



Capital Punishment Not a Deterrent: WGHR Demands Abolishment of the Death Penalty

New Delhi, 25 September 2013

The 'fast track court' constituted for speedy trial of the 16 December 2012 Delhi gang rape case, has sought confirmation from the Delhi High Court of its judgment dated 13 September 2013, awarding capital punishment to the convicted.

WGHR condemned the horrific crime that happened on that fateful evening and demanded justice to be delivered. WGHR empathises with the loss of life and anguish caused to the victim's family, and expresses deep concern over increasing violence against women in both the public and private sphere.

WGHR, however, believes that death penalty embodies the idea of retribution, which is as violent as the offence for which one is convicted, and is contrary to all civilised notions of criminology and constitutionalism.

The Supreme Court of India has laid down criteria where the death sentence can be awarded. Even in the most horrific and brutal crimes, the Supreme Court has held that only in the absence of any mitigating circumstance can the death penalty be given. Recently, the Supreme Court of India stated that judicial commutation is permissible in cases of murder driven by abject poverty. A bench of Justices S.J. Mukhopadaya and Kurian Joseph said: "*Poverty, socio-economic, psychic compulsions, undeserved adversities in life are some of the mitigating factors to be considered*" while pronouncing capital punishment.¹

WGHR stressed in its submission to the Justice J.S. Verma Committee² on amendment of laws relating to rape and sexual assault, that there is no scientific or empirical basis for claiming that death penalty has a deterrent effect on the incidence of crime, including sexual offences. Instead, studies show that as punishments become stricter, the rate of conviction falls as judges are reluctant to convict and/or award harsh sentences. An anticipated result of introducing death penalty for rape would be the reduction in convictions and an increase in impunity. Data generated by the Ministry of Home Affairs of India also supports the argument that death penalty has not been and is not a deterrent for murder. The murder rate in India has declined consistently in India over the last 20 years, despite the slowdown in the execution of death sentences since 1980.

WGHR expresses concerns against India aligning itself with the small minority of nations which favour death penalty. On 21 November 2012, a resolution was passed by the UN General Assembly's Third Committee (Social, Humanitarian and Cultural) on 'Moratorium on the use of the death penalty' by a record 110 votes, but India voted against the motion.

After his 2012 visit to India, Mr. Christof Heyns, UN Special Rapporteur on Summary, Arbitrary and Extra-Judicial Executions, presented a report³ at the 23rd session of the Human Rights Council in Geneva, in which he expressed his concerns over the growing incidences of capital punishment in India in recent times.

The UN Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Rashida Manjoo, in her press statement at the end of her official country mission to India, stated that, "*While this legislative reform is to be commended, it is regrettable that the amendments do not fully reflect the Verma Committee's recommendations.*" She further stressed that, "*the speedy developments and also the adoption of a law and order approach to sexual wrongs,*

¹ Venkatesan J., 2013. *Judicial commutation permissible in cases of murder driven by poverty: Supreme Court*, The Hindu, September 13, 2013.

² WGHR submission to the Justice Verma Committee, available at:

http://www.wghr.org/pdf/Submission_by_WGHR_to_Justice_Verma_Committee.pdf ; for full text of Justice Verma Committee report, visit: http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf

³ The full version of the report of the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, is available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf



now includes the death penalty for certain crimes against women. This development foreclosed the opportunity to establish a holistic and remedial framework which is underpinned by transformative norms and standards, including those relating to sexual and bodily integrity rights. Furthermore, the approach adopted fails to address the structural and root causes and consequences of violence against women.”

The Supreme Court of India in its earlier pronouncements (especially, in the case of *Bachan Singh v. State of Punjab*) laid down the policy of awarding capital punishment only in the “rarest of rare cases”. However, statistics show that there has been an increase, of late, in the number of death sentences awarded by the courts with around 100 cases per year.⁴

Recently, during the second inter-governmental peer review of India’s human rights (known as the Universal Periodic Review) in May 2012, the UN Human Rights Council made 169 recommendations to the Government of India, of which 11 recommendations related to the abolition of death penalty and the adoption of an official moratorium on death penalty. While none of these recommendations have been accepted by the Government of India, they nevertheless represent the growing concern in the international community against the continuation of death penalty in India. Therefore, WGHR strongly urges the Government of India to reconsider the UPR recommendations for the abolishment of death penalty.

Human rights lawyer and a member of WGHR, Ms. Vrinda Grover stated that, “The spectacle of death sentence distracts from ensuring that the state institutionalises systemic change in the legal system, which alone can create deterrence for violence against women. The demonisation and hanging of a few men, conceals the rampant sexual violence inside the home and all around us.”

“The societal clamour in India for the death penalty against the rapists, predictably reaffirmed by the fast track trial court, is a tragic indicator that society instead of protecting the humanistic values Indian civilisation is built upon, becomes the judge and the executioner. Persistence with the death penalty in India, and the broad support that it has in the country, means that we as a society have murder on our hands,” stated Miloon Kothari, WGHR Convenor and former Special Rapporteur of the UN Human Rights Council.

There is considerable evidence across the globe that death penalty has no deterrent effect on serious crimes. WGHR reiterates that death penalty cannot be justified under any civilised judicial system and demands that the Government of India take steps to abolish death penalty.

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⁴ For more details, refer to ‘*Human Rights in India: Status Report 2012 (Revised and Updated)*’ available at: www.wghr.org.