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India: Time to end the lethal lottery of India's death penalty system

(New Delhi): The first major study into India's legal judgements on death penalty cases has revealed that the system is riddled with fatal flaws and that the only remedy is to abolish the death penalty completely, said the study authors in New Delhi today.

Amnesty International believes that at least 140 people have been sentenced to death in 2006 and 2007. According to the latest available official figures, there were 273 persons on death row as of 31 December 2005. But this figure is likely to be considerably higher today.

The fate of these death row prisoners is ultimately a lottery. In the first comprehensive analysis of around 700 Supreme Court judgements on death penalty cases over more than 50 years, the authors expose a judicial system that has failed to meet international laws and standards relating to the death penalty.

Amnesty International India and the People's Union for Civil Liberties (Tamil Nadu & Puducherry) have issued the study, *Lethal Lottery: The Death Penalty in India, A study of Supreme Court judgments in death penalty cases 1950-2006*.

It is the first to examine the essential unfairness of the death penalty system in India by analysing evidence found in Supreme Court judgments of abuse of law and procedure and of arbitrariness and inconsistency in the investigation, trial, sentencing and appeal stages in capital cases. It demonstrates that:

- the administration of the death penalty in India has not been in the "rarest of rare cases" as claimed in the country
- on the contrary, there is ample evidence to show that the death penalty has been an arbitrary, imprecise and abusive means of dealing with defendants.

Dr V Suresh, President, PUCL (TN & Puducherry) said: "While the death penalty continues to be used in India, there remains a danger that it will be used disproportionately against ethnic minorities, the poor or other disadvantaged groups. There is only one way to ensure such inequalities in the administration of justice do not occur: the complete abolition of the death penalty."

Amnesty International welcomes the current hiatus of executions in the country. The relative lack of executions in the last decade -- one in 2004 -- illustrates that the people of India are willing to live without the death penalty.

"India stands at a crossroads. It can choose to join the global trend towards a moratorium on the death penalty, as adopted by the UN General Assembly last year. It will also then join 27 countries in the Asia Pacific region which have abolished the death penalty in law or in practice.

“Or it can continue to hang death row inmates, when the judicial system that puts them there has been shown by this extensive research to be unfair,” said Mukul Sharma, Amnesty International-India Director.

The full report is available at <http://www.amnesty.org/en/report/info/ASA20/007/2008> and a summary, at <http://www.amnesty.org/en/report/info/ASA20/006/2008>

Background:

The study of the courts highlights some of the main failings as:

- Errors in consideration of evidence - most death sentences handed down in India are based on circumstantial evidence alone. In a 1994 Supreme Court appeal, the Court noted sarcastically that the main witness's memory constantly improved. His testimony at the trial three years after the incident was observed to be far more detailed than his confessional statement recorded a few days after.
- Inadequate legal representation - concerns included lawyers ignoring key facts of mental incompetence, omitting to provide any arguments on sentencing, or failing to dispute claims that the accused was under 18 years of age at the time of the crime despite evidence to the contrary.
- Anti-terrorist legislation - concerns include the broad definition of ‘terrorist acts’, insufficient safeguards on arrest, and provisions allowing for confessions made to police to be admissible as evidence.
- Arbitrariness in sentencing - in the same month, different benches of the Supreme Court have treated similar cases differently, with mitigating factors taken into account or disregarded arbitrarily.
- In the Bachan Singh judgment of 1980, the Supreme Court ruled that the death penalty should be used only in the "rarest of rare" cases. More than a quarter of a century later, it is clear that through the failure of the courts and the State authorities to apply consistently the procedures laid down by law and by that judgment, the Court's strictures remain unfulfilled.

A total of 135 countries have abolished the death penalty in law or in practice, having realised executions are unacceptable. In 2007, only 24 countries carried out executions (China, Iran, Saudi Arabia, Pakistan and the USA were the main five perpetrators, accounting for 88 per cent of all known executions). See <http://www.amnesty.org/en/death-penalty>