

# amnesty international

## INDIA THE DEATH PENALTY

October 1989

Summary

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The Indian Constitution protects the right to life. Yet on average over a dozen Indians are executed every year for criminal offences. Most of them are poor and illiterate. Although the Indian Constitution guarantees all its citizens equality before the law, the fact that people are executed depends on what often appear to be arbitrary decisions of the courts or of the executive, which decides on mercy petitions. The social and political background of those sentenced to death also play a part in executions. Among those executed were several men convicted of politically motivated offences. At least one of them - Kehar Singh, convicted of conspiring to kill the late Prime Minister Indira Gandhi - was sentenced to death on unconvincing circumstantial evidence. Many Indians continue to wonder whether an innocent man may have been executed; if such an error has been made, it can never be corrected.

Executions in India are carried out by hanging. In 1983 the Supreme Court held that hanging did not involve torture, brutality, barbarity, humiliation or degradation. Amnesty International believes it involves all these, regardless of how executions are carried out. The Supreme Court said in 1983 that the system of hanging in operation in India avoided the chances of strangulation which resulted from too short a drop of the body, or of decapitation resulting from too long a drop. Yet some hangings fail to result in rapid death; this enhances and prolongs the unique cruelty and torture involved in all executions. Some in India have waited for more than a decade before the order to execute them was carried out.

Although India's higher courts have ruled that the death penalty can only be applied in the "rarest of rare" cases, the number of offences carrying the death penalty has been extended in recent years. This has been done even though the death penalty in India, as in other countries, is not known to have a special deterrent effect. From 1945 to 1950 the death penalty was abolished in two former princely states in southern India, but the number of murders remained the same in the six years after capital punishment had been restored.

Although many Indians believe that the death penalty should be retained, some prominent Indians have argued that capital punishment should be abolished. Among them are the late Prime Minister, Indira Gandhi. A former Chief Justice of India said this year that "the death penalty does not act as a deterrent to criminals who are determined to kill for motives personal or political" and that "the time is now ripe for asserting that the death penalty ought to be abolished".

Amnesty International urges the government to take steps to abolish the death penalty, possibly by setting up a commission to review its application. Pending abolition, Amnesty International urges the government not to carry out further executions, to restrict the number of offences carrying the death penalty, and to remove the possibility that offenders younger than 18 years old when they committed the offence can be executed. It also recommends that detailed statistics be published about executions in India, and that all those facing execution be given the minimum safeguards for a fair trial and adequate legal defence at all stages of trial proceedings.

This summarizes the attached 36-page document, India: The Death Penalty (AI Index: ASA 20/13/89), issued by Amnesty International in October 1989. Anyone wanting further details or to take action on this issue should consult the full document.

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# **INDIA**

## **THE DEATH PENALTY**

**October 1989**



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## INDIA: THE DEATH PENALTY

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## 1. Introduction

The Indian Constitution protects the right to life. Yet on average over a dozen Indians are executed every year for criminal offences. Most of them are poor and illiterate. Although the Indian Constitution guarantees all its citizens equality before the law, the fact that people are executed depends on what often appear to be arbitrary decisions of the courts or of the executive, which decide on mercy petitions. The social and political background of those sentenced to death also play a part in executions. Among those executed were several men convicted of politically motivated offences. At least one of them - Kehar Singh, convicted of conspiring to kill the late Prime Minister Indira Gandhi - was sentenced to death on circumstantial evidence which failed to convince many legal experts in India and abroad of his guilt. Indeed, many Indians continue to wonder whether an innocent man may have been executed. Yet his execution is irrevocable.

Executions are carried out by hanging. In 1983 the Supreme Court held that hanging did not involve torture, brutality, barbarity, humiliation or degradation. Amnesty International believes it involves all these things, regardless of where and however efficiently executions are carried out. It is the ultimate form of cruel and inhuman punishment and violates the right to life. All executions involve a deliberate assault on a prisoner; they inflict severe pain and suffering, both mental and physical.

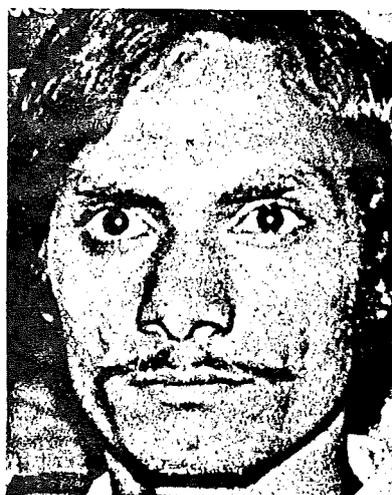
In August 1983 the Attorney-General defended hanging as the best method of execution by saying that the three vital systems of the body - vascular, nervous and respiratory - were extinguished in one moment by following the method prescribed in the jail manual. "There may be a few freak cases where hanging had gone wrong but that was no reason to discard the method", he was reported as saying.

The Supreme Court said in 1983 that the system of hanging in operation in India avoided the chances of strangulation which resulted from too short a drop of the body, or of decapitation resulting from too long a drop. Yet some hangings fail to result in rapid death; this enhances and prolongs the unique cruelty and torture involved in all executions.

Nathuram Godse, convicted of murdering Mahatma Gandhi, reportedly died 15 minutes after being dropped from the scaffold at Ambala prison. Others have only died slowly after the executioners took hold of the hands or legs of the convicts to pull the body down. This was how the execution of 29-year-old Jasbir Singh (Billa) and 27-year-old Kuljit Singh (Ranga), two men convicted of kidnapping and murdering two children in 1978, was reported in Sunday, Calcutta, 14 February 1982. The report is based on accounts of eye-witnesses to the executions in Tihar Jail.

"At 8.00 am on 31 January Delhi's Tihar jail superintendent, U.K. Wohra, brought down his right hand.... The middle-aged executioner from Patiala, Fakiri, immediately pulled the lever. The two wings of the wooden platform on which Billa and Ranga stood, opened out with a crash into the eight-foot-deep cemented pit and the two bodies trembled within it.... It was nearly 15 minutes before the Manila rope from which Billa and Ranga hanged

stopped swaying. Once the bodies had stopped swaying the executioner went about his macabre job. Within two minutes he was descending the cemented steps on the eastern side of the square, eight-by-eight-feet, cemented pit. He was accompanied by two assistants. He went up to Billa's dangling body, caught hold of the handcuffs that tied Billa's hands behind his back and pulled the body down and jerked it. The executioner's assistants each caught a foot of Ranga's and jerked him down. It was from Billa's stocky body that life departed first. Ranga had to be given two or three jerks. Once, as his nerves strained against the asphyxiation, Ranga's knees bent a little in a last flicker of movement. It turned out later that the rope had slipped a little on Ranga's neck. The knot, which should have been behind the ears, had moved towards the front."



Jasbir Singh (Billa) (c. India Today) and Kuljit Singh (Ranga) (c. Sunday)

### 1.1. Indian views of the death penalty

Many Indians believe that the death penalty should be retained, and in 1980, the Supreme Court of India upheld that the death penalty was a constitutional form of punishment. But other Indians have argued for abolition.

Indira Gandhi - Prime Minister of India until her assassination in 1984 - has said that she personally believed the death penalty should be abolished. On 24 April 1972 Mrs. Gandhi told the Lok Sabha (parliament):

"I know that capital punishment is a controversial subject. The Law Commission has expressed an opinion in favour of retaining it. This was supported by several of our chief ministers. But in spite of a very thorough study the Law Commission's report was not able to establish any real relationship between the incidence of murder and capital punishment.... This is a matter on which I should like Honourable Members and [the]

public to give thought"

Mahatma Gandhi also opposed the death penalty, saying that:

"I cannot in all conscience agree to anyone being sent to the gallows. God alone can take life because he alone gives it. ... Destruction of individuals can never be a virtuous act. The evil doers cannot be done to death."

In this he expressed views similar to those of Prince Satyavan in the classic Indian epic The Mahabharata. Other leading Indians have similarly argued that the death penalty should be abolished. Among them are now two former Chief Justices of India. One of them, Justice P. N. Bhagwati, dissented from the other four Supreme Court judges who, in the important 1980 judgment Bachan Singh v. State of Punjab upheld the constitutionality of the death penalty. He then wrote:

"I regard men as an embodiment of divinity and I am therefore morally against the death penalty. But my dissent is based not upon any ground of morality or ethics but is founded on constitutional issues, for .. [the] death penalty does not serve any social purpose or advance any constitutional value and is totally arbitrary and unreasonable so as to be violative of Articles 14, 19, 21 of the Constitution."

But the other Supreme Court judges, headed by the then Chief Justice Y.V. Chandrachud, ruled that the death penalty did not violate any of these fundamental constitutional rights. Former Chief Justice Chandrachud has now described why the Supreme Court took this position in 1980. He said:

"The constitutional validity of the death penalty was upheld in the well-known decision of the Supreme Court in Bachan Singh. That decision was rendered partly for the reason that the time was not as yet ripe in India for abolition of the death penalty and partly for the reason, not fully articulated, that the death penalty acts as a deterrent to potential murderers."

But, since then, the former Chief Justice has changed his views. In a 1989 statement made available to Amnesty International, Justice Chandrachud said that he believed that the death penalty had no deterrent effect and that it should now be abolished. In the statement he wrote:

"Life is never static. It moves on. I believe that the time is now ripe for asserting that the death penalty ought to be abolished. In spite of the fact that the Supreme Court, by a majority, upheld the validity of the death sentence, the number of murders has not come down in any measure at all. On the contrary, there has been an unprecedented wave of murders in different parts of our country. That shows beyond a shadow of a doubt that the death penalty does not act as a deterrent to criminals who are determined to kill for motives personal or political.

