

AMNESTY INTERNATIONAL INDIA

PUBLIC STATEMENT

9 October 2013

AI Index: ASA 20/055/2013

Oct 10, World Day against Death Penalty: India Must Commute Death Sentences Of All Prisoners at Risk of Execution

At least 23 people in India are at risk of execution. The cases of 18 people on death row, at risk of imminent execution and seeking commutation of their death sentences on grounds including delay in the disposal of their mercy petitions, are scheduled to be heard together by India's Supreme Court starting 22 October 2013. Another five prisoners, most of whose mercy petitions have been rejected, are also on death row.

This briefing presents details of the cases of all prisoners facing execution, and significant factors in each case. The upholding of the death sentence by the Supreme Court in some of these cases was made in judgments that the court later stated were *per incuriam*, or bad law. The briefing also outlines Amnesty International India's concerns regarding the Supreme Court's consideration of delay in 'terror' cases, and systemic flaws and secrecy around the use of the death penalty in India.

The use of the death penalty in India has been repeatedly acknowledged by Indian courts to be arbitrary, inconsistent, biased and flawed. There is no convincing evidence that capital punishment has a unique deterrent effect on crime, and its use puts India in a minority of countries that continue to execute.

Amnesty International India urges Indian authorities to commute all these death sentences to terms of imprisonment, and impose a moratorium on executions as a step towards ending the death penalty in India.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The death penalty violates the right to life, as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

Background

Since assuming office in July 2012, President Pranab Mukherjee has rejected the mercy petitions of 20 prisoners and commuted the death sentence of one. This is the most disposals of mercy petitions by a President in nearly 25 years.[1] In November 2012, the President rejected the mercy petition of Ajmal Kasab, the lone surviving gunman of the 2008 Mumbai attacks. On 21 November 2012, Ajmal Kasab was hanged, marking the resumption of executions in India after a gap of over eight years. Less than three months later, Afzal Guru, convicted of involvement in an attack on the Parliament of India, was executed. These two mercy petitions were unusually considered out of turn, and the executions were not announced to the public or the convicts' families until after they had been carried out.

In cases involving 18 persons whose mercy petitions have been rejected, including some whose mercy petitions were rejected by the earlier President Pratibha Patil, the judiciary has stayed executions after prisoners sought commutation of their sentences on grounds including delay in the disposal of their mercy petitions.

In July 2013, the Chief Justice of India said that conflicting judgements on mercy petitions by smaller benches had created a need for an authoritative pronouncement. He said that a five-judge 'constitutional bench', specially created to hear cases involving important questions of law, would begin hearing 18 cases seeking commutation in October 2013.[2]

Another five prisoners are also on death row. Their executions have been stayed, but they remain at risk.

Details of cases being heard by the Supreme Court

Simon, Gnanaprakasham, Meesekar Madaiah and Bilavendran were convicted in September 2001 by a special court set up under the Terrorist and Disruptive Activities Prevention Act (TADA) for involvement in a land mine blast in 1993 that killed 22 people. The special court sentenced them to life imprisonment, but on appeal their sentences were increased to the death penalty by the Supreme Court in January 2004.

Significant factors: International standards on the death penalty, including the UN Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty, state that anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction. This right is not available when the Supreme Court enhances a sentence of life imprisonment to death, as the revision jurisdiction of the Supreme Court is highly limited.

The Supreme Court itself has rarely exercised the power to enhance sentences of life imprisonment to death. It has described the enhancement of punishment as 'extraordinary jurisdiction'. [3] In several cases, the Supreme Court has rejected similar enhancements of sentence made by High Courts. [4]

Trials under the TADA did not uphold international fair trial standards; provisions of the TADA were also grossly abused in India to facilitate further human rights violations. The TADA was allowed to lapse in 1995.

Sonia Choudhary and **Sanjeev Choudhary** were convicted in May 2004 of the murder of eight relatives in August 2001 and sentenced to death. On appeal, the Punjab and Haryana High Court commuted their sentences to life imprisonment in April 2005. However, the Supreme Court increased the sentence to death in February 2007.

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Gurmeet Singh was sentenced to death by a court in July 1992 for the murder of thirteen relatives in 1986. The sentence was upheld by the Allahabad High Court in February 1996 and by the Supreme Court in September 2005.

