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India: Amnesty International calls for death sentence on Devender Pal Singh not to be carried out

Amnesty International calls on the Government of India not to carry out the death sentence imposed on Devender Pal Singh in 2001 after his conviction in an unfair trial. Under international law, the execution of a person convicted and sentenced to death in an unfair trial is a violation of the right to life.

Police claim that Devender Pal Singh (also known as Davinder Pal Singh Bhullar) made a statement confessing to involvement in a 1993 bomb attack in Delhi killing nine people – a statement which he subsequently retracted. In August 2001, with that retracted confession as the sole evidence against him, he was convicted of committing a terrorist act resulting in death, conspiracy to murder and various other offences and sentenced to death. The conviction and death sentence were confirmed in March 2002, though one of the three judges on the Supreme Court appeal bench found him not guilty. A further review petition was dismissed by the same Supreme Court judges, again by a 2 to 1 majority, in December 2002. A clemency petition to the Indian President was rejected in May 2011, clearing the way for the execution to take place.

A teacher at an Engineering College, Devender Pal Singh was suspected by the police of involvement in a bomb attack on a senior police officer in 1991 as part of the ongoing armed movement for an independent Sikh state. Unable to trace him, the police reportedly abducted and killed his father and uncle in December 1991. A number of police officials have been indicted for those abductions in a criminal investigation which is still ongoing. In 1994, hearing that he was also suspected of involvement in a bomb blast in Delhi in 1993 that killed 9 persons, and fearing torture and extrajudicial execution, Devender Pal Singh attempted to flee to Canada under a false identity and was arrested in transit at Frankfurt airport. He applied for asylum in Germany, but this was rejected and he was subsequently returned to India in January 1995.

On return to India he was arrested at New Delhi's international airport for travelling on false documents. The police claim that during questioning, Devender Pal Singh admitted to involvement in the Delhi bomb blast. He was therefore arrested and tried under the Terrorist and Disruptive Activities (Prevention) Act (TADA) – a subsequently lapsed law that itself contained numerous provisions which were inconsistent with international legal principles of fair trial.¹

Devender Pal Singh had no access to a lawyer during his initial detention – the period in which the police claim that he made a detailed confession of his involvement in the conspiracy to carry out the bomb attack. The Human Rights Committee, the UN body charged with overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party, has stated that all persons arrested must have immediate access to counsel.² The UN Special Rapporteur on the independence of judges and

1 Amnesty International, *Terrorist and Disruptive Activities (Prevention) Act: The lack of 'scrupulous care'*, (Index: ASA 20/39/94)

2 Concluding observations of the HRC: Georgia, UN Doc. CCPR/C/79/Add.74, 9 April 1997, para 28.

lawyers has also noted the importance of the presence of an attorney during police interrogation observing particularly “The absence of legal counsel gives rise to the potential for abuse...”³

In an application retracting the alleged confessional statement, Devender Pal Singh stated that he had not made any confession, but he had been “physically manhandled, threatened with encounter extinction [extra judicial execution] and was forced to sign several blank papers”. The appellate judgment of the Supreme Court also refers to this: “According to him, he was made to sign some blank and partly written papers under threat and duress and entire proceedings were fabricated upon those documents”. A petition filed in the Supreme Court by Devender Pal Singh also refers to “coercion and torture” in extracting the alleged confession. The Supreme Court appellate judgment also records that in his statement to the trial court, Devender Pal Singh further clarified that en route to the hearing by the judicial magistrate who was to verify the voluntariness of his statement, “he was told that if he made any statement to the Court, he would be handed over to Punjab Police who would kill him in an encounter”.

Such treatment violates the prohibition on torture and other cruel, inhuman, or degrading treatment set out in Article 7 of the ICCPR and the right to fair trial which includes, as set out in Article 14(3)(g) of the ICCPR, the right not to be compelled to testify against oneself or to confess guilt. The Human Rights Committee has stressed that this means there must be no direct or indirect physical or undue psychological pressure from the investigating authorities -- and in particular no torture or other ill-treatment -- on a person in order to obtain a confession; that statements or confessions obtained in violation of the prohibition on torture or other ill-treatment must be excluded from evidence; and that, where a person alleges that they have made a statement as a result of torture or other ill-treatment, the burden is on the state to prove that their statement was made of their own free will.⁴ Moreover, where a complaint about torture or other ill-treatment has been made, it must be investigated promptly and impartially.⁵