Since the extreme penalty has served no purpose, neither logic nor experience would justify its continuance on the statute book. It is sad to recall that no less a person than the Prime Minister of India, Mrs Indira Gandhi, was murdered in cold blood openly without fear of the consequences. It would not be far from right to say that the death penalty neither deters the criminal who is

determined to kill, nor does it act as a fear in the mind of a marginal criminal who is always optimistic that he will not be found and if found not be convicted of murder and if so convicted will not be sentenced to death. ... The death sentence ... must be discarded once and for all."

### 1.2. Deterrence

Yet the supposed deterrent effect of the death penalty in India remains one of the main arguments relied upon by those - including members of the Law Commission reviewing its application - arguing that the death penalty cannot be abolished. The Law Commission, in a 1967 report, justified its recommendation against abolition on the basis of the death penalty's supposed deterrent effect: "Having regard... to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment." But many Indians, including Mrs. Gandhi, did not agree.

Nor, as acknowledged by former Chief Justice Chandrachud, does Indian experience appear to support the belief that the threat of execution prevents crime. From 1945 to 1950 the death penalty was abolished in the former princely states of Travancore and Cochin (Kerala). Between 111 and 160 murders were committed each year in that period in Travancore (with 125 murders registered in the year 1950) and between 13 and 49 each year in Cochin (39 murders were registered in 1950). In the six years after the death penalty had been restored, the number of murders committed remained the same in the two states: a total of 967 murders between 1951 and 1956 when the death penalty applied, as compared to 962 between 1945 and 1950 when the death penalty stood abolished. In fact, the first three years after the death penalty had been restored show an increase in both states in the number of murders committed as opposed to the decrease one would have expected if the restoration of the death penalty had acted as a deterrent, as its advocates claim. (See "Can the State Kill its Citizen?", published by Shri Subramaniam.)

### 1.3. Debate about Abolition

Several attempts have been made to abolish the death penalty by legislation, but without success. Before independence, a private bill to abolish the death penalty for penal code offences was first introduced in 1931 in the Legislative Assembly, but the (British) Home Minister responded negatively. A bill to abolish capital punishment, which had called for a review of the application of the death penalty in other countries, was introduced in the first Lok Sabha (parliament) in 1956, but it was also rejected by the government. Resolutions introduced in the Rajya Sabha (upper house) in 1958 and 1962 met with a similar fate, but the government gave assurances that copies of the debate which had taken place in the house in 1962 would be forwarded to the Law Commission then reviewing the Penal Code and the Code of Criminal Procedure. In its report, presented to the government in September 1967 and finally put before the Lok Sabha in 1971, the Law Commission held that the death penalty should be retained, and that the executive should continue to exercise powers of mercy. The Law Commission recommended against listing exhaustive principles for clemency, but gave examples of situations - such as murder without premeditation, or mental abnormality of the offender - in which the

granting of clemency would be appropriate.

Further discussions about the death penalty took place in 1973 and 1975, when members of the Hindu nationalist Jan Sangh party submitted a memorandum to the President of India calling for abolition and for commutation of all death sentences as a mark of respect to Lord Mahavira, the founder of the pacifist Jain religion.

The Lok Sabha last discussed the death penalty in 1983. Although the then Prime Minister Indira Gandhi said she favoured abolition (see Introduction above), N.R. Laskar, Minister of State for Home Affairs, stated that the government was not considering any proposal to abolish the death penalty.

Attempts to challenge the constitutionality of the death penalty in the courts, too, have so far been unsuccessful. The latest of many such attempts resulted in the above mentioned decision of India's Supreme Court holding by a majority of four to one in the 1980 case of Bachan Singh v. State of Punjab that the death penalty was not unconstitutional. A 1983 challenge, that the death penalty was a barbarous and brutal act and was unconstitutional because it involved torture, also failed.

## 2. Background

India, a leading member of the non-aligned movement and a member of the Commonwealth, obtained independence from Britain in 1947 after a protracted and intense struggle for independence. The new administration inherited a Penal Code drafted in 1860 and an 1898 Code of Criminal Procedure (substantially revised in 1973). The death penalty was provided for in the Penal Code and executions were regularly carried out under the British administration; in 95% of the cases of those sentenced to death in the 1920s, executions were duly carried out. Ancient Hindu codes have also recognised the death penalty.

India has a federal state structure, and legislative and executive powers are shared between the central administration in New Delhi and India's 25 states, each with their own legislative assemblies, and seven union territories. The respective powers of the central and state governments are defined in the Constitution. Although law and order is primarily the responsibility of state governments, some powers are also exercised by both the central and the state governments. Executive powers also - such as the granting of clemency to people who have been sentenced to death - can be exercised both at the state level (by the Governor), and at central government level (by the President). For example, between 1974 and 1978 the President of India reportedly commuted 12 death sentences to life imprisonment, whereas 40 such death sentences were commuted by the governors of the various states during the same period. (The figures do not include information on clemency in the states of Bihar, Jammu and Kashmir, West Bengal and the Delhi Administration as it is not available.)

## 3. The Death Penalty in Law

The 1950 Indian Constitution guarantees the right to life and the right not to be arbitrarily deprived of one's life (Article 21), the right to equal protection by law (Article 14) and other fundamental rights.

The death penalty can be imposed under the Indian Penal Code for murder; for attempted murder "if hurt is caused" when committed by a person

servicing life imprisonment; for gang robbery with murder; for abetting the suicide of a child or insane person; for waging war against the government; for abetting mutiny by a member of the armed forces; and for fabricating false evidence with intent to secure the conviction of another person for a capital offence when conviction ensues. The death penalty is always optional: in 1983 the Supreme Court held a provision making its imposition mandatory for murder committed by a person serving a sentence of life imprisonment (Section 303) to be unconstitutional. Death sentences may also be imposed for a number of offences committed by members of the armed forces under the Army Act, 1950, the Air Force Act, 1950, and the Navy Act, 1956.

The 1967 report of the Law Commission recommended that the penalty should not be imposed on any offender below the age of 18 at the time of the offence; so far, legislation to implement that recommendation - which is in line with international standards laid down by the United Nations - has not been enacted. Only pregnant women are exempted in law from the death penalty; either the execution is stayed until after the delivery of the child or the sentence is commuted to life imprisonment. In practice, however, no woman has been executed since 1944, although some have been sentenced to death. In a recent case, the Supreme Court ordered prison authorities to satisfy themselves that a particular prisoner was in a "fit mental state" before executing him.

Death sentences may be imposed by a court of sessions or by the High Court sitting as a court of the first instance. If the death penalty is imposed by a court of sessions it must be confirmed by the High Court. The convict or the prosecution may also appeal to the High Court, in which case such an appeal is usually heard during proceedings held to confirm the sentence. A further appeal may be made to the Supreme Court after leave has been obtained either from the High Court or from the Supreme Court itself. If an acquittal has been reversed by the High Court and a death sentence has been imposed, the accused has an automatic right of appeal to the Supreme Court.

Sentences passed by courts-martial set up under the Army, Air Force and Navy Acts must be confirmed by the central government which is empowered to commute sentences. There is no right of appeal to a higher court, but defendants may petition the central government for clemency. It is not known to what extent the death penalty is imposed by courts-martial or carried out.

Both the President of India and the state governors have the power to grant clemency. In practice, that power is always exercised on the advice of the executive branch of the government, and is usually based on the recommendations of the Home Ministry. Under the Penal Code and the Code of Criminal Procedure, central and state governments are empowered to commute death sentences.

In December 1985 the Rajasthan High Court sentenced a man, Jagdish Kumar, and a woman, Lichma Devi, to death in two separate cases of "bride-burning" (the burning to death of a young married woman for failing to provide adequate dowry). In an unprecedented ruling the court ordered both prisoners to be publicly executed. But the Attorney-General brought a petition against the judgment in the Supreme Court and the court stayed the public hangings a few days later, saying that "a barbaric crime does not have to be met with a barbaric penalty". (The court subsequently commuted the death sentences to imprisonment for life after hearing appeals

from the accused.)

### 3.1. Extension of offences carrying the death penalty

In recent years the number of offences for which the death penalty can be imposed has been extended. Possibilities for appeal have also been restricted under special legislation. For example, under broadly defined "anti-terrorist" legislation introduced in 1984 and 1987, the death penalty can now be imposed for certain acts defined as "terrorist" tried by specially constituted courts with modified rules of procedure and restricted rights of appeal. Special courts established under the Terrorist Affected Areas (Special Courts) Act 1984 are empowered to impose the death sentence for certain broadly defined "terrorist acts". These courts follow rules which severely curtail procedural safeguards (including reversal of the burden of proof) and the right of appeal is limited to one avenue, the Supreme Court only. (There is no option to appeal to the High Court - which under ordinary criminal law is the first appeal court - and appeals must be made within 30 days from the date of the judgment, whereas 90 days are normally allowed for appeal against convictions by ordinary courts.) A similar system of "designated" courts has been set up under the Terrorist and Disruptive Activities (Prevention) Act 1987 which allows the death penalty to be imposed for widely defined "terrorist acts". These laws were passed in the context of widespread unrest, including acts of political violence, in various parts of the country, especially in the state of Punjab, since 1984. The government has not given information about how many death sentences have been imposed under this legislation, and Amnesty International does not know of any having been imposed.