Significant factors: One of the two judges in the High Court who heard the appeal was in favour of acquitting Gurmeet Singh, saying that the evidence against him was insufficient to prove guilt. The case was then referred to a third judge, who upheld the conviction and death sentence. In some cases involving similar non-unanimous rulings, the Supreme Court has commuted death sentences to life imprisonment.[5] The Court has also observed that death sentences need to be approved unanimously to remove 'the vice of arbitrariness'.[6]

When Gurmeet Singh sought an appeal of his sentence in the Supreme Court, the negligence of officials at the Allahabad High Court led to a delay of seven years in the judicial process. The High Court took disciplinary action against the officials responsible, but the Supreme Court refused to commute the sentence on the ground of delay, stating that it could only consider delays for which executive authorities were responsible.[7]

Shivu and **Jadeswamy** were sentenced to death by a court in July 2005 for the rape and murder of a woman in 2001. The Karnataka High Court upheld the sentence in November 2005 and the Supreme Court confirmed it in February 2007.

Significant factors: In November 2012, the Supreme Court - in a different case relating to the imposition of the death penalty - observed that in Shivu and Jadeswamy's case,

“the circumstances of the convicts were not considered for reducing the death penalty” – a necessary measure that courts are required to take under the ‘rarest-of-rare’ doctrine in Indian law before sentencing anyone to death.[8]

Murugan, Santhan and Arivu (aka Perarivalan) were sentenced to death in January 1998 by a special court set up under the Terrorist and Disruptive Activities Prevention Act (TADA) of involvement in the killing of India’s former Prime Minister Rajiv Gandhi and 15 other people in May 1991. In May 1999, the Supreme Court acquitted them of charges under the TADA, but upheld their convictions on other charges including murder, and confirmed their death sentences.

Significant factors: The presiding judge in the three-judge bench of the Supreme Court that confirmed the death sentences told journalists in February 2013 that the judgement was ‘constitutionally incorrect’.[9] He said the judgment had ‘errors’ as the Court had not considered the antecedents, nature and character of the accused. He also said that since the convicted prisoners had already spent over two decades in custody, their execution would amount to giving ‘two punishments for the same crime’, which would violate the Constitution of India.[10]

In August 2011, the legislative assembly of Tamil Nadu state had adopted a resolution recommending commutation of the death sentences.

Trials under the TADA did not uphold international fair trial standards; provisions of the TADA were also grossly abused in India to facilitate further human rights violations. The TADA was allowed to lapse in 1995.

Suresh and Ramji were convicted and sentenced to death by a court in February 1997 for the murder of five relatives in 1996. The sentence was upheld by the Allahabad High Court in February 2000 and by the Supreme Court in March 2001.

Jafar Ali was given the death sentence in July 2003 for the murder of his wife and five daughters in 2002. The Allahabad High Court upheld the sentence in January 2004, and the Supreme Court confirmed it in April 2004.

Praveen Kumar was convicted of the murder of four people in 1994 and sentenced to death by a court in February 2002. The sentence was upheld by the Karnataka High Court in October 2002 and by the Supreme Court a year later.

Sunder Singh was given the death sentence by a court in June 2004 for the murder of five relatives in 1989. The sentence was upheld by the Uttaranchal High Court in July 2005 and by the Supreme Court in September 2010.

Maganlal Barela was sentenced to death by a court in February 2011 for the murder of his five daughters in June 2010. The sentence was upheld by the Madhya Pradesh High Court in September 2011 and the Supreme Court in January 2012.

Details of cases of other prisoners on death row

Devender Pal Singh Bhullar was sentenced to death by a special court set up under the Terrorist and Disruptive Activities Prevention Act (TADA) in August 2001 for his involvement in a bomb attack in New Delhi in 1993 that killed nine people. The Supreme Court confirmed the conviction and death sentence in March 2002, although one of the three judges had found him not guilty, saying there was no evidence to convict him.

After his mercy petition was rejected, Devender Pal Singh Bhullar again approached the Supreme Court to commute his sentence on grounds including delay in the disposal of his mercy petition. In April 2013, the Supreme Court refused to commute his sentence, stating that delay “cannot be invoked in cases where a person is convicted for an offence under TADA or similar statutes.”

Significant factors: Devender Pal Singh Bhullar’s trial fell far short of international standards for a fair trial. He had no access to a lawyer during his initial detention and trial. He was found guilty on the basis of an unsubstantiated confession made to the police, which he later retracted, claiming it was a false confession made under police pressure.

The Supreme Court bench which heard his latest petition did not adequately consider concerns raised about his mental health.

