

UA 32/98

Death Penalty/Legal Concern

29 January 1998

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Amnesty International is concerned that 26 people sentenced to death by a special court in the southern Indian state of Tamil Nadu on 28 January 1998 may not have received a fair trial according to international standards for fair trial and that the judge involved indicated the sentences were handed down for deterrent purposes.

Twenty-four men and women - 15 Sri Lankan and nine Indian nationals - were found guilty of conspiracy to murder the former Prime Minister of India, Rajiv Gandhi. A further two Indian nationals were found guilty of murder. Mr Gandhi was killed by a bomb explosion in Tamil Nadu in May 1991.

The legislation under which they were tried - the Terrorist and Disruptive Activities (Prevention) Act (TADA) - contravenes several international standards for fair trial, including the holding of trials *in camera* and the non-disclosure of the identity of witnesses. In addition, although the majority of those accused were arrested in July 1991, a charge sheet was not drawn up until May 1992 and a preliminary trial did not begin until May 1993.

The trial itself took place in January 1994 in the Poonamallee jail in Madras, designated a special court under TADA, where many of those sentenced had been detained for almost seven years since arrest.

Under TADA, the accused are only able to appeal to the Supreme Court whereas under normal law they would have the right to appeal to the High Court before moving to the Supreme Court.

Amnesty International is also concerned that one of the accused, Ms A Athirai, is reported to have been only 17 years old at the time of her arrest in July 1991. Article 6(5) of the ICCPR and Article 37(a) of the Convention on the Rights of the Child state that sentence of death should not be imposed for crimes committed by persons below eighteen years of age.

BACKGROUND INFORMATION

Amnesty International unconditionally opposes the use of the death penalty as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. In a resolution adopted in April 1997, the UN Commission on Human Rights called on all states that have not yet abolished the death penalty *"to consider suspending executions, with a view to completely abolishing the death penalty"*.

The Indian Constitution protects the right to life. India's highest courts have ruled that the death penalty can only be applied in the *"rarest of the rare"* cases. Yet on average a dozen executions are carried out in India every year for criminal offenses. Most of those executed are the poor and illiterate.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:

- expressing concern at the sentence of death handed down to 26 men and women on 28 January 1998, following a trial which Amnesty International believes may not have conformed to international standards for fair trial;
- urging that in hearing the appeal, the Supreme Court examines the trial and sentencing in the light of India's obligations under the ICCPR;
- expressing unconditional opposition to the death penalty as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment and emphasising that the death penalty has never been shown to have a special deterrent effect.

APPEALS TO:

This is a limited action. Please restrict appeals to 15 per section.

Mr K.R. Narayanan
President of India
Office of the President
Rashtrapati Bhavan
New Delhi 110 004, India
Telegrams: President, New Delhi, India
Faxes: + 91 11 301 7290
Salutation: Dear President

Justice M.M. Punchhi
Chief Justice of India
Supreme Court of India
Tilak Marg
New Delhi 110 001, India
Telegrams: Chief Justice, New Delhi, India
Salutation: Dear Chief Justice

COPIES TO:

Mr Indrajit Gupta
Minister of Home Affairs
Ministry of Home Affairs
North Block, New Delhi 110 001, India
Faxes: + 91 11 301 5750

and to diplomatic representatives of India accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 16 March 1998.