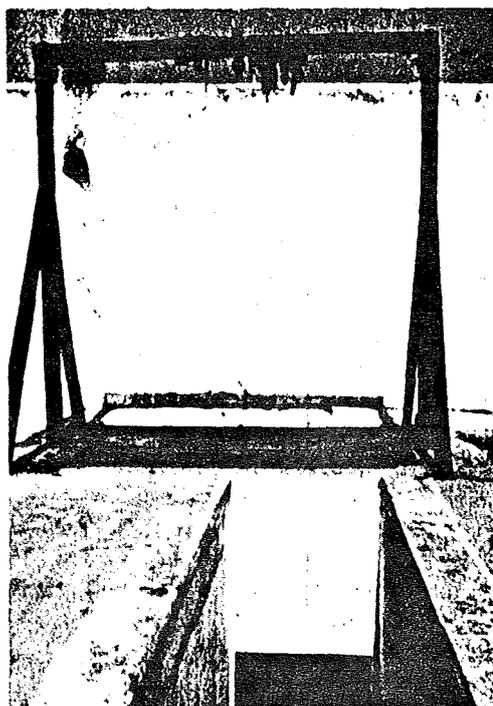
In December 1987, after a young woman in the state of Rajasthan had performed the ancient ritual of sati (self-immolation by a widow on her husband's funeral pyre), the central government passed the Commission of Sati (Prevention) Act, 1987, which made the abetment of a successful sati punishable by death. (A similar law had been passed in October 1987 by the Rajasthan Government.) In May 1988 it became a capital offence to cause death through the use of illegal arms or ammunition, and in December for second convictions for drug-trafficking, under the Narcotics, Drugs and Psychotropic Substances (Amendment) Act of 1988.

### 3.2. How executions are carried out

The method of execution is specified in the jail manuals of the various states. For example, for executions carried out in Punjab and Delhi, the procedures of the Punjab Jail Manual apply. These lay down the following procedures:

"The convicts will be hanged at the break of dawn. The manual specifies the use of a Manila rope of one inch diameter for the hanging to be kept in the jail for the purpose. The length of the rope should be 19 feet, well twisted and fully stretched. It should be well tested in the presence of the jail superintendent at least a week before the execution. The testing itself will be done with a sand or clay sack weighing two-and-a-half times more than that of the prisoners. The executioner shall reside in the jail for two days prior to the date of hanging. Senior jail officials like the superintendent and the deputy superintendent will visit the condemned convicts in their death cells an hour before the execution and the superintendent will identify the persons named in the warrant besides reading it over to them. The manual says the

hands of the convict shall be pinioned behind his back and his leg-irons [iron fetters to prevent escape] struck off. The prisoner shall then be marched to the scaffolding under the charge of the deputy superintendent guarded by a head warder and six warders, two proceeding in front and two behind and one holding either arm. On arrival of the prisoner at the scaffolding, the superintendent shall inform the magistrate and hand over the convict to the executioner. The prisoner shall mount the scaffolding and would be placed directly under the beam to which the rope is attached. The executioner will strap his legs tightly together, place the cap on his head and face, adjust the ropes tightly around his neck with the noose being one-and-a-half inches to the right or left of the middle line and free from the flap of the cap. In a signal from the superintendent, the executioner will draw the bolt to open a trap-door below. The body shall remain suspended for half-an-hour and shall not be taken down till a medical officer declares the man dead. Twelve spectators may be admitted with the permission of the Inspector General to witness the execution." (Indian Express, 15 October 1988)



The gallows of Tihar Jail (c. Sunday)

#### 4. The Death Penalty in Practice

##### 4.1. Numbers

The Indian Government rarely publishes information about executions and does not issue yearly statistics of the numbers of people executed. That

number is generally estimated at several dozen each year and contrasts with the thousands of murders yearly committed. According to information the Indian Government supplied to the Supreme Court in the 1980 case Bachan Singh v. State of Punjab, an average of 17,000 offences of murder were committed in India each year in the period 1974 to 1977. The last known official figures were announced in the Lok Sabha (parliament) in November 1986: 35 people, according to the government, were executed in the three years 1982-1985. Before that, in the five years between 1974 and 1978, 29 were officially said to have been executed from among 288 convicted murderers who were sentenced to death by the sessions court and had their sentences confirmed by the High Court. Other reports, however, such as Data India in 1979, quote higher official figures of executions: 66 in 1974 and 26 in 1975). Reports of individuals being executed sometimes appear in the Indian press. With the exception of executions of political prisoners, publicity surrounding executions is rare.

#### 4.2. Reduction of death sentences imposed for criminal offences

The death penalty has been mostly imposed for the offence of murder. Until 1955 the Code of Criminal Procedure required that a judge handing down a sentence in a case of murder should record in writing his reasons for not awarding the death penalty, thus making the death penalty the rule and the alternative, life imprisonment, the exception. But that requirement was dropped from the Code of Criminal Procedure in 1955 and courts were left without guidance in law for the application of the range of lawful punishments for murder. In 1973 the Code of Criminal Procedure was revised and a new provision (Section 354(3)) obliged the judge to record in writing the "special reasons" for imposing the death penalty. Thus, life imprisonment became the rule and the death penalty the exception.

These legislative changes have resulted in a more restricted use of capital punishment in India, a practice also reflected in Supreme Court judgments. In 1974 the Supreme Court, in its judgment in the Ediga Anamma case, listed various factors to be taken into account in sentencing to life imprisonment, rather than the death penalty; it was interpreted as a judgment towards "cautious partial abolition". Although the Court, in its 1980 judgment in the Bachan Singh case, upheld the constitutionality of the death penalty, it also ruled that death sentences should be imposed only in the "rarest of rare cases". The effect of this judgment was to oblige judges to be quite certain before passing a death sentence that, in view of the nature and circumstances of the crime and the criminal, there were "special reasons" why the alternative penalty of life imprisonment could not, in all conscience, be imposed. The Court ruled:

"The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death if there are special reasons for doing so... while considering the question of sentence to be imposed for the offence of murder..., the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally heinous character, and constitutes on account of its designs and the manner of execution a source of grave danger to society at large, the court may impose the death sentence."

The Supreme Court continued to further restrict the application of the death penalty when it held in 1983 (in Mithu vs. State of Punjab) that

murder by a life convict was no longer punishable by a mandatory death sentence as prescribed in the Penal Code.

Although Amnesty International welcomes the more restricted use of the death penalty in India brought about by recent judicial decisions, it is concerned that the vague criteria for imposing the death penalty virtually ensure that its application can only be arbitrary.

#### 4.3. Arbitrary Application

##### 4.3.1. Judicial Discretion

Whether a condemned man or woman shall live or die depends, first of all, on the personal views of the judge who tries him or her, or who hears the appeal. A study carried out by Professor A.R. Blackshield\*, which examined several representative Indian court decisions between 1972 and 1976, found that the degree of such arbitrariness was unacceptably high. Statistical evidence suggested that "the preponderance from November 1972 to January 1973 of the Benches consisting of Justices Vaidialingam, Dua and Alagiriswami [all since retired] may have been unfortunate for the appellants involved." The personal views of the judge handing down sentences may influence the choice of punishment in any country. Justice V.R. Krishna Iyer did not believe that a man who had an illicit relationship with a woman should be executed for murdering his wife and two children; but the other judge on the Supreme Court bench hearing the case, Justice A.P. Sen, thought this was a perfect example of one of the "rarest of rare" cases where the death penalty should be imposed. (K. Janardhanan v. State of Kerala, 1979.) In India judges have a great deal of discretion in exercising judgment in capital cases because of the lack of clear guidelines about the circumstances in which the death penalty should be imposed.

A former Chief Justice of India, himself having given final rulings in many death penalty cases, described the dilemma of Indian judges like this:

"There being no legislative policy or principle to guide the court in exercising its discretion in this delicate and sensitive area of life and death, the exercise of discretion of the Court is bound to vary from Judge to Judge. What may appear as special reasons to one Judge may not so appear to another and the decisions in a given case whether to impose the death sentence or to let off the offender only with life imprisonment would, to a large extent, depend upon who is the Judge called upon to make the decision. The reason for this uncertainty [in].. the sentencing process is two-fold. Firstly, the nature of the sentencing process is such that it involves a highly delicate task calling for skills and talents very much different from those ordinarily expected of lawyers.... Secondly, when unguided discretion is conferred upon the Court to choose between life and death, by providing a totally vague and indefinite criterion of 'special reasons' without laying down any principles or guidelines for determining what should be considered

to be 'special reasons', the choice is bound to be influenced by the subjective philosophy of the Judge called upon to pass the sentence and on his value system and social philosophy will depend whether the accused shall live or die... We lawyers and Judges like to cling to the myth that every decision which we make in the

exercise of our judicial discretion is guided exclusively by legal principles and we refuse to admit the subjective element in judicial decision making. But that myth now stands exploded...."

(Dissenting judgment by Justice P.N. Bhagwati in the 1980 case of Bachan Singh.)

One particularly striking example of how judicial discretion can result in either death or life for a convicted murderer was the decision to hang Jeeta Singh but to reprieve his two co-accused Kashmira Singh and Harbans Singh (Harbans Singh v. State of Uttar Pradesh and others (1982) 2 Supreme Court Cases 101). All three were convicted for playing an equal part in the murder of members of a family. They were sentenced to death by a sessions court in the state of Uttar Pradesh in 1975 and that year their sentences were confirmed by the Allahabad High Court. But the three convicts met with a different fate depending on which Supreme Court bench heard their appeal. The accused had appealed separately to the Supreme Court against the sentence; the petitions were heard by different Benches, and, as a result, Kashmira Singh's death sentence was commuted to life imprisonment, but Jeeta Singh's death sentence was confirmed. Jeeta Singh's petition to the President of India for mercy was rejected, and he was executed in 1981. The third convict, Harbans Singh, had also appealed to the Supreme Court: it dismissed his appeal in 1978. The Supreme Court also turned down his request to the Court to review its decision and the President refused to grant him clemency. When Harbans Singh was about to be executed in October 1981, he learnt that the Supreme Court had commuted the death sentence imposed on his co-accused, Kashmira Singh. He immediately made a third approach to the Supreme Court, which, considering the extraordinary circumstances of the case, recommended that the President grant him mercy. This indeed happened, and Harbans Singh's death sentence was finally commuted to life imprisonment by the President.