Trials under the TADA did not uphold international fair trial standards; provisions of the TADA were also grossly abused in India to facilitate further human rights violations. The TADA was allowed to lapse in 1995.

Saibanna Natikar was sentenced to death by a trial court in January 2003 for the murder in 1994 of his second wife and daughter. At the time of the crime, he had been free on parole from a life sentence for the murder of his first wife. The Karnataka High Court upheld the sentence in October 2003, and the Supreme Court did so in April 2005.

Significant factors: While one of the judges on the two-judge bench in the High Court which heard the case was in favour of giving the death sentence, the second judge was in favour of sentencing Saibanna to life imprisonment, saying that the case was “not a fit case to award death sentence”. The case was referred to a third judge, who ruled in favour of the death penalty. In some cases involving similar non-unanimous rulings, the Supreme Court has commuted the death sentence to life imprisonment.[11]

In 2009, the Supreme Court - in a different case - observed that the reasoning underlying the confirmation of Saibanna’s death sentence in the Supreme Court judgement in 2005 implied that the death penalty was mandatory for any prisoner already serving a life sentence and convicted of a second offence that merited a life sentence. The Court said that such reasoning violated an earlier decision which had ruled

that mandatory death sentences were unconstitutional.[12] UN bodies and mechanisms have repeatedly stated that the mandatory imposition of the death penalty violates international law.

In August 2012, fourteen former High Court and Supreme Court judges wrote to the President of India asking him to commute the death sentences of Saibanna and 12 other prisoners, which they said were given in judgments that were *per incuriam*, or bad law. **B A Umesh** was given the death sentence by a court in October 2006 for the rape and murder of a woman in 1998. The sentence was upheld by the Karnataka High Court a year later, and by the Supreme Court in February 2011.

Significant factors: In November 2012, the Supreme Court – in a different case – observed that the Court’s ruling in B A Umesh’s case had wrongly presumed that he was guilty of other instances of robbery and assault and deemed him ‘incapable of rehabilitation’ despite his guilt not having been proven in any other case.[13]

Dharampal was convicted and sentenced to death in May 1997 of the murders of five people in 1993, committed while he was released on bail after being convicted of rape. The sentence was upheld by the Punjab and Haryana High Court in September 1998 and by the Supreme Court in March 1999.

Balwant Singh Rajoana was convicted and given the death sentence by a court in 2007 for his involvement in the killing of a former Punjab Chief Minister and 16 other people in 1995. The death sentence was confirmed by the High Court of Punjab and Haryana in October 2010. Balwant Singh Rajoana’s execution was scheduled for March 31, 2012, but was stayed after a mercy petition was filed before the President.

Supreme Court’s consideration of delay in disposal of mercy petitions

Amnesty International India opposes the death penalty in all circumstances, and therefore does not believe that there is any ‘appropriate’ length of time a prisoner can be held before execution.

However, Amnesty International India notes that the Supreme Court has in the past commuted death sentences to life imprisonment, ruling that ‘inordinate executive delay’ could amount to cruel, inhuman and degrading punishment and was a violation of the right to life guaranteed under the Indian Constitution.[14]

In 1989, a five judge constitutional bench of the Supreme Court ruled that inordinate delay in the disposal of a mercy petition by the executive could be counted as a factor in favour of commutation.[15]

The Supreme Court held that: “Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 ... This Court [however] may consider the question of inordinate delay in the light of all circumstances

of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable”.

Even prior to this judgement, the Supreme Court had commuted death sentences to life imprisonment on account of ‘inordinate executive delay’ amounting to a violation of the right to life under the Indian constitution. In some of these commutations, the executive delay was of two years and under.[16]

However in April 2013, the Supreme Court, in the case of *Devender Pal Singh Bhullar versus State*, while noting the petitioner’s claims that the delay of eight years in disposal of the mercy petition “has rendered the sentence of death cruel, inhuman and degrading, treatment”, decided not to commute the death sentence based on the ‘enormity of the crime’.[17]

Torture and other cruel, inhuman or degrading treatment or punishment are absolutely and unequivocally prohibited under international human rights and humanitarian law. The prohibition is a peremptory norm of general international law which applies to all states, and is provided for in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a State Party. This provision is non-derogable - it cannot be revoked or restricted even in the direst of emergencies.

The Supreme Court’s approach that considerations of ‘the enormity of the crime’ may outweigh claims of cruel, inhuman or degrading treatment or punishment is therefore of extreme concern.

