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Death Penalty

14 December 1990

INDIA:

**Juman KHAN
K. GURUSAMY**

Juman KHAN

On 4 December 1990, the Supreme Court rejected a writ petition by Juman Khan (sentenced to death in November 1984 for the murder of a child) challenging the constitutional validity of the death penalty in India and asking for his sentence to be commuted to life imprisonment.

Juman Khan, a rickshaw-puller, the father of two and in his late twenties, is from Firozabad, Uttar Pradesh. Appeals against his conviction have been rejected by both the Allahabad High Court and the Supreme Court. The Allahabad High Court, confirming the death sentence on 9 September 1985, stated that: "There is no eye-witness of the occurrence in this case. The conviction of the appellant solely rests on circumstantial evidence". Since then he has been kept in solitary confinement on death row.

A temporary stay of execution was granted by the President after Juman Khan submitted a petition to him in July 1988 in which he appealed for mercy and a retrial on the grounds, among others, that during his trial, being unable to afford a lawyer, he had a state-appointed lawyer - under the free legal aid scheme - who was too inexperienced to provide him with an adequate defence. The President rejected his appeal on 7 November 1988. The Supreme Court then stayed his execution on 10 November 1988 but on 4 December 1990 rejected Juman Khan's writ petition. It is not known if a date has been set for his execution.

K. GURUSAMY

K. Gurusamy of Kila Ramandhi, Kamuthi, is now facing execution after spending ten years in prison, seven of them in solitary confinement.

Gurusamy worked in the Kalamman temple at Verkatachalapuram, Tamil Nadu. He was sentenced to death on 5 February 1981 for murdering his aunt and uncle. He appealed for mercy to the Governor of Tamil Nadu in 1981. His petition was forwarded to the President on 19 March 1982 and rejected a year later, on 24 March 1983. The Supreme Court dismissed his appeal on 26 August 1983 and since then his execution has been scheduled to take place on three occasions: 22 September 1983, 21 October 1983 and 23 November 1990. His execution was postponed on each occasion. He has complained about the delay in execution, saying it was a reason to commute the death sentence. Although the Madras High Court found that "quicker action could have been taken much earlier" by the executive, the court ruled the delay in execution to be not unjustifiable.

The relatives of Gurusamy have also claimed that the delay, and repeated postponement of execution while he was held in solitary confinement, had caused him great mental anguish leaving him on one occasion in what they described as a "mentally disturbed state".

When he was about to be executed on 23 November 1990 the Supreme Court stayed his execution to allow his lawyer to bring one more petition to appeal against his death sentence.

BACKGROUND INFORMATION

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. The death penalty is usually carried out by hanging. An attempt to challenge this method of execution failed before the Supreme Court, which stated in a 1983 judgement that hanging did not involve torture, barbarity, humiliation or degradation. Amnesty International believes it involves all these. 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. In 1984, several judges of the Supreme Court repeatedly ruled that a death sentence, if not carried out for more than two years, should be automatically commuted to life imprisonment. Other Supreme Court judges, however, have ruled that no such rule could be adopted.

RECOMMENDED ACTION: Telegrams/telexes/express and airmail letters:

- explaining that Amnesty International opposes the death penalty on the grounds that it violates the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment;
- urging that the death sentences of Juman Khan and K. Gurusamy be commuted to life imprisonment;
- stressing that the length of time that both men, but particularly K. Gurusamy, have spent awaiting execution is a strong humanitarian reason to commute their death sentences;
- stressing that Juman Khan's conviction was based entirely on circumstantial evidence and that in such circumstances there is always an element of doubt about guilt and that executions should not be carried out if there is a possibility that an innocent person may be killed;
- expressing concern at reports that Juman Khan was represented at his trial not by a lawyer of his choice but by a state-appointed lawyer who he claims was too inexperienced to provide him with an adequate defence.

APPEALS TO:

His Excellency
President Ramaswamy Venkataraman
Office of the President
Rashtrapati Bhavan
New Delhi 110 004, India

**Telegrams: President Venkataraman,
New Delhi, India
Telexes: 31 66427 RBND IN**

Mr Subodh Kant Sahay
Minister of State for Home Affairs
Ministry of Home Affairs
North Block
New Delhi 110 001, India

Mr R. Bhargava
Secretary
Ministry of Home Affairs
North Block
New Delhi 110 001, India
**Telegrams: R Bhargava, Home Affairs
Ministry, New Delhi, India
Telexes: 3161879 FRGN IN
or 3161880 FRGN IN
(via Ministry of Foreign Affairs)**

**Telegrams: Minister of State Home
Affairs Sahay, New Delhi, India
Telexes: 3161879 FRGN IN
or 3161880 FRGN IN
(via Ministry of Foreign Affairs)**

COPIES TO: diplomatic representatives of India in your country and to the Governors and Chief Ministers of Uttar Pradesh (for Juman Khan) and Tamil Nadu (for K. Gurusamy);

Mr B. Satyanarayan Reddy
Governor of Uttar Pradesh
Office of the Governor
Lucknow
Uttar Pradesh, India

Mr Mulayam Singh Yadav
Chief Minister of Uttar Pradesh
Office of the Chief Minister
Lucknow
Uttar Pradesh, India

Mr Surjit Singh Barnala
Governor of Tamil Nadu
Office of the Governor
Madras
Tamil Nadu, India

Mr Muthuvel Karunanidhi
Chief Minister of Tamil Nadu
Office of the Chief Minister
Madras
Tamil Nadu, India

Some appeals should be sent in a personal or professional capacity.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 1 February 1991.