Another example demonstrating apparent arbitrariness in judicial decisions was the case of three men, Kannan, Lakshmanan and Vaitheeswaran, who had been sentenced to death in the state of Tamil Nadu in 1975 for murdering several people for financial gain. Two of them, Kannan and Lakshmanan, appealed to the Supreme Court and the Court commuted their death sentences to life imprisonment. But the appeal to the Supreme Court by the third convict, Vaitheeswaran, was heard by a different Bench of the court and was dismissed. The Supreme Court confirmed his death sentence. When his lawyer learned that the death sentences of Kannan and Lakshmanan had been commuted, he petitioned the Supreme Court to commute Vaitheeswaran's sentence. Indeed, in April 1982, the Court commuted his sentence to life imprisonment, taking note of the commutation of the death sentences of his two co-accused.

The courts have also taken differing and what appear to be contradictory views on whether the youth of the offender is a factor which could save him or her from the gallows. In a number of cases, the Supreme Court refused to uphold the death penalty because the offender was young. But in other cases the Court held that youth was no extenuating factor in deciding on which punishment to give to a convicted murderer. One Indian writer, Dr. Raizada, pointed out that young offenders committing multiple murders were given life sentences whereas in other cases "where neither the loss of as many lives nor of higher valued property" was involved, the condemned men were awarded the death sentence.

#### 4.3.2. Delay in execution

Inconsistent court rulings about delay in execution have also added an arbitrary element to the life or death decisions made by the Indian courts to proceed with execution. Courts have given widely differing rulings on whether delay in execution - either since the offence was committed, since the original imposition of the death penalty or since the confirmation of the death sentence by the High or Supreme Court - is a ground for not carrying out the death sentence. In 1944 the then Federal Court of India first decided that the courts could commute a death sentence because there had been an unreasonable delay in execution.

In February 1983 two judges of the Supreme Court recognized - in the case of Vatheeswaran v. State of Tamil Nadu - that a convict sentenced to death could ask the court to commute the death sentence to life imprisonment on the grounds that he or she suffered agony and mental torture because the sentence had not been carried out within a reasonable period of time (the convict had in this case been sentenced to death eight years earlier). The Supreme Court said that such delay in execution meant that the convict was being deprived of his life in an unjust, unfair and unreasonable manner, which violated the constitutional guarantee to the right to life in Article 21. The court held that a delay in execution of two years or more should normally entitle a convict to seek commutation of his sentence and that this two-year period should include "time necessary for appeal and consideration of reprieve". In other words, the cause of the delay (whether the result of legal action by the condemned prisoner or the executive's failure to act on a clemency petition) was immaterial.

But within two months, three other judges of the Supreme Court in effect overruled the decision in the case of Sher Singh v. State of Punjab. The Supreme Court confirmed that delay in execution of the death sentence could be a ground for requesting commutation, but it did not accept that there should be a hard and fast, inflexible rule applicable in all cases - such as the two-year rule. The three judges also argued that it was normal for appeals to take more than two years and that a convict should not be allowed to be able to obtain clemency under the two-year rule by simply delaying his execution through bringing proceedings. Thus, in one 1983 case - Munawar Harun Shah v. State of Maharashtra (AIR 1983 SC 585) - where there had been a five-year delay in execution, partly because the prisoner himself initiated further legal proceedings, the Supreme Court upheld the death penalty and Munawar Hussain Shah was hanged. But four years later the Patna High Court ruled in March 1987 that all death sentences pending in the state of Bihar for ten years or more would automatically be rendered ineffective and the convict considered to have already undergone the sentence, provided the accused person had not delayed giving evidence.

In an attempt to clear the uncertainty resulting from these judgments about the length and cause of delay as ground for commutation, the Supreme Court referred the matter to a larger (five-judge) Constitution Bench. In October 1988, in the case of Triveniben v. State of Gujarat, the Supreme Court reaffirmed that "undue long delay" in execution could indeed be a factor in commuting a death sentence. Again, the court held that there was no hard and fast rule about the minimum period of delay in execution which would entitle a convicted man or woman to obtain such commutation. The Supreme Court said: "No fixed period of delay could be held to make the sentence of death inexecutable". But the court also specified that where delay was to be taken into account it would only consider undue long delay which had occurred after the court had ruled on the final appeal, ie, such

as delays caused by the Executive when a mercy petition was kept pending for a long time before the President or the Governor of a state. No delay resulting from legal appeal procedures initiated by the convict himself could be the basis for commutation of a death sentence. "The only delay which would be material for consideration will be the delay in disposal of the mercy petition or delays occurring at the instance of the executive." However, the Court failed to specify what an "unreasonable delay" was, and arbitrary decisions about executions are bound to be the result.

As a consequence of these court decisions, those sentenced to death have suffered a different fate depending on when they complained to the courts about delay. A recent illustration of this is the appeal which 37-year-old Shashikant Keshavlal Parmar, alias Mali, a former electrician, brought before the Supreme Court, arguing that delay in his execution (as well as his good conduct in jail and the lack of a criminal record) should be a ground to commute the death sentence imposed on him to life imprisonment. Parmar had been convicted to hang for committing a triple murder of a lawyer's family in October 1980 and was sentenced to death on 31 July 1981. Since then, six warrants were issued for his execution, which the Chief Minister of Gujarat asked the Supreme Court to prevent. But despite numerous appeals from prominent Indians, Shashikant Keshavlal Parmar was hanged in Rajkot jail early on 7 September 1989. He had to be carried to the place of execution. Had such an eight-year-long delay in execution been raised with the Supreme Court in early 1983, or perhaps even before October 1988, execution would most probably not have taken place.



Shashikant Keshavlal Parmar in Rajkot Jail two hours before he was hanged on 7 September 1989 ( Indian Express )

The above examples illustrate that no means of limiting the death penalty can prevent it being imposed and executed in an arbitrary and unfair manner.

An article in the April-June 1979 issue of the Journal of the Indian Law Institute concluded that the application of the death penalty in India violates the principle of equality before the law and is unacceptable. This principle is laid down in Article 14 of the Constitution and in international human rights instruments to which India is a party (Article 14 of the International Covenant on Civil and Political Rights lays down that "All persons shall be equal before the courts and tribunals.") Professor A.R. Blackshield, in his study "Capital Punishment in India" (Journal of the Indian Law Institute, vol.21 Number 2) concludes:

"But where life and death are at stake, inconsistencies which are understandable may not be acceptable. The hard evidence of the... cases compels the conclusion that, at least in contemporary India, Mr. Justice Douglas' argument in Furman v. Georgia is correct: that arbitrariness and uneven incidence are inherent and inevitable in a system of capital punishment; and that therefore - in Indian constitutional terms; and in spite of Jagmohan Singh - the retention of such a system necessarily violates Article 14's guarantee of 'equality before the law'."

## 5. Who is Executed?

Inequality in application of capital punishment is also evident from Indian reviews of the social and political background of those who have been executed.

### 5.1. The Poor and Underprivileged

Several Indian judges have found that among the hundreds of people who are sentenced to death each year of the thousands who commit murder, it is the poor and illiterate who are singled out to be eventually executed. For example, Justice Bhagwati, in his 1980 dissenting judgment in the case of Bachan Singh, wrote:

"There can be no doubt that death penalty in its actual operation is discriminatory for it strikes mostly against the poor and deprived sections of the community and the rich and the affluent usually escape from its clutches."

One reason for this is that poor and illiterate prisoners do not have easy access to adequate legal assistance. Even when free legal aid is made available, the quality of defence rarely matches that obtained through private legal assistance. Legal aid fees are very low - much lower than the minimum usually charged by a private lawyer. The Supreme Court legal aid fee now stands at Rs. 1,000 for one appeal, whereas private lawyers would charge on average between Rs. 4,000 and Rs. 5,000 for an appeal in a death penalty case. One Supreme Court lawyer, who has argued several death penalty cases in the Supreme Court, has put his expenses in a single case alone at between Rs. 1,000 and Rs. 2,000. With notable exceptions, few experienced lawyers have been willing to take on such cases. The low level of legal aid fees also means that legal aid lawyers, even if experienced, can only spend a limited amount of time to prepare a defence - in some cases legal aid lawyers are only assigned to defendants in murder cases at very short notice. The consequences are irreversible. If vital evidence

is not produced by defence lawyers during the trial, or if other mistakes are made during trial proceedings, it is often impossible to correct this later: an appeal court will not hear normally fresh evidence but will only hear arguments on questions of law. Thus there are serious risks that miscarriages of justice may occur.

These dangers exist in many countries retaining the death penalty. For example, in a 1987 report on the death penalty in the United States, Amnesty International - which found that the death penalty there was used in an arbitrary and racially biased manner - also concluded that the death penalty discriminated against the poor:

"Widespread concern has been expressed about the quality of legal representation of poor defendants in capital trials. Despite the unique complexity of these trials, and the severity and the irrevocability of the sentence once carried out, there is disturbing evidence that many defendants are assigned inexperienced counsel, ill-equipped to handle such cases and working with severely limited resources. Lawyers handling later appeals in such cases have expressed the belief that in many of them errors on the part of trial counsel have contributed significantly to the imposition of death sentences, sometimes resulted in miscarriages of justice".

