as a PIL seeking mercy for Rajoana was dismissed by the Court observing that such a petition was not maintainable.

I may make it clear that I am a confirmed believer in the abolition of death penalty. I am pointing out only the convoluted action of Badal

Government in acting in this manner rather than in the straight forward constitutional manner which is open to it.

I was glad to read in the press an official statement by the the ruling party, Shiromani Akali Dal stating that it was against the death penalty "as it is the ultimate denial of human rights and it violates the right to life". If so I would suggest a straight constitutional method namely the Punjab Government should have a law passed by the Punjab Assembly amending the Indian Penal Code and providing that

punishment for death will be life imprisonment instead of present death or imprisonment for life as provided in the Indian Penal Code. Our Constitution has concurrent list which enables both the Parliament and the State Assembly to pass legislation. Entry No. 1 in the list includes all matters including the Indian Penal Code at the commencement of the Constitution. Thus both the Centre and State can legislate and provide for various sentences under the Indian Penal Code. Of course if the Punjab Government was to amend the Indian Penal Code for providing only imprisonment for life it may prima facie run counter to the Indian Penal Code but for such a situation Article 254 of the Constitution itself provides a remedy namely – that in such a case the State Law may be reserved for consideration of the President and if it has received his consent, that law shall prevail in that State. The result will be that if Badal Government genuinely acts, Indian Penal Code will only provide for imprisonment for life and not death in the State of Punjab. This will serve both the purpose of Rajoana not being hanged but also set a healthy precedent for the rest of the country to also abolish death penalty.

(Continued on page no. 21)

(Continued from page no. 18)

It is thus clear that notwithstanding retention of the death penalty in the Indian Penal Code a central legislation, Punjab Government can pass a law providing for only imprisonment of life under the Indian Penal Code and send it for approval to the President. It will then be for the Centre to take the decision and if it does not approve of the Punjab Government suggestion at least Badal Government would be able to say that it not only tried to lead in the field for human rights for abolishing the death penalty but also in the process tried to avoid the execution of Rajoana.

That States in our Constitution can take different views on the question of death penalty is not in doubt. The example of USA is apposite. The USA consists of 50 states. While at the federal (i.e. central) level, imposition of death sentence has been upheld as a constitutionally valid punishment, 13 states as also the District of

Columbia, have prohibited and banned death sentence.

The vociferous opposition to abolition of death penalty springs from myth that it can lead to increase in murders. Facts show otherwise. Thus, in 1945-50 the State of Travancore, which had no death penalty, had 962 murders whereas during 1950-55, when death sentence was introduced, there were 967 murders.

In Canada, after the abolition of death penalty in 1976, the homicide rate has declined. In 2000, there were 542 homicides in Canada – 16 less than in 1998 and 159 less than in 1975 (one year prior to the abolition of capital punishment).

A survey conducted by the United Nations in 1988 concluded that research has failed to provide any evidence that executions have a greater deterrent effect than life imprisonment.

The Punjab Government should not have any second thought about the support both on moral and legal ground for the abolition of death

penalty – in Gandhi's India who said that "I cannot in all conscience agree to anyone being sent to the gallows, God alone can take life because he alone gives it". Similarly Dr. Ambedkar said, "I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether". Similarly the socialist leader Jai Parkash Narain said that, ".....death sentence is no remedy for such crimes."

The High Commissioner for Human Rights, Louise Arbour called the death penalty "....a sanction that should have no place in any society that claims to value human rights and the inviolability of the person".

Will the Badal Government bring in the necessary amendment as mentioned above – if it does not it will expose it to the charge that all this drama of appealing to the President for mercy for Rajoana is a political gimmick and not for any larger considerations of human right.

The author is retired Chief Justice of Delhi High Court.