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INDIA: GOVERNMENT URGED TO STOP ALL EXECUTIONS AS NEW CONCERNS EMERGE

Amnesty International is seriously alarmed by the decision issued by the Supreme Court of India in Devender Pal Singh Bhullar's case on 12 April 2013. Amnesty International urges the Indian authorities not to carry out this or any other executions and to immediately establish a moratorium on the implementation of death sentences as a first step towards abolition of the death penalty.

Devender Pal Singh's trial fell far short of international standards for a fair trial. The Supreme Court's decision raises concerns about the treatment of delay in the disposal of mercy petitions. Amnesty International is also deeply disappointed that the Supreme Court practically ignored highly relevant international human rights standards despite repeated acknowledgment by judges of the Indian Supreme Court that it is "an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law occupying the field."¹

The recent resumption of executions and the secrecy around them have added to a highly troubling catalogue of concerns over the Indian authorities' use of the death penalty.

Unfair trial concerns: Devender Pal Singh Bhullar's case

The trial of Devender Pal Singh Bhullar, one of the prisoners now at risk of imminent execution, failed to meet international standards for a fair trial. Devender Pal Singh Bhullar was sentenced to death in August 2001 for his involvement in a bomb attack in New Delhi in 1993 that killed nine people. He was arrested at the New Delhi Airport in January 1995 under the Terrorist and Disruptive Activities (Prevention) Act (TADA), a law that subsequently lapsed and contained provisions incompatible with international human rights law, including the right to a fair trial.

Devender Pal Singh Bhullar had no access to a lawyer during his initial detention and trial. He was found guilty on the basis of an unsubstantiated confession made to the police, which he later retracted, claiming it was a false confession made under police pressure. He has maintained his innocence throughout.

The Supreme Court confirmed the conviction and death sentence in March 2002. However, one of the three judges found Devender Pal Singh not guilty, concluding that there was no evidence to convict him and that a dubious confession could not be the basis for imposing a death sentence. The same Supreme Court judges, again by a 2 to 1 majority, dismissed a review petition in December 2002. The two judges in favour of the death sentence observed that the non-unanimous sentence could be a factor to be considered in the mercy petition process.

Devender Pal Singh Bhullar's petition was rejected by the President in May 2011, eight years after the request was filed. Devender Pal Singh Bhullar challenged the decision before the Supreme Court, seeking commutation of his death sentence on the grounds of inordinate delay in its consideration and challenging the constitutionality of his prolonged stay on death row, which he claimed was cruel, inhuman and degrading, in violation also of international human rights law.

The use of the death penalty in India is riddled with systemic flaws. Inconsistency in sentencing is a particular concern. Another is successive legislation providing for trial,

¹ For instance, in *Vishaka & Others vs. State of Rajasthan & Others* 1997 (6) SCC 24.

conviction and sentence of death for “terrorist offences” which violates international law and standards for fair trial. Concerns with such legislation include the broad definition of “terrorist acts” for which the death penalty can be imposed; insufficient safeguards on arrest; exceptional provisions that allow “confessions” made to police rather than a magistrate to be admissible as evidence; 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 .

An alarming and regressive judgment that ignores international standards

In the Indian justice system, a mercy petition is often the final opportunity for individuals to have their death sentences commuted by the executive after judicial appeals have been exhausted.

In 1989, a five judge bench of the Supreme Court of India laid down circumstances under which prisoners could approach courts to challenge decisions on their mercy petitions on the grounds of inordinate delay.

The Supreme Court held that: “Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 ... This Court [however] may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death in-executable”.

Even prior to this 1989 judgement, the Supreme Court had commuted death sentences to life imprisonment on account of “inordinate executive delay” amounting to a violation of the right to life under the Indian constitution. In some of these commutations, the executive delay was of two years and under.²

In its judgment of 12 April 2013,³ the Supreme Court noted the petitioner’s claims that the long delay of eight years in disposal of the mercy petition “has rendered the sentence of death cruel, inhuman and degrading, treatment” (para.39). However, it decided not to commute the death sentence in this case and set that claim aside based on the “enormity of the crime”. Worryingly, the judgment also states that delay “cannot be invoked in cases where a person is convicted for an offence under TADA or similar statutes.”

Torture and other cruel, inhuman or degrading treatment or punishment are absolutely and unequivocally prohibited under international human rights and humanitarian law. The prohibition is a peremptory norm of general international law which applies to all states, and is provided for in Article 7 of the International Covenant on Civil and Political Rights, to which India is a State Party. This provision is non-derogable, namely it cannot be revoked or restricted even in the direst of emergencies. The Supreme Court’s approach that considerations of “the enormity of the crime” may outweigh claims of cruel, inhuman or degrading treatment or punishment is therefore of extreme concern.

Amnesty International opposes the death penalty in all circumstances, and therefore does not believe that there is any ‘appropriate’ length of time a prisoner can be held before execution.

Mental health concerns inadequately considered

The UN Commission on Human Rights also called upon all states that retain the death penalty “Not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person”. Devender Pal Singh Bhullar has been receiving treatment at a psychiatric facility in New Delhi and in 2011 his lawyer requested that the

² For instance, in *T V Vatheeswaran vs. State of Tamil Nadu* AIR 1983 SC 361.

³ *Devender Pal Singh Bhullar vs. State of N.C.T of Delhi*, Writ Petition (Criminal) D. No. 16039 of 2011, issued on 12 April 2013.

Supreme Court of India consider his mental ill-health as grounds for commuting his death sentence.

