

# URGENT ACTION

## JUDGES SUPPORT MERCY, PRESIDENT REJECTS IT

**India's president has rejected a mercy petition from Saibanna Ningappa Natikar, though 14 former judges have told him they believe the death sentence was wrongly imposed. Saibanna is at imminent risk of execution.**

**Saibanna Ningappa Natikar** had petitioned the president for mercy, but the president rejected the petition on 4 January. He had been sentenced to death in 2005 for the 1994 murder of his second wife and daughter. At the time of the crime, he had been free on parole from a life sentence for the murder of his first wife. The Supreme Court rejected an appeal in 2005.

Fourteen former judges recently asked the president to commute the death sentences of Saibanna Ningappa Natikar and 12 others, as they had been wrongly imposed. The judges pointed out that the reasoning underlying the Supreme Court's confirmation of Saibanna's death sentence in 2005 implied that capital punishment was mandatory for any prisoner convicted of a second offence that merited a life sentence, and violated a Supreme Court decision from 1983. The Supreme Court had itself acknowledged the error in its reasoning on Saibanna's case in 2009. UN bodies and mechanisms have repeatedly stated that the mandatory imposition of the death penalty violates international law.

Saibanna's is the second petition for mercy to be rejected by India's president after that of Ajmal Kasab, who was executed on 21 November 2012, the first execution in India in eight years. The rejection of Saibanna's mercy petition now implies that more executions may follow soon.

### **Please write immediately in English or your own language:**

- Urging the authorities to stop plans to execute Saibanna Ningappa Natikar, or any other execution;
- Urging them to commute all death sentences to terms of imprisonment;
- Reminding them that the UN General Assembly has called repeatedly for a moratorium on executions, with a view to abolishing the death penalty, and pointing out that India's decision to resume executions has set it against the global trend towards abolition.

### **PLEASE SEND APPEALS BEFORE 25 FEBRUARY 2013 TO:**

President

President Pranab Mukherjee  
Rashtrapati Bhavan  
New Delhi 110 004, India  
Fax: +91 11 23017290; 23017824  
Email: (via form)  
<http://www.helpline.rb.nic.in/>

**Salutation: Dear President Mukherjee**

Prime Minister

Dr. Manmohan Singh  
South Block, Raisina Hill  
New Delhi 110 001, India  
Fax: +91 11 23019545; 23016857  
Email: (via form)  
<http://pmindia.gov.in/feedback.php>

**Salutation: Dear Prime Minister**

Minister of Home Affairs

Sushilkumar Shinde  
104, North Block,  
Central Secretariat  
New Delhi 110001, India  
Fax: + 91 11 23094221  
Email: hm@nic.in

**Salutation: Dear Minister**

**Also send copies to diplomatic representatives accredited to your country.**

Please check with your section office if sending appeals after the above date.

**AMNESTY  
INTERNATIONAL**



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### ADDITIONAL INFORMATION

Before Ajmal Kasab's execution on 21 November 2012, the last execution in India had been that of Dhananjay Chatterjee in August 2004. This move to resume executions after an eight-year hiatus has set the country against the regional and global trend towards abolition of the death penalty. The authorities used to make information about the rejection of mercy petitions and dates of execution available to the public before any executions. In resolution 2005/59 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".

Since assuming office in late 2012, President Pranab Mukherjee has rejected two mercy petitions (Ajmal Kasab and Saibanna) and has commuted another death sentence (Atbir). According to official figures, the president has sent back the mercy petitions of 14 people – 13 men and one woman – to the Ministry of Home Affairs for reconsideration. The 13 are Gurmeet Singh; Dharampal; Suresh and Ramji; Praveen Kumar; Jafar Ali; Sanjeev and Sonia (f); Sundar Singh; Mohammad Afzal Guru; Simon, Gnanaprakasam, Madaiah and Bilavandra. The president has the options of rejecting the mercy petitions; commuting the death sentences to terms of imprisonment; or postponing his decision indefinitely.

India's use of the death penalty is riddled with systemic flaws. Section 303 of the Indian Penal Code (IPC) which provided for mandatory death penalty was struck down by the Supreme Court in 1983 as being unconstitutional. However, the IPC has not yet been amended and section 303 remains in the statute. In 2005, in Saibanna's case, the Supreme Court found that the trial court had convicted Saibanna under Section 303 even though the offence had taken place in August 1994, over 10 years after the offence was struck off the books. A two-judge bench of the Karnataka High Court had first given a split verdict on his case, after which his appeal was referred to the third judge who had confirmed his death sentence. Despite this, Saibanna was still sentenced to death, on different grounds. The 14 judges who petitioned the president to commute Saibanna's sentence found that the Supreme Court's reasoning in his case was *per incuriam*, that is, bad law, because the reasoning effectively made the imposition of death penalty mandatory in his case, in violation of the Court's decision in 1983.

In total, 140 countries are abolitionist in law or in practice. In 2011, only 21 states in the world executed, meaning that 90 per cent of the world was execution-free. Out of 41 countries in the Asia-Pacific region, 17 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. Over the past 10 years, four Asia-Pacific countries abolished the death penalty for all crimes: Bhutan and Samoa in 2004, the Philippines in 2006 and the Cook Islands in 2007. UN bodies and mechanisms have repeatedly called upon member states to establish a moratorium on executions with a view to abolishing the death penalty, including through the adoption of four UN General Assembly resolutions, in December 2007, 2008, 2010 and 2012. India voted against all four resolutions. In a general comment on Article 6 of the International Covenant on Civil and Political Rights, to which India is a State Party, the UN Human Rights Committee stated that Article 6 "refers generally to abolition [of the death penalty] in terms which strongly suggest ... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life...".

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment, regardless of the nature of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution.

Name: Saibanna Ningappa Natikar

Gender m/f: m

Further information on UA: 337/12 Index: ASA 20/004/2013 Issue Date: 14 January 2013