Systemic flaws in use of death penalty in India

The use of the death penalty in India is riddled with systemic flaws. Inconsistency in sentencing is a particular concern. Research by Amnesty International and the People’s Union for Civil Liberties into Supreme Court judgements on the death penalty has revealed that the imposition of death sentences is highly arbitrary, and depends on a range of factors ranging from the competence of legal representation to the personal views and idiosyncrasies of the judges who hear the case.

The Supreme Court has on several occasions acknowledged the judiciary’s lack of consistency in the use of the death penalty.[18] In November 2012, it said that death penalty sentencing had become ‘judge-centric’ rather than based on legal principles.[19]

In August 2012, 14 retired High Court and Supreme Court judges wrote to the President of India, pointing out that the Supreme Court had awarded the death sentence to 15 people in judgements that were *per incuriam*, or bad law. They described the execution of two prisoners in 1996 and 1997 following flawed judgements as “the gravest known miscarriage of justice in the history of crime and punishment in independent India”.[20]

Former judges and a former President have acknowledged that there is a class bias in the use of the death penalty in India, and it is discriminatory against those with little wealth and influence.[21]

Amnesty International India is also concerned about successive legislation – such as the Unlawful Activities Prevention Act - providing for the trial, conviction and sentence of death for ‘terrorist offences’, which violate international law and standards for fair trial. Concerns with such legislation include the broad definition of ‘terrorist acts’ for which the death penalty can be imposed; insufficient safeguards on arrest; exceptional provisions that allow ‘confessions’ made to police rather than a magistrate to be admissible as evidence, and obstacles to confidential communication with counsel.

Amnesty International India is also concerned about the insufficient independence of special courts from executive power; insufficient safeguards for the presumption of innocence; provisions for discretionary closed trials; sweeping provisions to keep secret the identity of witnesses; and limits on the right to review by a higher tribunal.

Secrecy around the use of the death penalty

Amnesty International India is concerned by the secrecy that now surrounds the use of the death penalty in India. When Ajmal Kasab was executed on 21 November 2012, the public and his family were only informed after the execution had been carried out. Similarly, when Afzal Guru was executed on 9 February 2013, his family received official notification of his execution only after it had been carried out. Further, Afzal Guru’s body was not returned to his family for last rites and burial.

Information regarding decisions on mercy petitions by the President is no longer available on the website of the President’s Secretariat. Prisoners and their families are sometimes unaware of the rejection of mercy petitions, or are informed very late. Lawyers and activists have been forced to rely on unofficial sources for information about scheduled executions. Some executions have been stayed by the Supreme Court only hours before they were to take place, following late-night interventions by lawyers at judges’ homes.[22]

Transparency on the use of the death penalty is among the fundamental safeguards of due process that prevent the arbitrary deprivation of life. The UN Commission on Human Rights has called upon all states that still maintain the death penalty “to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution”. [23] Making information public with regard to legislation providing for the death penalty as well as its implementation allows for an assessment of whether fair trial and other international standards are being respected.

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also stated that “refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation”. [24]

Global trend towards abolition of death penalty

As of today, 140 countries have abolished the death penalty in law or in practice. Only one in 10 countries in the world carries out executions, and only 21 of the world’s countries were recorded as having carried out executions in 2012.

UN bodies and mechanisms have repeatedly called upon member states to establish a moratorium on executions with a view to abolishing the death penalty, including through the adoption of four UN General Assembly resolutions in December 2007, 2008, 2010 and 2012.

The UN Human Rights Committee, the expert body charged with overseeing the implementation of the ICCPR, has said that Article 6 of the Covenant - which provides for the right to life - “refers generally to abolition [of the death penalty] in terms which strongly suggest...that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life.”

The death penalty has not been shown to have any particular deterrent effect. UN experts and bodies, including the UN High Commissioner for Human Rights, have said that suggestions that the death penalty has a meaningful deterrent effect have been overstated. [25] A major study conducted in USA in 2012 concluded that there was a lack of credible evidence about the deterrent effect of capital punishment. [26]

Amnesty International India reiterates that Indian authorities have an obligation to guarantee justice to the victims of terrorist attacks or sexual violence and their families. Authorities must conduct prompt, thorough, effective and independent official investigations into all such incidents, and try those accused in fair trials. However they must do so without recourse to the death penalty.

Recommendations

Amnesty International India urges the Government of India to:

- Immediately commute all death sentences to terms of imprisonment, and
- Impose a moratorium on all executions, as a first step towards abolishing the death penalty altogether.

