

EXTERNAL (for general distribution)

**AI Index: 20/30/91
Distr: UA/SC**

UA 224/91

Death Penalty

1 July 1991

**INDIA: Sewaka PERUMAL
 Essaki MUTHU**

Amnesty International is concerned that Sewaka Perumal and Essaki Muthu face imminent execution following the rejection of their recent appeals by the Supreme Court.

Sewaka Perumal and Essaki Muthu were convicted of murder and sentenced to death in a Sessions Court trial in 1986. They, and a third man later acquitted, had been charged with the murders of Athiappan in 1978, Chelladurai in 1981, Hari Ramchandran in 1982 and Christ Odas in 1983. All of the murders took place in the state of Tamil Nadu.

The High Court appeal in 1989 confirmed the death sentence for Sewaka Perumal for two murders and for Essaki Muthu in relation to one murder, but acquitted the third man. The remaining murder cases were either dismissed or are still pending before the Madras High Court.

In May 1991, the Supreme Court also confirmed the death sentences for Sewaka Perumal and Essaki Muthu. The court dismissed an initial special leave petition sent from jail. Lawyers then brought a review petition to the Supreme Court, but it was also rejected apparently without the Supreme Court giving reasons for its rejection. Finally, the Legal Aid Committee petitioned the Supreme Court stating that the procedures when the court dealt with the special leave petition had been unfair for a death penalty case. The grounds for this were based on the fact that when the court dismissed the appeal it did not have the complete records relating to the case before it. The petition also stated that the reasons for its decision should be given in the Supreme Court's judgement.

The Supreme Court heard the special leave petition again, this time after calling for the records from the Sessions Court trial. In its final judgement of 7 May 1991 the Supreme Court again dismissed the special leave petition on the grounds that this was one of the "rarest of rare" cases, in which, according to Supreme Court precedent, the death penalty can be applied.

The special leave petition had argued for clemency on grounds which include: the victim's poverty; the fact that the two men should have been tried separately for each murder on the evidence of each incident and not for multiple murder; and, because of uncertainty about the identity of one of the murder victims since the dead body was only identified by the mother of the victim from a photograph a number of years after the alleged murder.

It is not known whether a mercy petition has been filed seeking Presidential clemency.

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 from the neck until death. 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 and airmail letters:

- explaining that Amnesty International unconditionally 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 Sewaka Perumal and Essaki Muthu be commuted, stressing that the length of time that both men have spent awaiting execution is a strong humanitarian reason to commute their death sentences.

APPEALS TO:

His Excellency

(Salutation: Dear President)

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Mr R. Bhargava

(Salutation: Dear Secretary)

Secretary

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Telegrams: R Bhargava, Home Affairs Ministry

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(via Ministry of Foreign Affairs)

Mr M. M. Jacob

(Salutation: Dear Minister)

Minister of State for Home Affairs

Ministry of Home Affairs

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Telegrams: Home Affairs Minister Jacob, New Delhi, India

Telexes: 31 61879 frgn in; 31 61880 frgn in

(via Ministry of Foreign Affairs)

Mr Bhismanarayan Singh

(Salutation: Dear Governor)

Governor of Tamil Nadu

Office of the Governor

Madras, India

Telegrams: Tamil Nadu Governor Singh, Madras, India

COPIES TO: diplomatic representatives of India in your country.

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 12 August 1991.