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Death Penalty in India: “One hardly finds a rich or affluent person going to the gallows”

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

In November 2012, Ajmal Kasab, the lone surviving gunman from the 2008 Mumbai attacks, was hanged in the country's first execution in more than eight years. Three months later, Afzal Guru was executed after his clemency petition was rejected by the President; Guru had been convicted in 2005 of being involved in the 2001 attack on Parliament. More recently, the government has expanded the scope of the death penalty by amending laws to provide for this punishment in certain cases of rape.

The Supreme Court last week also rejected an appeal against the decision by the President to reject Devender Pal Singh's mercy petition. In a trial that has raised serious fair trial concerns, Devender Pal Singh was found guilty of planning an explosion that killed nine people in 1993. His sentence was confirmed by the Supreme Court in 2002 and he has been on death row since. The recent decision of the Supreme Court is likely to affect at least 17 more prisoners who are asking for commutation of their death sentences on the grounds of delay in the disposal of their mercy petitions by the President.

Justice A. P. Shah, a former Chief Justice of the Delhi High Court, is one of the most outspoken opponents of capital punishment in the country. He shared his views on the death penalty in this interview with Amnesty International.

What is the state of the death penalty in India?

India has carried out only very few executions since the 1990s. However, the brutal gang rape of a 23-year old woman in Delhi last year intensified public calls for the imposition of the death penalty.

Why should India abolish the death penalty?

Whether an accused is sentenced to death or not is an arbitrary matter and depends on a number of factors, ranging from the competence of the legal representation to the interest of the central government in a particular case and the personal predilections of the judges.

It is beyond any shred of doubt that in India, it is the judges' subjective discretion that eventually decides the fate of an accused.

Also, confessions and witness testimonies play a more vital role in India than in many other countries, given that forensic and other scientific evidence are not so frequently adopted here.

Most death sentences are awarded on circumstantial evidence alone. Even the use of professionally trained witnesses by the police is common.

Why do you say the death penalty is discriminatory?

In India, it is largely cases involving the poor and the down-trodden - who are the victims of class-bias - which result in an imposition of a death penalty. Here one hardly finds a rich or affluent person going to the gallows.

Therefore, it is apparent that the death penalty, as it is used now, is discriminatory. It strikes mostly against the disadvantaged sections of society, showing its arbitrary and capricious nature - thus rendering it unconstitutional.

You have expressed concerns about the execution of Afzal Guru, who was convicted of being involved in 2001 attack on Parliament in Delhi

Several disturbing trends emerge from his execution, which must be highlighted.

For example, the rejection of his clemency petition by the President on 3 February 2013 was kept a secret and was not communicated to his family. Afzal Guru was executed within a week without his family being informed and his body was buried secretly. There are also serious doubts about the quality of evidence and whether he was adequately represented legally during his trial.

What's the future of the death penalty in India?

The global trend is increasingly and overwhelmingly in favour of abolition.

We would be deluding ourselves if we were to believe that the execution of a few persons sentenced to death will provide a solution to the unacceptably high rates of crime. In reality, capital punishment does not have any deterrent effect.

Justice A. P. Shah is one of 14 retired judges who last year called on the Indian President to commute 13 death sentences that, they maintain, were imposed in a manner inconsistent with the law.