

PRESS RELEASE

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WGHR welcomes the Supreme Court of India's Judgement on Commuting the Death Penalty of 15 convicts into Life Imprisonment and setting up newer standards

The Working Group on Human Rights in India and the UN (WGHR) - a coalition of human rights organisations and independent experts – applauds the 21 January 2014 judgement of the Supreme Court of India on commuting death penalty into life imprisonment of 15 convicts languishing in prison on death row for many years.

The Bench comprising three Supreme Court judges stated that undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is in violation of Article 21 and thereby entails as the ground for commutation of sentence. Hence, the death sentence of 13 convicts was commuted to life imprisonment. The two other death penalties were commuted to life sentence on the ground of mental illness.

The Bench also affirmed that the right to seek mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. It further held that every Constitutional duty must be fulfilled with due care and diligence; otherwise judicial interference is the command of the Constitution for upholding its values. The judgement also unequivocally insists that putting death row convicts into solitary confinement is unconstitutional.

It has also laid down certain guidelines on the treatment of people who are under death sentence. The Court has held that prisoners on death row- as soon as their mercy petitions are turned down- shall be allowed to meet their family members and friends for 14 days and seek appropriate legal aid from legal services authority if they wanted to approach the Supreme Court. It has categorically held that the execution shall not be held for two weeks after the mercy petition has been turned down. For the first time the court has also held that after the execution of death warrant, a post-mortem of the body shall also be conducted.

WGHR is hopeful that this judgment would open doors of reprieve to approximately four hundred convicts on death row including Devender Pal Singh Bhullar and those on the death row in Vellore prison in the Rajiv Gandhi assassination case. WGHR expressed its deep concern when Government of India (GoI) ended an informal moratorium on capital punishment by carrying out two executions in the recent past in a quick succession. GoI executed the 26/11 Mumbai attack convict Azmal Kasab in November 2012 and in February 2013, Afzal Guru was put to the gallows who was convicted in the December 2001 Parliament attack case. It is important to note that both these executions were carried out very covertly and minimum human rights standards were not followed.

WGHR reiterates 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 civilized ideals of criminology and constitutionalism. This view was also echoed in the Honorable Court's judgment that retribution has no constitutional value in our largest democratic country (India).

WGHR would like to highlight once again that during the second inter-governmental peer review of India's human rights (also known as the Universal Periodic Review) in May 2012, the UN Human Rights Council made 169 recommendations to the Government of India, out 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.

WGHR stresses the importance of the fact that several victims in the Gujarat riots prosecutions, that have been concluded and who were represented before court with their special counsels assisting the prosecution, had also pleaded against the imposition of death penalty in their own cases where their loved ones had been killed. It is this commitment of victim of violence that should encourage all of us to re-dedicate ourselves to this larger cause with this judgment.

WGHR would also like to express its anxiety that the NHRC in India that is supposed to uphold international human rights standards within India, had not been seen to intervening in this case before the judgement where the human rights of prisoners on the death row was a matter of concern. WGHR hopes that this 20 year silence of the NHRC on the issue of death penalty will finally be broken.

WGHR reiterates its concern against India aligning itself with the small minority of nations which favour death penalty. On 21st 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.

Ms. Vrinda Grover, Supreme Court lawyer and a member of the WGHR stated, "The Supreme court by commuting the death sentences has reaffirmed the supremacy of the right to life in our constitutional scheme, restoring India's position as a de facto abolitionist country. Post 2004, this trend was disrupted by 2 executions, both of which fall foul of the directions laid down by the Supreme Court in this landmark judgment".

Mr. Henri Tiphagne, Convenor, WGHR and Human Rights Lawyer said that this judgment shall now only serve as an impetus for all in the larger democratic and human rights community within the country including the NHRC and the over 160 other national and state human rights institutions to work towards restoring an immediate moratorium on the issue of death penalty and commit ourselves gradually towards its ultimate permanent abolition.

"The path breaking judgement by the Supreme Court is a welcome development that will hopefully restore sanity in our country that has lost considerable credibility in the past year with the increasing clamour for the death penalty from across society. The sound legal basis articulated in the judgement must join hands with foundational human rights principles, overwhelming global scientific and empirical evidence and repeated recommendations from a range of UN bodies to once and for all abolish the death penalty in India", stated Mr. Miloon Kothari, Advisor, WGHR and former Special Rapporteur of the UN Human Rights Council.

WGHR strongly urges the Government of India to reconsider the UPR recommendations received from the UN Human Rights Council calling for the permanent abolition of death penalty.

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The Working Group on Human Rights in India and the UN – a national coalition of fourteen human rights organisations and independent experts – works towards the realisation of all civil, cultural, economic, political and social human rights in India and towards holding the Indian government accountable to its national and international human rights obligations. For information on WGHR, please visit: www.wghr.org.

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