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Committed to Human Rights and Community
Development

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Appealing for Clemency and calling for an end to the death penalty is the right thing to do.

The Tamil Information Centre (TIC) made an appeal on 8 October, for clemency and commutation of the death sentence on four people in the Rajiv Gandhi murder case. The TIC's appeal for clemency was in furtherance of a commitment to the value and dignity of human life and the belief that human life is sacred. In this respect, the killing of the former Prime Minister Rajiv Gandhi and 16 others including nine police officers in Sriperumpudur in Tamil Nadu in India on 21 May 1991 was equally callous and cruel and the offenders deserve to be punished.

The TIC views the imposition of the death penalty as involving both, "profound legal and political questions" as well as "important moral issues." The TIC appeal was only a reflection of the moral and legal questions that trouble many. It is our view that in confronting the problem of serious and violent crime in our societies, we must bear in mind that crime is both a manifestation of the great mysteries of evil and human freedom and an aspect of the very complex reality that is contemporary society. We cannot and should not expect simple or easy solutions to what is a profoundly cruel, and even less should we rely on the death penalty to provide such a solution. Rather, we must look to other means for claims of justice. While accepting that it is morally unsatisfactory and socially destructive for offenders to go unpunished, we believe that the forms and limits of punishment must be determined by moral objectives which go beyond the mere inflicting of injury or taking one's life. We should be aware that inflicting the death penalty is irrevocable in a way that other punishments are not. Execution of innocent persons should be avoided at all cost. We further believe that the forms of punishment must be determined with a view to the protection of the society and its members and also to reform offenders and reintegrate them into society, though we do agree that this may not be possible in certain cases.

While accepting that the Indian government has the right to take appropriate measures to protect itself and its citizens from grave harm, nevertheless, the question for judgement and decision today is whether the death sentence is justifiable under present circumstances. We believe that such a punishment might satisfy certain vindictive and political desires, but the satisfaction of

such desires are not and cannot be an objective of a humane approach to punishment.

Legally, concerns have been raised by numerous civil and human rights institutions both within and outside India on the conduct of the case under the notorious Terrorist and Disruptive Activities (Prevention) Act popularly known as TADA which came into force in 1985. The Act was severely criticised for its draconian nature and on such recognition finally was allowed to lapse by the Indian government in 1995.

It should be noted that not only the Tamil Information Centre but also several other international human rights organisations have appealed for commutation of the death sentences and end the use of the death penalty in India.

Amnesty International has pointed out in its appeal that the imposition of the death sentence is a retrograde step for human rights in India. While positive steps are being taken worldwide towards abolition and in view of the call by the UN Human Rights Commission for a moratorium on executions. Amnesty International has expressed concern that while Nalini, Murugan, Perarivalan and Santhan were acquitted by the Supreme court of offences under the Tada, the court failed to consider the incompatibility of certain provisions of TADA with the international standards for fair trial when it held that their trial under those provisions should not be called into question.

To confirm sentences of death after a trial held under provisions of a law which has now lapsed following widespread criticism from national and international human rights bodies that it denied the right to a fair trial, is manifestly unsound, say Amnesty and other organisations.

The death penalty, like in Rajiv Gandhi's murder case, is also advanced as a justifying objective of punishment since it serves as a deterrent for others. Empirical studies in this area have not given any conclusive evidence that would justify the imposition of the death penalty as a means of preventing others from committing crime. There are strong reasons to doubt that many crimes of violence are undertaken in a spirit of rational calculation which would be influenced by a remote threat of death and so undercuts the effectiveness of the deterrent. The protection of society and its members from violence to which the deterrent effect of punishment is supposed to contribute, is a central value of abiding importance. It requires prudent firmness and not taking of life in legitimate self-defense or in defense of society.

We maintain that commuting the death sentences of the four and the abolition of the death penalty in India would promote values that are important to us, the citizens of India and the world community. We believe that the abolition of death penalty will confirm that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to such violent crimes. It is a manifestation of our freedom as moral persons striving for a just society. It is also a challenge, as concerned individuals to find ways of dealing with gross human rights abuses that manifest intelligence and compassion rather than power and vengeance.

We do not propose the abolition death penalty as an easy and simple solution to the problems of violence. But as we have stated above, we do not believe that any simple and comprehensive solution is possible. We affirm that killing is wrong and all acts of violence need to be condemned when it destroys lives, shatters families, and crushes the hopes of the innocent. There is a special need to offer sympathy and redress for the victims of violence and their families. But, recognition of this sympathy and support should not lead to demands for vengeance, but to a firm resolution to offer help to the victims and that justice is done fairly and swiftly.

We call on you and those who have taken "an eye for an eye" and, "a life for a life" views in response to the TIC appeal, to review your considerations in light of what we have said and appeal to the President of India to commute the sentences passed on S Nalini, Suthenthirarajah, Sriharan and Perarivalan.

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