However, the retraction complaint and subsequent statement made in the trial court by Devender Pal Singh that his statement confessing to the bomb blast was made as a result of torture appear to have been summarily dismissed by both the trial and appellate court. No investigation into his complaints took place. Moreover, the requirement in TADA that a judicial magistrate verify the voluntariness of a confession made to the police was not complied with adequately. The minority appellate judge who found Devender Pal Singh not guilty noted that the statement of the judicial magistrate shows that he asked only one question: whether the statement was recorded on the particular date. The appellate judge noted that the magistrate asked no further questions; that when Devender Pal Singh was produced before the magistrate he was in police custody and police officials were present in the courtroom during the proceedings; and that the magistrate “did not think it necessary to take the accused to his chamber to assess his mental state. He also admitted that ... no [confessional] statement of the accused was produced before him.”

The failure of the courts to order an investigation into Devender Pal Singh’s complaints of threats, torture, duress and fabrication was compounded by the majority judges of the appellate court who shifted the burden of proof to the defence. Instead of requiring the prosecution to show that the confession was made voluntarily, the majority judgment asserted that once the prosecution had shown that the requirements of the TADA act and its rules were complied with, “it is for the accused to show and satisfy the court that the confessional statement was not made voluntarily.” Yet where lawyers for Devender Pal Singh were able to show that procedural requirements of the TADA rules were not complied with by the police, the

3 Report of the Mission of the Special Rapporteur to the United Kingdom, UN Doc. E/CN.4/1998/39/add.4, 5 March 1998, para 47.

4 General Comment no. 32 on Article 14, para 41.

5 General Comment no. 20 on Article 7, para 14.

judgment dismisses such non-compliance as “not being an incurable illegality” and “merely a procedural requirement”, concluding, “Procedure is handmaiden and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it”.

The appellate court did not pay due regard to the importance of the requirement to investigate Devender Pal Singh’s complaints that his confession had been made as a result of torture and other ill-treatment. The majority judgment stated: “A mere statement that requisite procedures and safeguards were not observed or that statement was recorded under duress or coercion is really of no consequence. Such a stand can be taken in every case by the accused after having given the confessional statement. It could not be shown as to why the [police] officials would falsely implicate the accused.” The judgment concluded, “The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration.”

Such a conclusion is at odds with the frequent allegations of torture in police custody, particularly of TADA detainees. The concerns about the unlikely claim by police that Devender Pal Singh suddenly chose to make a statement confessing to having committed an act of mass murder while being questioned about offences of travelling on false documents are additionally serious given this context. Further, it should be noted that under current Indian law, confessional statements must be made before a judicial magistrate if they are to be admissible as evidence – those made to the police are not admissible.

In this case, there was no other evidence against Devender Pal Singh to secure or uphold his conviction and death sentence. On appeal, Devender Pal Singh’s counsel noted that his co-accused (against whom the sole evidence was also the alleged confession of Devender Pal Singh) had been acquitted, and argued that he should be given the benefit of the doubt. To this, the majority appellate judgment, rejecting a key principle of criminal justice, stated: ‘Exaggerated devotion [to] the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions ... Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent... Proof beyond reasonable doubt is a guideline, not a fetish.’

While not every minor procedural failure justifies the quashing of a conviction, in this case the combination of the denial of access to a lawyer – which the Human Rights Committee⁶ and the UN Special Rapporteur on torture⁷ have identified as a crucial guarantee against torture – and the failure of the judicial magistrate to verify the voluntariness of the alleged confession are not minor procedural failures. These are key failures which cast doubt on the admissibility of the statement of confession which was the only evidential basis for a conviction and a death sentence. At the very least there must be an impartial, independent and thorough investigation into Devender Pal Singh’s complaint of torture and, unless such an investigation conclusively establishes that his statement was not made as a result of torture or other ill-treatment, the conviction should be quashed and the case submitted for retrial.

The Human Rights Committee has stressed that in trials leading to the imposition of the death penalty “scrupulous respect of the guarantees of fair trial is particularly important”. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of Article 14 of the Covenant [ICCPR] have not been respected, constitutes a violation of the right to life (Article 6 [ICCPR]).”⁸

6 General Comment no. 20 on Article 7, para. 11.

7 For instance Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to China, UN Doc. E/CN.4/2006/6/Add.6, 10 March 2006, para. 55.

8 General comment no. 32 on Article 14, para 59.

Amnesty International calls upon the Government of India to not carry out the execution of Devender Pal Singh. He should be removed from death row immediately and retried in proceedings that are in compliance with international standards of fair trial and without recourse to the death penalty. Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.