

Sri Pranab Mukherjee
President of India
Rashtrapati Bhavan
New Delhi – 110 004.
India

12 December 2012

Subject: Open letter regarding the resumption of executions in India

Dear President,

I am writing on behalf of Amnesty International regarding the recent resumption of executions in India after eight years, to urge the Indian authorities to immediately establish a moratorium on executions with a view to abolishing the death penalty.

Ajmal Kasab was executed on the 21 November of this year. He had committed grave and serious offences, and Amnesty International has consistently expressed its sympathies and condolence to the victims of his actions and their families. However, by executing him, the Indian state has violated the internationally recognized right to life and has signalled a step away from the regional and global trends towards abolition of the death penalty.

As of today, 140 countries in the world have abolished the death penalty in law or practice. Most recently, Mongolia became the 140th country to join this group by becoming a state party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 13 March 2012. In the Asia-Pacific region, 17 countries have abolished the death penalty for all crimes, 10 are abolitionist in practice and one – Fiji – uses the death penalty only for exceptional military crimes.

Amnesty International is concerned about the manner in which Indian authorities carried out Ajmal Kasab's execution on 21 November 2012. A notification by the Indian Ministry of Home Affairs, published on the same day, stated that you had rejected his petition for mercy on 5 November.

According to reports, Ajmal Kasab himself was only informed of this rejection on 12 November. It is unclear whether he was aware of the possibility of seeking a review of your decision. Information about the rejection of the petition for mercy and the date of execution was not made available to the public until after the execution had been carried out. Authorities in India have made public claims that this lack of public announcement and secrecy surrounding the execution were to avoid intervention by human rights activists.

This practice is in contrast to how previous executions have been carried out in India over the past 15 years. Information regarding the executions of Dhananjay Chatterjee (2004), and Shankar (1995), for example, was accessible to the public in advance of the execution.

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Transparency on the use of the death penalty is among the fundamental safeguards of due process that prevent the arbitrary deprivation of life. Making information public with regard to legislation providing for the death penalty as well as its implementation allows for an assessment of whether fair trial and other international standards are being respected. In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty “to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution”.

Amnesty International finds it disappointing that the Indian State has chosen to carry out Ajmal Kasab’s execution in this manner, especially as secrecy was not the practice in execution in the country.

Amnesty International welcomes the recent commutation of Atbir’s death sentence on 15 November 2012. The petition for mercy of Saibanna Ningappa Natikar is, however, still pending before you. Fourteen former judges recently petitioned the President to commute 13 death sentences that they believe were wrongly imposed. The case of Saibanna Ningappa Natikar, sentenced to death for murdering two members of his family in 2005, was one of the cases identified by the judges.

Amnesty International is also concerned about a further nine petitions for mercy involving 14 individuals that have been sent to the Ministry of Home Affairs for consideration for a second time, which we understand is usual practice when there is a new minister in office. On 10 December 2012, the Indian Minister of Home Affairs told reporters that he will review the petitions before him after the end of the winter session of Parliament. One of these petitions concerns Mohammad Afzal Guru who was sentenced to death for his involvement in the 2001 Parliament attack. Mohammad Afzal Guru was tried by a special court under the Prevention of Terrorism Act. Amnesty International has found that these trials did not conform with India’s obligations under international human rights law.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. It opposes it as a violation of the right to life as recognized in the Universal Declaration of Human Rights and the ultimate cruel, inhuman and degrading punishment.

The desirability of the abolition of the death penalty has long been recognized in international law and standards. The International Covenant on Civil and Political Rights (ICCPR), to which India is a State Party and which allows for the use of the death penalty under certain circumstances, clearly states in Article 6.6 that no provision in Article 6 should be invoked “to delay or to prevent the abolition of capital punishment.”

The UN Human Rights Committee, the expert body established under the ICCPR to monitor its implementation, has said in its General Comment no. 6 of 30 April 1982 that Article 6 of the ICCPR “refers generally to abolition in terms which strongly suggest that abolition is desirable.” The Committee concluded that “all measures of abolition should be considered as progress in the

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enjoyment of the right to life.” As a state party to the ICCPR, India has a legal obligation to comply with the provisions of the treaty.

The use of the death penalty in India is riddled with systemic flaws. Of particular concern are: the broad definition of “terrorist acts” for which the death penalty can be imposed; insufficient safeguards on arrest; obstacles to confidential communication with counsel; insufficient independence of special courts from executive power; insufficient safeguards for the presumption of innocence; provisions for discretionary closed trials; sweeping provisions to keep secret the identity of witnesses; and limits on the right to review by a higher tribunal.

On behalf of Amnesty International, I urge you to

- Commute all death sentences to terms of imprisonment
- Immediately halt plans to carry out further executions, and establish an official moratorium on executions as the first step to abolishing the death penalty;
- Wherever mercy petitions have been rejected, respect the practice of promptly informing the individual, his/ her lawyers, his/ her family, of the decision, reasons for the decision, and proposed date of execution, as well as the public, of any scheduled execution.

Yours sincerely,



G. Ananthapadmanabhan

Chief Executive

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