(The United States of America: The Death Penalty, Amnesty International 1987, page 42)

The same conclusion was drawn in India. A writer in the Illustrated Weekly of India, in an article of 7 April 1985, pointed out:

"... in an inequitable society like India, where the political process favours the privileged and the ruling elites, it is usually the poor and the underprivileged and the political dissenters who are convicted and hung. The poor rarely have the means to employ competent lawyers, while the wealthy can employ the best legal services"

Juman Khan, a rickshaw-puller in his late twenties from Firozabad, Agra District, Uttar Pradesh, was sentenced to death in November 1984 for the murder of a child, allegedly committed in 1983. A fellow prisoner wrote to Amnesty International on his behalf complaining that Juman had not had adequate assistance by a lawyer when he was tried by the Additional Sessions Judge, Agra, and that he was innocent. Not being able to afford a lawyer, the court appointed one to defend him. In September 1985 the Allahabad High Court upheld the sentence and the following year, in March, the Supreme Court dismissed his appeal. The court found that "the petitioner was guilty of a heinous crime and deserves the extreme penalty. This case falls within the test 'rarest of rare cases' as laid down by this court in Bachan Singh v. State of Punjab (1980)." The court also observed: "We have heard learned counsel for the petitioner, but we are not impressed with his submissions".

The Supreme Court dismissed Juman's appeal in July 1988, but when the Uttar Pradesh Government ordered his execution, a temporary stay was granted by the President. When Amnesty International learned of his case and the threat of his execution, it contacted the Supreme Court Legal Aid Committee which advised Juman to petition the Supreme Court for review of his sentence on the grounds he was denied a fair trial. In November 1988

the Supreme Court ordered a stay of his execution until further notice.

Juman is held in the District Jail, Agra, awaiting the outcome of that review. He is illiterate. It is an illustration of the difficulties faced by poor and illiterate defendants that he was unable to write himself to the Supreme Court Legal Aid Committee. He was lucky in finding another prisoner, who could write and had some legal knowledge, to contact the Supreme Court Legal Aid Committee on his behalf and get further legal assistance.

Dr. N.S. Jain, a prominent ophthalmic surgeon, was convicted of conspiring to kill his wife by hiring assassins so that he could marry his mistress. Those who killed his wife - Ujagar Singh, Kartar Singh and Daya Singh - were eventually executed, but the doctor did not hang (he was sentenced instead to life imprisonment). One writer, in the Times of India of 22 October 1983, commented:

"The genesis of the murder was in the minds of Dr. Jain and his lover.... They will soon be out and free to live as they want, while the hired minions are dead."



Ujagar Singh and Kartar Singh executed on 9 October 1983 (c. India Today)

It is true that Dr. Jain and his mistress were convicted of conspiracy to murder, an offence different from that of murder committed by those carrying out the killings. Yet this distinction could allow conspirators to escape hanging, whereas the paid killers could not. One legal observer in the 1985 Lawasia Journal (page 97) pointed out: "The hirer of a killer must be about the most calculating and pre-meditating murderer of all, and if this view [of the court] prevails, he can calculate himself off the gallows and pay someone else to take the risk of being there."

Another illustration is the case of two leading Calcutta industrialists, 69-year-old Chandranath Banik and his son, Chandan Banik, convicted of murdering the latter's wife, Dejbani Banik, in 1983. Both men were sentenced to death by the Alipore sessions judge for the murder which was reportedly committed because of Dejbani Banik's inability to meet the demands of her husband's family to invest money in their family business. The High Court dismissed the appeals of the condemned men and so did the Supreme Court, but when they petitioned the Supreme Court to review its decision, two Supreme Court judges commuted their sentences to life imprisonment in August 1987. The Supreme Court said it took into account the age of the father and the fact that the son - the husband of the murdered woman - had three children. The two judges said that the records of the case did not show the degree of guilt of each convict and that therefore "the safer course" was to commute the death sentence imposed on both men.

Amnesty International welcomed the Supreme Court's decision to commute these death sentences. Indeed, it urges all governments to commute death sentences as a step towards abolishing the death penalty. But Indian commentators have pointed out that a commutation as given in the Banik case might not have taken place if the two condemned men had been of a less prosperous background. An editorial in The Statesman of 13 August 1987 commented:

"That [the murder being committed because of the wife's inability to meet excessive financial demands by her husband's family] being so, the public is likely to interpret the Supreme Court's leniency as somehow condoning the wickedness of two rich men who did to death a helpless and innocent young woman who had been entrusted to their protection."

## 5.2. Political Prisoners

Others liable to be executed are political prisoners convicted of criminal offences. Under the British administration the best known example was the execution of Bhagat Singh, a militant nationalist and leader of the Hindustan Socialist Republican Army, and his two co-accused, Sivaram Rajguru and Sukhdev, on 23 March 1931. Bhagat Singh had advocated a socialist revolution to remove the British administration from India. The three men were sentenced to death for their part in the Lahore conspiracy case, the charges relating to the throwing of bombs in the Delhi Legislative Assembly Hall in 1929 - an incident in which nobody was injured - and to other acts of politically motivated violence which resulted in the death of several British officials. The assassin of Mahatma Gandhi, V.N. Godse, and his accomplice were the first to be executed for politically motivated murders after independence. No further such executions were reported until two "Naxalites" (left-wing revolutionaries), Kista Gowd, a forty-five-year-old farmer, and R. Bhoomaiah, a village tailor, were executed in December 1975. (But another "Naxalite", Nagabhusan Patnaik, a forty-year-old lawyer and leading member of the Communist Party of India (Marxist-Leninist) - as the Naxalites are officially known - had his death sentence, imposed for a similar murder of a landlord, commuted to life imprisonment two years before that.) The Supreme Court recognized the political nature of the offence but felt that "the penal code... makes no such classification.... We cannot rewrite the law, whatever our views on current reforms." The judges urged the two condemned men to make a plea for executive clemency: "The political nature of the offence and the undoubted decline in capital punishment in most countries of the world

should be urged before the President." But the petitions failed to halt their execution.

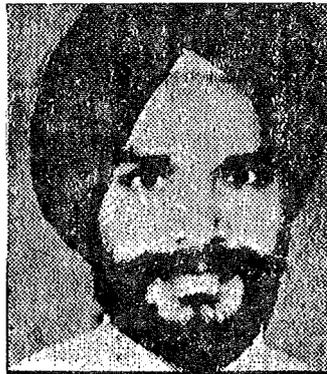


Mohammed Maqbool Butt, executed on 11 February 1984

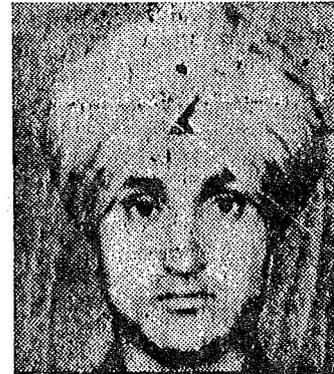
Similarly, Mohammed Maqbool Butt, a journalist and former President of the Jammu and Kashmir National Liberation Front, convicted under the Enemy Agents Ordinance of murdering a policeman in 1968, was finally executed on 11 February 1984. Prisoners tried under the Enemy Agents Ordinance cannot appeal against sentence although there is some provision for review. Butt had petitioned the Supreme Court in 1977, but the petition was rejected, apparently on technical grounds. The President had kept his petition for clemency pending for more than seven years, since 1977, but Butt was suddenly executed on 11 February 1984 less than one week after the abduction and murder of an Indian diplomat in Britain. (A group calling itself the Kashmir Liberation Army - which had urged the release of Maqbool Butt as a condition for the release of the abducted diplomat - had claimed responsibility for the diplomat's death.) The case is a clear illustration of how the death penalty has been misused to serve political ends; a convicted man executed to punish the criminal acts of others.

The latest political executions took place on 6 January 1989, when Satwant Singh and Kehar Singh, two Sikhs convicted respectively of murdering and conspiring to murder the late Prime Minister Indira Gandhi, were hanged inside New Delhi's Tihar jail. Her assassination took place at a time of rising political tension in Punjab, where many Sikhs have campaigned for increased autonomy and armed Sikhs have resorted to widespread violence to establish a separate state. Many Sikhs resented Mrs. Gandhi's decision to use the army in June 1984 to remove the armed fundamentalist leader, Sant Jarnail Singh Bhindranwale and his followers from the Golden temple, the holiest Sikh shrine and Supreme Seat of Sikh religious authority. An estimated 1,000 people were killed during the army operation. Many of them were armed Sikhs, but there were many innocent bystanders or pilgrims among them. Both Satwant Singh and Kehar Singh had

been sentenced to death with a third accused, Sub-Inspector Balbir Singh, by a special judge sitting in Tihar Jail, a maximum security prison. All had appealed to the High Court in Delhi, but the Court had dismissed their appeal in December 1986. (Kehar Singh and Balbir Singh claimed to be innocent of conspiracy to murder, but Satwant Singh, held immediately after the shooting of Mrs Gandhi, never disputed shooting her). They then appealed to the Supreme Court. In August 1988 the Court acquitted Balbir Singh, saying that there was no evidence on which to justify his conviction, even though it had been upheld by the High Court. It dismissed the evidence against him, saying it was concocted by the Delhi police, and said there was no proof that he knew of the contemplated assassination of the late Prime Minister. But the Supreme Court held that the other accused, Kehar Singh, had such knowledge. It upheld his conviction and that of Satwant Singh, even though Kehar Singh was convicted entirely on circumstantial evidence which many Indian commentators and legal experts have questioned and held to be entirely insufficient to prove his guilt. They believe an innocent man has been executed. So believe some international legal observers. Lord Gifford, a Queen's Counsel and member of the House of Lords in Britain, issued a statement saying "It is particularly shocking that a man should be executed on the basis of such evidence, which is at its highest, ambiguous and speculative". Amnesty International appealed in vain to the government to grant the two clemency.



