

## The Death Penalty in India Briefing for the EU-India Summit, 7 September 2005

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### 1. The death penalty - global trends

Worldwide 120 countries have abolished the death penalty in law or practice:

85 countries - for all crimes;

- 11 countries - for ordinary crimes (the death sentence is available only under military law and for treason or crimes committed in exceptional circumstances); and
- 24 countries - in practice (the death sentence exists in law, however, the state has not carried out an execution in more than a decade and has expressed its intention not to execute).

There is a persistent trend internationally to abolish the death penalty and India is among 76 countries that retain the death penalty.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights.

The death penalty is an inherently unjust and arbitrary punishment, however heinous the crime for which it is inflicted. Studies globally suggest that it is more likely to be imposed on those who are poorer, less educated and from marginalized segments of society. The death penalty is irrevocable, yet the risk of error in its application is inescapable.

Amnesty International recognizes the need to combat violent crime but there is no convincing evidence that the death penalty deters crime more effectively than other punishments. Amnesty International believes that prolonged detention of people under sentence of death must be considered cruel, inhuman and degrading.

A number of judgments in India and other countries have ruled that long waiting periods for prisoners facing execution amount to inhuman or degrading punishment or are brutalizing to the human spirit.

### 2. The death penalty in India

In the 1983 Macchi Singh and Others v State of Punjab judgment, India's Supreme Court ruled that the death penalty can only be applied in the "rarest of rare" cases. Since this is not further defined and no clear guidelines exist, the use of the death penalty is largely dependent on the interpretation of this phrase by individual judges.

The first known execution since the late 1990s took place in August 2004 amid widespread popular support. This raised fears that others now on death row in India may also soon be executed.

Dhananjay Chatterjee was executed at 4:30am on 14 August 2004. He had been sentenced to death in August 1991, for the rape and murder of a schoolgirl in her apartment in Calcutta in March 1990. (Further details on this case can be found below.)

The Indian authorities have opposed the death penalty in some cases but condoned it in others. In 2004, the government requested mercy for Indian national Ayodhya Prasad Chaubey, who was executed in Indonesia on 5 August 2004 on drug-trafficking charges, but the government has condoned other executions of Indian citizens.

The number of executions carried out in India is unknown. In May 2005, an Indian human rights group, the People's Union for Democratic Rights (PUDR), called on the Government of India to make public all information on executions since independence in 1947. Indian media have reported that there have been 55 executions since independence. PUDR has challenged this figure, stating that according to a 1967 Law Commission report, at least 1,422 people were executed between 1953 and 1963.

There is no consistency across Indian states with regard to disclosure of death penalty statistics. The Delhi Deputy Director General of Prisons stated it was not "in the public interest" to publish such figures while officials in Maharashtra state disclosed statistics upon request. Later this year, the Indian non-governmental organization, the People's Union for Civil Liberties and Amnesty International will request several Indian states to make public their death penalty statistics.

Well known death sentences in India are of persons convicted of assassinating major political leaders, as in the killings of Mahatma Gandhi, Indira Gandhi and Rajiv Gandhi, or for crimes under 'terrorist' laws, as in the attack on the Indian Parliament in 2001. These sentences were by their nature very well known throughout the country but hundreds of other sentences have been awarded without considerable attention.

The recently published legal casebook, *Can Society Escape the Noose...? The Death Penalty in India*, contends that of the thousands of murders committed each year in India, it is the poor and underprivileged and persons belonging to minority groups who eventually receive the death sentence and are executed for their crimes.

All executions in India are by hanging or reportedly by shooting, however, the Law Commission of India has recommended lethal injection as a more 'humane' mode of execution. Amnesty International is concerned that the death penalty is the ultimate cruel, inhuman and degrading punishment and there can be no 'humane' way to execute someone.

### 3. Cases from India

Below are cases from India of persons who have received the death penalty. Amnesty International is concerned about fair trial issues, risk of executing the innocent and the cruelty associated with prolonged detention.

**CASE 1:** Chatterjee (m) executed 14 August 2004 for the rape and murder of a school girl in Calcutta in March 1990.

A last-minute petition on the grounds that, amongst other things, Dhananjay Chatterjee had spent 13 years under sentence of death, had received no legal aid and had not been DNA tested was dismissed by the Supreme Court on the grounds that it had no merit. The petition also highlighted the fact that there was an abundance of case law showing commutation in other similar cases. A further last-minute petition to the High Court of West Bengal was also dismissed.

There were vigils and protests across India the night before the execution. Following the hanging, the executioner apparently broke down and resigned, after offering prayers for Dhananjay Chatterjee.

Amnesty International also expressed concerns that the 13 years Dhananjay Chatterjee spent living with the mental anxiety caused by being sentenced to death may have amounted to cruel, inhuman and degrading punishment and that the decision to carry out the execution was an arbitrary one. Other courts in India have commuted a death sentence to life imprisonment on the grounds of prolonged detention. In 1989, an Indian court commuted the death sentence imposed on Gyasi Ram to life imprisonment, on the grounds that he "had suffered the mental agony of living under the shadow of death for far too long." Gyasi had been awaiting a decision on a mercy petition for eight years.

**CASE 2:** Krishna Mochi (m), Dharmendra Singh, aka Dharu Singh (m), Nanhe Lal Mochi (m), Bir Kuer Paswan (m) are at risk of execution despite legal concerns.

The four men named above were sentenced to death in 2002 in Bihar state. Their appeal was rejected in December that year, despite concerns that they had not received a fair trial. All four are *dalits*, or "untouchables", people considered beneath the Indian caste system. They were convicted in February 1992 for the killing of 35 members of an upper-caste armed group in Bihar state.

They were convicted of a "terrorist act" under the now lapsed 1987 Terrorist and Disruptive Activities (Prevention) Act (TADA Act), which gave police sweeping powers to arrest and detain without trial under the Act's vague and imprecise provisions. It was used to arrest, among others, members of vulnerable groups. TADA provisions contravene essential legal safeguards for fair trials. For example, provisions contravene Article 14 of the International Convention on Civil and Political Rights including the presumption of innocence until proved guilty, the right of the accused to be promptly informed of the charges against them, the right to be tried without undue delay as well as the right to examine witnesses against them. In 1992, the Chief Minister of Bihar admitted that innocent people had been detained under the Act.

The Supreme Court of India rejected the men's appeal by two votes to one. The dissenting judge noted the "defective" investigation of the killings, particularly in the recording of witness statements. For example, statements were taken well after the incident. He was also critical of the fact that the prosecution had not examined the investigating police officer and there had been no identification parade of the accused. Amnesty International is concerned that the men's trial fell short of international fair trial standards.

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