In its judgment issued on 12 April, the Supreme Court of India recognized that documentation produced by Devender Pal Singh Bhullar's lawyer indicate that "on account of prolonged detention in jail after his conviction and sentence to death, the petitioner has suffered physically and mentally". It however concludes that such documentation "cannot be relied upon for recording a finding that the petitioner's mental health has deteriorated to such an extent that the sentence awarded to him cannot be executed." In view of the fact that Devender Pal Singh Bhullar has been in a psychiatric facility for more than two years, this brief and unexplained dismissal is another worrying instance of the Court appearing to disregard international human rights standards.

Fear of new imminent executions

Amnesty International is concerned that the decision and reasoning in Bhullar's case will have an impact of other cases pending before the Supreme Court on similar grounds. Of particular concern are cases brought under TADA. Amnesty International is deeply concerned that the Supreme Court's ruling will weaken the chances of these individuals' mercy petitions succeeding.

On 6 April 2013, the Supreme Court of India stayed the executions of the following eight individuals while petitions were filed on their behalf arguing for a commutation of the death sentence to imprisonment because of "inordinate delay" on the part of the executive in deciding their mercy petitions: Praveen Kumar, Gurmeet Singh, Jafar Ali, Suresh and Ramji, Sonia and Sanjeev, Sunder Singh, and Dharampal. Many of these people have been on death row for a long period of time – some, like Suresh, Ramji and Dharampal, have been on death row for over a decade.

Other individuals whose mercy petitions were rejected, and have had their executions stayed while their petition is pending in court include: Santhan, Murugan and Perarivalan and Gnanaprakasam, Simon, Meesekar Madaiah, Bilavendran, Mahendra Nath Das and Saibanna. Of these, Santhan, Murugan, Perarivalan, Gnanaprakasam, Simon, Madaiah and Bilavendran have been convicted for offences under the TADA.

India resumed executions after a hiatus of over eight years in November 2012, when Ajmal Kasab, the lone surviving gunman from the 2008 Mumbai attacks, was hanged. Another execution, Afzal Guru's, was carried out in February 2013. The President has rejected at least a further nine mercy petitions in 2013 alone.

Secrecy in the use of the death penalty

While Amnesty International opposes the death penalty unconditionally, the organization is also concerned by the lack of transparency that has surrounded the use of the death penalty in India since November last year.

When Ajmal Kasab was executed on 21 November 2012, the public was only informed after the execution had been carried out. Similarly, when Afzal Guru was executed on 9 February 2013, even his family only received official notification of his execution after it had been carried out. Moreover, Afzal Guru's body was not returned to his family for burial.

Information regarding decisions on mercy petitions by the President is no longer available on the website of the President's Secretariat. On 5 April it was reported that the President had made decisions on mercy petitions pending before him, reportedly rejecting the petitions of at least seven individuals. However, to date, the Indian Ministry of Home Affairs has not clarified how many petitions were rejected, or the number or identity of individuals whose mercy petitions were rejected.

Reports indicate that on 5 April at least one prisoner was moved to detention facilities equipped to carry out executions immediately after his mercy petition was rejected, and prior to the filing of extraordinary appeals before the Supreme Court.

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".

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also stated that "Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation".⁴ The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stated that "refusal to hand over the body for burial ... [is an] intentional act, fully mindful of causing family members turmoil, fear and anguish over the fate of their loved one(s)".⁵

Expansion of the scope of the death penalty

Earlier in April, the President signed into law the Criminal Law (Amendment) Act, 2013, which provides for the death penalty for certain forms of rape and expands the scope of capital punishment in India, against recommendations by UN human rights bodies and mechanisms and despite contrary recommendations by the Justice Verma Committee.

Resumption of the death penalty bucks global trends

As of today, 140 countries are abolitionist in law or in practice. 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. Only one in 10 countries in the world carries out executions, and only 21 of the world's countries were recorded as having carried out executions in 2012.

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 Human Rights Committee, the expert body charged with overseeing this Covenant's implementation, stated that Article 6 (which provides for the right to life) "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 without exception, and 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.

Amnesty International has also consistently condemned attacks on civilians by armed groups, including in India, irrespective of the cause in the name of which they are or purport to be carried out.

Amnesty International also reiterates that states have an obligation to guarantee justice to the victims of terrorist attacks and their families. States must conduct prompt, thorough, effective and independent official investigations into all incidents of terrorist attacks, capable of leading

⁴ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Transparency and the Imposition of the Death Penalty, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006, para 32.

⁵ Report of the Special Rapporteur on the question of torture, UN DOC. E/CN.4/2003/68/Add.2, 3 February 2003, para.65.

to the identification of the persons reasonably suspected of being responsible for such acts, and try those accused in proceedings that meet international fair trial standards, without recourse to the death penalty.

Recommendations:

Amnesty International calls on the Indian authorities:

- not to execute Devender Pal Singh Bhullar, to remove him from death row immediately, and retry his case in proceedings that comply with international fair trial standards;
- to commute all death sentences to terms of imprisonment; and
- to immediately establish a moratorium on execution as a first step towards full abolition of the death penalty.

Read more

India: Amnesty International calls for death sentence on Devender Pal Singh not to be carried out (24 June 2011):

<http://amnesty.org/en/library/asset/ASA20/033/2011/en/c1200318-d6aa-48ff-83ee-b3825d19e752/asa200332011en.pdf>

India: Execution imminent after plea rejected (12 April 2013):

<http://www.amnesty.org/en/library/info/ASA20/020/2013/en>

Death Sentences and Executions 2012:

<http://www.amnesty.org/en/library/asset/ACT50/001/2013/en/bbfea0d6-39b2-4e5f-a1ad-885a8eb5c607/act500012013en.pdf>