Kehar Singh



Satwant Singh

Balbir Singh, accused of conspiracy to murder Indira Gandhi; Kehar Singh and Satwant Singh accused of conspiracy to murder Indira Gandhi and executed on 6 January 1989

#### 6. Are Innocent People Executed?

When the Supreme Court acquitted Balbir Singh, the judges observed that the only reason why he was implicated was because he was a Sikh. The three judges said there was no other evidence against him. Yet the New Delhi sessions court had sentenced him to death and the Delhi High Court had upheld his conviction, and one probably innocent man would have been executed but for the Supreme Court's timely intervention.

Kehar Singh was, however, executed. The evidence against him was that he was related to and knew Beant Singh - one of the two men who shot and killed Mrs. Gandhi - and frequently visited his house. Further evidence was that both men and their families jointly visited the holy Sikh shrine, the Golden Temple in Amritsar; that Kehar Singh and Beant Singh went to a

family party where "inflammatory" songs were heard; and that the two men spent fifteen minutes talking alone on the roof of Beant Singh's house without telling what was said. The Supreme Court concluded that this was an "exchange of secret information....to further the prosecution of the conspiracy" and that "these talks go a long way in establishing Kehar Singh being a party to the conspiracy". The Court reached this conclusion, even though there was no evidence about the contents of the talks between the two men. Further evidence against him was that, on being told of the Prime Minister's death, he remarked: "Whosoever would take confrontation with the Panth (Sikh religious faith) he would meet the same fate". The Supreme Court concluded this meant Kehar Singh had prior knowledge of the assassination: "This remark shows his guilty mind" the court said. In September 1988 the Supreme Court also rejected Kehar Singh's request to review its judgment.



Jasbir Kaur, wife of Kehar Singh, after her last visit to her husband before his execution on 6 January 1989 (c. Popper Foto)

The nature of Kehar Singh's alleged involvement in the conspiracy - if any - will for ever remain open to question. The government had established a special commission to inquire into Mrs. Gandhi's death - the Thakkar Commission - but its findings, though already submitted to the government, were not published at the time of the trial. Its findings were not considered by the trial courts or made available to the defence. This raised further doubts about Kehar Singh's guilt; an editorial in The Statesman, 8 January 1989, for example, commented:

"...the refusal to permit courtroom cross-examination of people who were near the site at the time of Mrs. Gandhi's murder or to release the inquiry commission's full findings hardly lived up to the maxim that justice must also be seen to be done. It is down

right criminal to send a man to the gallows if those who condemn him themselves hide behind a cloak of secrecy".

Kehar Singh's alleged role in the conspiracy has become even less clear after parts of the Thakkar Commission report were leaked to the press and published and after other fresh evidence emerged, indicating that others might be involved in or even bear primary responsibility for the conspiracy to kill Mrs. Gandhi. Even before the executions were carried out, the police arrested in November 1988 a man whom they said was a key figure in the conspiracy: Atinder Pal Singh. He and three other Sikhs now stand accused in yet another case of conspiracy to kill the late Prime Minister and are being tried inside New Delhi's Tihar Jail. According to press reports, the prosecution's allegations of Kehar Singh's role in the conspiracy has had to be substantially altered in the new case.

When Kehar Singh was executed, many leading Indians, including jurists, administrators and a former Governor, said that they remained totally unconvinced that Kehar Singh had instigated Beant Singh to kill Mrs. Gandhi. V.M. Tarkunde, a former judge of the Bombay High Court, said: "The evidence against him was so meagre that it would not support, as the saying goes, the hanging of even a dog." Another, a former law minister, said that: "The standards of assessing evidence were changed because of the importance of the victim." Some expressed shock at the execution and said that the death sentence should have been commuted. The Indian Post, on 5 January 1989, wrote:

"In the course of the legal proceedings after the President of India first rejected Kehar Singh's mercy petition in October, more and more people - thinking, rational people - all over the country have become convinced it would be wrong to hang Kehar Singh and have said so."

And an editorial in The Statesman on 8 January commented:

"..Indian legal opinion seems to share the misgivings of the eminent British jurist who dismissed the evidence against him as "at its highest, ambiguous and speculative". Indeed Mr F.S. Nariman [a well known lawyer and member of the International Commission of Jurists] has gone on record to say that while there may have been sufficient evidence to warrant conviction, there was insufficient evidence to warrant the death sentence. Any judicial system that does not extend the benefit of the doubt to people who are accused of a capital offence cannot be said to serve the ends of justice. It is reduced to the level of an instrument of political vengeance."

There are international guidelines aimed at preventing such executions. The United Nations Economic and Social Council adopted a safeguard in May 1984 (ECOSOC Resolution 1984/50) which states: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."

There is also a risk that innocent people who are not political prisoners may be sentenced to death. Sharad Sarda was convicted of murdering his wife Manju in the state of Maharashtra in 1982. He was sentenced to death by the Additional Sessions Judge, Pune, and the sentence was confirmed by the Bombay High Court in 1983. But in July 1984 the

Supreme Court acquitted Sardar on the grounds that both the trial court and the High Court had erred in appreciating the evidence linking Sardar to his wife's death. The Supreme Court was particularly critical of the High Court which it said had committed "a fundamental error of law" and "overlooked well defined principles of law".

Another example is the Allahabad High Court's mistake in a 1951 murder trial (see 1956 I.S.C.R. 238) when it signed a judgment sentencing Nauhu Singh to death and acquitting Bechan Singh, whereas, the court had meant to acquit the former and convict the latter. Unable to alter its judgment, the Allahabad High Court requested the state government to order that Nauhu Singh's sentence be remitted. This the state government did, and promptly released him. Amnesty International does not know what happened to Bechan Singh.

These and other cases illustrate Amnesty International's concern that, however strict the safeguards in any legal system may be, the possibility that an innocent man or woman is executed can never be ruled out.

Amnesty International does not know of studies undertaken in India to investigate wrongful capital sentencing. But such studies have been undertaken in other countries, including the United States which, like India, has a highly developed legal system with a complex set of legal safeguards designed to prevent miscarriages of justice. A recent research study carried out in the United States by two academics, Hugo Adam Bedan and Michael L. Radelet, found that in 350 cases heard by US courts between 1900 and 1985 the defendants were wrongly convicted of murder and of rape and were sentenced to death. In most cases, the convictions had been upheld on appeal but new evidence emerged later which either established the innocence of the condemned prisoners or which raised substantial doubts about their guilt. They concluded there had been 23 wrongful executions and said that many other cases could not be considered because of insufficient information (Miscarriages of Justice in Potentially Capital Cases, Stanford Law Review, Vol. 40 No. 1 November 1987). Since 1985, the cut-off date of the research project, at least 9 people sentenced to death were released from US prisons after their guilt had been questioned by the courts.

Several Indian commentators have also underlined the danger that innocent men and women may be executed for crimes they did not commit. For example, former Chief Justice Bhagwati, in his judgment in the Bachan Singh case, identified several possible sources of error which could lead to an innocent man being sent to the gallows:

"In the first place, our methods of investigation are crude and archaic. We are, by and large, ignorant of modern methods of investigation based on scientific and technological advances. Our convictions are based largely on [the] oral evidence of witnesses. Often witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Sometimes they are even got up by the police to prove what the police believes to be a true case. Sometimes there is also mistaken eye-witness identification and this evidence is almost always difficult to shake in cross-examination. Then there is also the possibility of a frame-up of innocent men by their enemies. There are also cases where an overzealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defence. The possibility of error in judgment cannot therefore be ruled out on any theoretical considerations. It is indeed a very live possibility and it is not

at all unlikely that so long as [the] death penalty remains a constitutionally valid alternative, the court or the State acting through the instrumentality of the court may have on its conscience the blood of an innocent man."

## 7. The Cruelty of the Death Penalty

Amnesty International opposes the death penalty because it is the ultimate form of cruel, inhuman and degrading treatment or punishment. It also believes that the experience of waiting for execution is, in itself, a form of such cruel, inhuman and degrading treatment, prohibited in Indian law and in various international human rights instruments, such as the International Covenant on Civil and Political Rights and the Convention against Torture. This is especially so if prisoners condemned to die have to wait for long periods to be executed. The Indian Supreme Court has recognized this in 1983 when it found in the case of K T Vatheeswaran (mentioned above under 4.2.2.) that:

"It is of course true that a period of anguish and suffering is an inevitable consequence of sentence of death. But... prolonged delay when it arises from factors outside the control of the condemned man can render a decision to carry out the sentence of death an inhuman and degrading punishment."

The European Court of Human Rights, in a recent unanimous judgment, held that it would be a breach of the right not to be subjected to torture or to inhuman or degrading treatment or punishment to extradite Mr. Soering, a German national, to the United States where he would face murder charges and the "death row phenomenon": being exposed to severely stressful conditions on death row - including psychological intimidation by other inmates and physical abuse - compounded by a protracted period awaiting execution (Soering v. United Kingdom, European Court of Human Rights, 7 July 1989). The average time spent by a prisoner on death row during appeal procedures before execution in Virginia (the state where he would be tried) was between six and eight years. The European Court of Human Rights said that some delay between the imposition and execution of the death sentence was inevitable but that "having regard to the very long period of time spent on death row in such extreme conditions for strict incarceration, with the ever present and mounting anguish of awaiting execution of the death penalty and the personal circumstances of the applicant" Mr Soering's extradition to the United States would expose him to torture or inhuman or degrading treatment which the European Convention (and the International Covenant on Civil and Political Rights) prohibits.