Endnotes

- [1] For details of disposal of mercy petitions by year from 1980 to 2006, see Bikram Jeet Batra, *'Court' of Last Resort: A Study of Constitutional Clemency for Capital Crimes in India*, 2009, pp.96-97, available at www.jnu.ac.in/cslg/workingPaper/11-Court%20%28Bikram%29.pdf
- [2] See "Larger bench of SC to hear death row convicts", *The Hindu*, 26 July 2013, available at www.thehindu.com/news/national/larger-bench-of-sc-to-hear-pleas-of-death-row-convicts/article4956418.ece
- [3] *Gagan Kanojia and another vs. State of Punjab*, (2006) 13 SCC 516
- [4] See for example *Jashubha Bharatsingh Gohil and others vs. State of Gujarat*, (1994) 4 SCC 353
- [5] See for example *Pandurang and others vs. State of Hyderabad*, AIR 1956 SC 216
- [6] Justice PN Bhagwati (dissenting judgement) in *Bachan Singh vs. State of Punjab*, (1982) 3 SCC 24
- [7] *Gurmeet Singh vs. State of Uttar Pradesh*, AIR 2005 SC 3611
- [8] *Sangeet and another vs. State of Haryana*, AIR 2013 SC 447
- [9] See "Constitutionally incorrect to hang the three, says judge who confirmed death for Rajiv killers", *The Times of India*, 24 February 2013, available at http://articles.timesofindia.indiatimes.com/2013-02-24/india/37269646_1_penalty-rajiv-gandhi-assassination-case-death-convicts
- [10] See "Don't hang Rajiv killers", *The Hindu*, 25 February 2013, available at <http://www.thehindu.com/todays-paper/tp-in-school/dont-hang-rajiv-gandhi-killers-k-t-thomas/article4450403.ece>
- [11] See for example *Pandurang and others vs. State of Hyderabad*, AIR 1955 SC 216
- [12] *Santosh Bariyar vs. State of Maharashtra*, (2009) 6 SCC 498
- [13] *Sangeet and another vs. State of Haryana*, AIR 2013 SC 447
- [14] See for example *Jagdish vs. State of Madhya Pradesh*, (2009) 9 SCC 495
- [15] *Triveniben vs State of Gujarat*, 1989 AIR SC 1335
- [16] See for example *T V Vatheeswaran vs. State of Tamil Nadu* AIR 1983 SC 361
- [17] *Devender Pal Singh Bhullar vs. State of N.C.T of Delhi*, (2013) 6 SCC 195
- [18] *Aloke Nath Dutta vs. State of West Bengal*, (2007) 12 SCC 230; *Swamy Shraddananda vs. State of Karnataka*, AIR 2007 SC 2531; *Santosh Bariyar vs. State of Maharashtra*, (2009) 6 SCC 498
- [19] *Sangeet and another vs. State of Haryana*, AIR 2013 SC 447
- [20] Copies of letters on file with Amnesty International India.
- [21] Amnesty International, "Death penalty in India: "One hardly finds a rich or affluent person going to the gallows"" (Index: ASA 20/023/2013); "Pending death penalty cases have social, economic bias, says Kalam", *The Hindu*, 2 July 2012, available at <http://www.thehindu.com/todays-paper/tp-in-school/pending-death-penalty-cases-have-social-economic-bias-says-kalam/article3592711.ece>
- [22] See for example "Supreme Court stays execution of Maganlal", *The Hindu*, 8 August 2013, available at <http://www.thehindu.com/news/national/other-states/supreme-court-stays-execution-of-maganlal/article5001475.ece>; "Supreme Court stays execution of two", *The Hindu*, 21 August 2013, available at <http://www.thehindu.com/news/national/karnataka/supreme-court-stays-execution-of->

two/article5044630.ece; “Urgent plea in SC to stay execution of Veerappan aides”, *The Hindu*, 16 February 2013, available at <http://www.thehindu.com/news/national/karnataka/urgent-plea-in-sc-to-stay-execution-of-veerappan-aides/article4422334.ece>

[23] Resolution 2005/59, adopted on 20 April 2005, available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-59.doc

[24] UN document E/CN.4/2006/53/Add.3, 24 March 2006, para. 32, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/120/57/PDF/G0612057.pdf>

[25] See OHCHR, *Moving Away from the Death Penalty: Lessons from National Experiences*, October 2012, available at http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

[26] National Research Council, “Current research not sufficient to assess deterrent effect of the death penalty”, 18 April 2012, available at <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=13363>

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