Prisoners sentenced to die in India are usually held for several years, sometimes more than a decade, before a final decision on execution is taken. For example, Daya Singh, 37 years old, was arrested in 1972 for murdering a former Chief Minister of Punjab in 1965. He was sentenced to death in 1978; his appeal against his conviction was dismissed by the Punjab and Haryana High Court in 1980 and that year the Supreme Court did the same. In 1983 and in 1986 he petitioned the President for mercy which was refused on both occasions. In October 1988 the Supreme Court dismissed his petition to commute the death sentence on the ground of the ten year delay in execution. By then, the date for his execution had already been set twice and all formalities had been completed. He is still awaiting execution, having spent 17 years in jail, ten of them on death row.

During each appeal, the condemned prisoner experiences the agony of conflicting emotions: the hope to live and the need to prepare for death which may be imminent. This tremendous strain on the convict under sentence of death, awaiting his fate in great uncertainty, has caused mental instability in several cases. Gayasi Ram, a 60-year-old man, awaited execution for a decade. He was sentenced to death for murder by the sessions court in Jhansi, Uttar Pradesh, on 19 October 1978. The Allahabad High Court confirmed the death sentence on 28 March 1979 and his final appeal to the Supreme Court was rejected in March 1981. In December that year his wife appealed for mercy to the President of India. But nothing has happened for eight years since then and, despite repeated reminders from the State Government to the Union Home Ministry, the President failed to decide on his clemency petition. The long delay appears to have affected his mental health. According to a report in India Today of 31 January 1989 the district and sessions judge, Jhansi, has told the inspector general of prisons of his concern over Gayasi Ram's mental condition: "Gayasi's mental state is such that he might commit suicide by banging his head on the iron grill of his cell if a decision on his petition is not taken soon. If he is to be hanged it should be done without any delay or he should be released." The Jhansi district magistrate, P. Uma Shankar, who met Gayasi Ram in his prison cell last February, endorsed the finding that the old man had become mentally unstable. His sentence has now been commuted. Commenting on the death of another death convict, named Ponnu, who had waited four years in a prison in Kerala to hear the outcome of his mercy petition, an editorial in the Times of India of 11 April 1983 deplored the government's "inexcusable dilatoriness in dealing with mercy petitions".



Gayasi Ram, who awaited execution for more than a decade before his death sentence was finally commuted (c. India Today)

Long delays in executions are also found elsewhere, leading the United Nations Special Rapporteur on Torture to conclude in his 1988 report to the United Nations Commission on Human Rights that if

"persons who have been sentenced to death have to wait for long periods before they know whether the sentence will be carried out or not" and "if the uncertainty....lasts several years.....the psychological effect may be equated with severe mental suffering, often resulting in serious physical complaints....it may be asked whether such a situation is reconcilable with the required respect for man's dignity and physical and mental health".

#### 8. Conditions of condemned prisoners

Prisoners condemned to die are held in solitary confinement and denied basic facilities available to other prisoners. In Delhi's Tihar jail, for example, prisoners in condemned cells are allowed a maximum of half an hour physical exercise a day, often less. Justice Krishna Iyer in his 1978 judgment in the case of Sunil Batra described conditions of these prisoners as follows:

"Grim walls glare at him from all sides night and day: his food is inserted into the room and his excretory needs must be fulfilled within the same space. No pillow to rest his restless head, no light inside save the bulb that burns blindly through the night from outside. No human face or voice or view except the warder's constant compulsory intrusion into the prisoner's privacy.... No exercise except a generous half hour, morning and evening, in a small, walled enclosure.... A few books, yes; newspapers? No. talk to others? No..."

The cells for convicts under sentence of death in the jail are known as "phansi kothi" and measure ten by nine feet; in one corner is a cement slab to be used as bed, in the other corner an open latrine with a tap. The cells have no fans, lights or windows. They have solid cemented roofs and reinforced walls. On the front side is an iron grill and a gate opening into an enclosed yard roofed with an iron grill. Many under sentence of death are kept with their legs chained to their waist to prevent their escape.

Until 1978, condemned prisoners used to be held in death cells immediately after the lower court had sentenced them to death. But in that year, the Supreme Court ruled that this was no longer permissible. The court acknowledged that states had a duty to keep condemned prisoners in safe custody, but said they could not be kept in prolonged solitary confinement. In *Sunil Batra v. Delhi administration*, the Supreme Court said:

"even jail dispensation inhibits solitary confinement as a measure of punishment. It completely negatives any suggestion that because a prisoner is under sentence of death, therefore.....the jail authorities can impose upon him [the] additional punishment of solitary confinement."

The Supreme Court said that only after all appeals and mercy petitions had been exhausted could convicts under sentence of death be held apart from other prisoners with a constant guard. Even then, the court said, condemned prisoners should be held within sight and sound of other prisoners and be allowed to eat in their company. Nevertheless, many states appear to keep condemned prisoners in prolonged solitary confinement from the time they were first condemned to death by the lower courts. For example, the Supreme Court criticized the Tamil Nadu government in 1983 for holding T V Vatheeswaran for eight years in solitary confinement after he

had been sentenced to death, despite its 1978 order that states should not be allowed to do so.

#### 9. Steps towards worldwide abolition

Outside India, at least one country a year on average has abolished the death penalty over the last decade. Among these countries are Australia, France, the German Democratic Republic (GDR) and the Philippines. Pakistan, which had one of the highest execution rates in Asia, ceased all executions after a civilian government assumed office in December 1988. The Cambodian National Assembly unanimously adopted a Constitutional Amendment in April 1989 which abolished the death penalty. Statistics compiled by Amnesty International show that 44% of all countries in the world have now abolished the death penalty in law or in practice. Others have taken steps towards restricting its use. The Soviet Government announced in 1987 that the death penalty was being re-examined and Soviet legislators are expected to adopt new principles of criminal law which will reduce the number of crimes carrying the death penalty from 18 to 6.

Abolition or retention of the death penalty is subject to much public debate in many countries and some of them have set up inquiry commissions. The Jamaican Government established a committee in 1979 to review application of the death penalty after the Senate had passed a resolution temporarily suspending the death penalty for 18 months. The Fraser Committee on Capital Punishment and Penal Reform, in its report of December 1981, concluded that it was "...of the opinion that death as a penalty for murder should be abolished".

In Sri Lanka, the Commission on Capital Punishment - known as the Norval Morris Commission - published its report in 1959 at a time when the death penalty had remained suspended for three years. (It was reinstated the same year following the assassination of the then Prime Minister, S.W.R.D. Bandaranaike, but no executions have taken place in Sri Lanka since 1977.) The Commission recommended that the death penalty remain suspended. After careful study of available evidence, the Norval Morris Commission concluded that there had been no observable increase in the rate of murders during the period that the death penalty was suspended.\*\*

The United Kingdom Royal Commission on Capital Punishment examined between 1949 and 1953 available statistics from seven European countries, New Zealand and states within Australia and the USA, which had abolished the death penalty in law or ceased to carry out executions. The Commission concluded that "there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall." Similarly, the United Nations published a report on this subject in 1962 which concluded that "All the information available appears to confirm that such a removal [of the death penalty] has, in fact, never been followed by a notable rise in the incidence of crime no longer punishable with death".

In July 1988 the Director of the Institute of State and Law noted the Soviet experience: "In our country the death penalty has been abolished three times and abolition never produced a rise in criminality. In the period from 1947 to 1950 our courts passed no death sentences for intentional homicide. Nevertheless there was no rise in the number of murders....". As noted in the Introduction, the same conclusion was drawn in India, where the death penalty was abolished in two former princely states in southern India between 1945 and 1950.

## 10. Recommendations

### A. Abolition

The death penalty is the ultimate form of cruel, inhuman and degrading punishment and a violation of the right to life; the United Nations has urged all states to abolish it. Pending abolition the United Nations has requested governments to restrict progressively the number of offences for which the death penalty may be imposed (UN General Assembly resolution 32/61 of 8 December 1977). Although India's higher courts have during the last decades narrowed the circumstances in which the death penalty can be imposed (ruling that capital punishment can only be imposed in the "rarest of rare" cases), the number of offences carrying the death penalty has been extended in recent years. As described in section 3.1, the death penalty now covers broadly defined "terrorist acts" under the Terrorist and Disruptive Activities (Prevention) Act of 1987 and the Terrorist Affected Areas (Special Courts) Act of 1984; the abetment of sati under the Commission of Sati (Prevention) Act, 1987; and a second conviction for drug-trafficking under the Narcotics, Drugs and Psychotropic Substances (Amendment) Act, 1988. There is no evidence that the death penalty has had a deterrent effect in India. A former Chief Justice of India who himself upheld the death penalty in several past cases has now stated that: "I believe that the time is now ripe for asserting that the death penalty ought to be abolished".

1. Amnesty International calls on the Indian Government to take steps towards abolishing capital punishment. It could do so by establishing an official commission of inquiry to review the application of the death penalty in India, including the lack of a proven special deterrent effect.
2. Pending abolition, Amnesty International urges the government not to carry out any further executions and to commute the death sentences of all those now awaiting execution.
3. Pending abolition, the government should, in line with international standards adopted by the United Nations, introduce legislation to restrict the number of offences for which the death penalty can be imposed and, as a first step, repeal recent legislation extending its application to new offences carrying the death penalty.

### B. Secrecy surrounding executions

As noted in this report, the Indian Government does not publish yearly statistics about executions and rarely publishes data about the number of executions carried out in India. (The last such statistics Amnesty International knows of cover the period 1982-1985). In a recent resolution on the implementation of safeguards guaranteeing protection of the rights of those facing the death penalty (resolution 1989/64 of 24 May 1989), the United Nations Economic and Social Council urged member states:

"to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions

actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted."

4. Amnesty International urges the government to publish such data, as requested by the United Nations, on a yearly basis.

C. Safeguards for those facing the death penalty

Internationally accepted safeguards for persons facing the death penalty provide that all such persons should have adequate legal defence at every stage of proceedings, above and beyond the protection available in non-capital cases. These standards also stipulate that capital punishment may only be carried out after a legal process "which gives all possible safeguards to ensure a fair trial", and that persons under 18 years of age at the time the crime was committed should not be sentenced to death. (United Nations Economic and Social Council resolution 1984/50 of 25 May 1984 and United Nations Economic and Social Council resolution 1989/64 of 24 May 1989. Both texts are appended to this report.) As described in Part 3 of this report, people in India can be sentenced to death for "terrorist acts" under procedures which severely curtail normal legal safeguards (reversal of burden of proof and limitations on appeal). There is evidence suggesting that poor people accused of capital offences are not always adequately defended at all trial stages, thus making them particularly liable to be executed. A recommendation of India's 1967 Law Commission that the death penalty should not be enforced on offenders below the age of 18 at the time he or she committed the offence has still not been implemented.

5. Amnesty International recommends that, pending abolition, the government introduce legislation which prohibits the execution of those who are less than 18 years of age when they committed an offence. The government could do so by implementing the 1967 Law Commission's recommendation to that effect.
6. It also recommends that the government review special legislation permitting people to be sentenced to death under procedures which fall short of minimum safeguards for a fair trial; that it inform the United Nations of the extent to which international safeguards to protect the rights of those facing the death penalty have been implemented in India; and that the government establish a committee to examine the adequacy of legal representation to poor defendants charged with capital offences at all stages of legal proceedings.

Appendix

- A. List of people known to have been executed in India between 1975 and 1989.
- B. Text of ECOSOC resolutions 1984/50 and 1989/64.

\*"Capital Punishment in India" (1979), 21 Journal of the Indian Law Institute, p. 139.

\*\*The Commission was of the view: "that the statistics of homicide in Ceylon when related to the social changes since the suspension of the death penalty in Ceylon and when related to the experience of other countries tend to disprove the assumption of the uniquely deterrent effect of the death penalty and that...reintroduction cannot be justified on the argument that it is a more effective deterrent to potential killers than the alternative of protracted imprisonment."

NAMES OF THOSE REPORTED EXECUTED IN INDIA SINCE 1975

(All were convicted of murder or of conspiracy to murder.)

<u>Date</u>	<u>Name</u>	<u>Place of execution (if known)</u>	
	1975	Raj Kishore	Andhra Pradesh
	1975	Vengopal Rao	Andhra Pradesh
25 July	1975	Krishan Chetty	Coimbatore Jail, Tamil Nadu
1 December	1975	Jangam Bhoomaiah	Andhra Pradesh
1 December	1975	Kista Gowd	Andhra Pradesh
November	1976	Amrit Bhushan Ghupta	Andhra Pradesh
	1976	Bhaskara Pillai	Trivandrum, Kerala
12 September	1979	Sopan	Yerawada Jail, Maharashtra
12 September	1979	Dagadu	Yerawada Jail, Maharashtra
12 September	1979	Sukhya	Yerawada Jail, Maharashtra
12 September	1979	Devya	Yerawada Jail Maharashtra
29 July	1980	V. Bhaskaran	Vellore Jail, Tamil Nadu
31 January	1982	Jasbir Singh Billa	Tihar Jail, Delhi
31 January	1982	Kuljit Singh Ranga	Tihar Jail, Delhi
3 May	1983	Mehar Chand	Jaipur Jail, Rajasthan
9 October	1983	Kartar Singh	Tihar Jail, Delhi
9 October	1983	Ujjagar Singh	Tihar Jail, Delhi
9 November	1983	Mahavir Mahto	Bhagalpur Jail, Bihar
9 November	1983	Dhanuk Mandal	Bhagalpur Jail, Bihar
9 November	1983	Deena (Deendayal)	Agra District Jail, UP
15 November	1983	Hiramam Wankhede	Nagpur Jail, Maharashtra
15 November	1983	Raghunath Wankhede	Nagpur Jail, Maharashtra
22 November	1983	Dharam Pal	Lucknow Jail, Uttar Pradesh
12 December	1983	Mahipal Singh	Lucknow Jail, Uttar Pradesh
12 December	1983	Nripati Singh	Lucknow Jail, Uttar Pradesh
12 December	1983	Uttam Singh	Lucknow Jail, Uttar Pradesh
27 January	1984	Amar Singh	Jabalpur, Madhya Pradesh
27 January	1984	Shahjaad	Jabalpur, Madhya Pradesh
11 February	1984	Maqbool Ahmed Butt	Tihar Jail, Delhi
10 March	1986	Ranja Tobal	
May	1986	Nahar Singh Fanji	
May	1986	Baldev Singh Sangha	
May	1986	Sucha Singh	
14 July	1988	Baba Bal Yogi Avdhoot (alias Ganesh Giri)	Jaipur Jail, Rajasthan
11 October	1988	Ramnarayan Bhargava	Jabalpur, Madhya Pradesh
11 October	1988	Mahesh Kumar	Jabalpur, Madhya Pradesh
18 November	1988	Paramhans Yadav	Bhagalpur Jail, Bihar
6 January	1989	Kehar Singh	Tihar Jail, Delhi
6 January	1989	Satwant Singh	Tihar Jail, Delhi
16 June	1989	Gurcharan Singh	Patiala, Punjab
16 June	1989	Pritam Singh	Patiala, Punjab
28 June	1989	Labh Singh	Ambala, Haryana
7 September	1989	Shashikant Keshavlal Parmar	Rajkot, Gujarat

6. Resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council at its 1984 spring session on 25 May 1984 ("ECOSOC safeguards"). These safeguards were endorsed in United Nations General Assembly resolution 39/118 on 14 December 1984.

"The Economic and Social Council,

Having regard to the provisions bearing on capital punishment in the International Covenant on Civil and Political Rights, in particular article 2, paragraph 1, and articles 6, 14 and 15 thereof,

Recalling General Assembly resolution 38/96 of 16 December 1983, in which, inter alia, the Assembly expressed its deep alarm at the occurrence on a large scale of summary or arbitrary executions,

Recalling also General Assembly resolution 36/22 of 9 November 1981, in which the Committee on Crime Prevention and Control was requested to examine the problem with a view to making recommendations,

Recalling further Economic and Social Council resolution 1983/24 of 26 May 1983, in which it decided that the Committee on Crime Prevention and Control should further study the question of death penalties that did not meet the acknowledged minimum legal guarantees and safeguards, as contained in the International Covenant on Civil and Political Rights and other international instruments, and welcomed the intention of the Committee that the issue should be discussed at the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Acknowledging the work done by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the areas of summary or arbitrary execution, including the reports of the Special Rapporteur (E/CN.4/1983/16 and Add.1 and Corr.1; E/CN.4/1984/29),

Considering the relevant views and comments of the Human Rights Committee established under the International Covenant on Civil and Political Rights,

Expressing its concern at the tragic incidence of arbitrary or summary executions in the world,

Having considered the note by the Secretary-General on arbitrary and summary executions (E/AC.57/1984/16),

Guided by the desire to continue to contribute to the strengthening of the international instruments relating to the prevention of arbitrary or summary executions,

1. Takes note of the note by the Secretary-General on arbitrary and summary executions;
2. Again strongly condemns and deploras the brutal practice of arbitrary or summary executions in various parts of the world;
3. Approves the safeguards guaranteeing protection of the rights of those facing the death penalty, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution, on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment;
4. Invites the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the safeguards with a view to establishing an implementation mechanism within the framework of the item of its provisional agenda entitled "Formulation and application of United Nations standards and norms in criminal justice".

#### Annex

#### SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering."

Resolution 1989/64, adopted by the United Nations Economic and Social Council on 24 May 1989

Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

The Economic and Social Council,

Recalling its resolution 1984/50 of 25 May 1984, containing safeguards for those facing the death penalty,

Also recalling resolution 15 of the Seventh Congress on the Prevention of Crime and the Treatment of Offenders,

Further recalling Council resolution 1986/10, section X, of 21 May 1986, in which the Council requested a study of the death penalty and new contributions from the criminal sciences to the matter,

Noting the report of the Secretary-General on the implementation of the safeguards,

Also noting with satisfaction that a large number of Member States have provided the Secretary-General with information on the implementation of the safeguards and have made contributions,

Further noting with appreciation the study on the question of the death penalty and the new contributions of the criminal sciences to the matter,

Alarmed at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty,

Aware that effective implementation of these safeguards requires a review of relevant national legislation and the improved dissemination of the text to all persons and entities concerned with them, as specified in resolution 15 of the Seventh Congress,

Convinced that further progress should be achieved towards more effective implementation of the safeguards at a national level on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment,

Acknowledging the need for comprehensive and accurate information and additional research about the implementation of the safeguards and the death penalty in general in every region of the world,

1. Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. Invites Member States to co-operate with the specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. Also invites Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. Invites Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;

5. Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. Recommends that the report of the Secretary-General on the question of capital punishment, to be submitted to the Economic and Social Council in 1990, in pursuance of resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. Requests the Secretary-General to publish the study on the death penalty and the new contributions of the criminal sciences to the matter prepared pursuant to Economic and Social Council resolution 1986/10, section X, paragraph 2 (b), and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.