

**Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions**

REFERENCE:  
UA IND 2/2020

26 February 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolution 35/15.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the possible imminent execution of **Mr. Mukesh Kumar**, **Mr. Vinay Sharma**, **Mr. Akshay Thakur** and **Mr. Pawan Gupta**.

According to the information received:

Between 16 and 21 December 2012, Mr. Mukesh Kumar, Mr. Vinay Sharma, Mr. Akshay Thakur, Mr. Pawan Gupta and two other individuals were arrested and convicted for the rape and murder of a woman. The victim was a 23-year-old medical student. She was gang-raped and thrown off a moving bus in New Delhi. She died in hospital on 29 December 2012. The case received extensive media coverage, both in India and internationally. It ignited a wave of mass protests in major cities of India demanding better safety for women and justice for the young victim who became a symbol of women's resistance to rape around the world.

On 10 September 2013, the four men were sentenced to death by a special Fast Track Court. One of the judges reportedly stated that the case had shocked the collective conscience of society and that, in times when crimes against women were on the rise, courts could not turn a blind eye towards such a gruesome crime. The judge also reportedly said that the victim was tortured until the very end, and that the case fell into the "rarest of rare" category, which justified capital punishment.

On 13 March 2014 and 5 May 2017 respectively, the sentence was confirmed by the Delhi High Court and the Supreme Court of India. At an unspecified date, Mr. Mukesh, Mr. Vinay and Mr. Pawan, sought review of the sentence. On 9 July 2018, the Supreme Court rejected their appeal. On 9 December 2019, a review petition was filed by Mr. Akshay. On 18 December 2019, the Supreme Court dismissed it.

On 7 January 2020, a death warrant was issued for the execution of the four men to be carried out on 22 January 2020.

On 9 January 2020, review petitions were filed again by Mr. Mukesh and Mr. Vinay. On 14 January 2020, the petitions were dismissed.

Another death warrant was issued for 1 February 2020.

Mr. Akshay Thakur filed a mercy petition on 1 February, 2020 which was dismissed by the President on 5 February. It is reported that, in total, three mercy petitions to the President of India have thus far been rejected. At present, the execution date is set for 3 March 2020.

The four men have been detained since 2012 and have reportedly been subjected to torture and other inhuman or degrading treatments. They have repeatedly been beaten by prison inmates and guards and kept in solitary confinement in a very small prison cell.

According to the Indian Supreme Court's case-law, while judicial and administrative remedies are pending, death warrants cannot be issued and at least 14 days should lapse between issuance of a death warrant and the date of execution, following the rejection of a mercy petition.

I acknowledge the extreme cruelty and seriousness of the offence for which the death penalty has been imposed in this case and the importance of the authorities passing a clear message that sexual violence is not tolerated in India. India has an obligation to ensure that those responsible for the horrendous crime that was committed in the present case are punished in accordance with the gravity of such crime. It also has an obligation to ensure that the victim's family can have access to mechanisms of justice and to prompt redress for the harm suffered.

This being fully recognized, and without prejudging at this point the accuracy of these allegations, I wish to express my concern that, if confirmed, they would be in contravention of the rights of every individual to life and security, as set out in Articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1979; and the provision of Articles 2, 12 and 16 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signed by India in 1997.

I wish to recall that the Human Rights Committee has expressed the view that "the death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights". In this context, the Human Rights Committee has also noted, "[t]he deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the

circumstances in which a person may be deprived of his life by such authorities” (General comment No. 6, para.3).

In particular, the imposition of death penalty following procedures and detention which involved the use of torture or cruel, inhuman or degrading treatment would amount to an arbitrary killing. The Human Rights Committee has repeatedly stated that the imposition of the death penalty in a manner that is contrary to another provision of the ICCPR also violates article 6 of the ICCPR. In this particular case, allegations regarding the use of torture violate the prohibition against arbitrary deprivation of life.

As Your Excellency’s Government is well aware, the prohibition of torture in international law is absolute and cannot be derogated under any circumstances. As such, retentionist States are called upon to rigorously observe the restrictions and conditions imposed by article 7 of the International Covenant on Civil and Political Rights and articles 1,2 and 16 of the CAT (A/67/279).

Likewise, States should take effective measures also to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals without putting them at further risk of ill-treatment . In addition, any detention regime which subjects or exposes any individual to treatment or conditions of detention grossly inconsistent with universally recognized standards, most notably the "Nelson Mandela Rules" , is incompatible with the prohibition of torture and ill-treatment.

I also note that any violation of the fair trial guarantees provided for in Article 14 of the ICCPR in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of Article 6 of the ICCPR. I recall principles 2 and 4 of the Basic Principles on the Independence of the Judiciary mention the requirement of non-interference in order to guarantee the independence of the judiciary. Such lack of interference implies that no authority, private group or individual may interfere in judicial decisions; they must respect and abide by the decisions of the judiciary. Judges shall decide matters presented before them not only impartially and in accordance with the law, but without threats or interference. The decision-making process can be assured only if there is no inappropriate or unwarranted interference with the judicial process.

While the ICCPR permits States, which have retained the death penalty to continue to apply it, this "dispensation" should not be construed as a justification for the deprivation of the life of individuals, and does not make the execution of a death sentence strictly speaking legal. It merely provides a possibility for States parties to be released from their obligations under articles 2 and 6 of the Covenant [...] and enables them to make a distinction with regard to persons having committed the "most serious crime(s). (A/74/318).

I acknowledge, commend and welcome the fact that no execution of a death sentence has been carried out in the past five years, and express my hope, and share my recommendation that the de-facto moratorium on executions will continue to be maintained. In this regard, it is worth recalling that there exists no evidence that the death penalty is a particular deterrent to any crime. Resumption of the use of the death penalty is therefore inconsistent with the aim of crime reduction. I would like to recall that the United Nations Secretary-General has urged all leaders to exercise caution in rhetoric around the death penalty, recalling that targeting certain categories of offence or individuals may also have a chilling effect on the peaceful exercise of human rights and fundamental freedoms.

The resumption of executions, such as in the present case, would be contrary to the object and purpose of article 6 of the ICCPR. In this regard, the United Nations Human Rights Committee has indicated that “States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future ... It is contrary to the object and purpose of article 6 for States parties to take steps to increase de facto the rate and extent in which they resort to the death penalty, or to reduce the number of pardons and commutations they grant” (General Comment 26, Para 50).

The resumption of executions would be contrary to the object and purpose of article 6 of the ICCPR and, furthermore, would do little to effectively address the root causes for sexual violence in India. In this regard, I would also like to recall and express support to the 2014 Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW), where the Committee urged India to implement the recommendations of the Justice Verma Committee regarding violence against women.

I therefore wish to expressly commend the de facto moratorium on the death penalty which has been observed by India for the last five years and encourage your Excellency’s Government to maintain this policy.

In view of the above, I respectfully call upon your Excellency’s Government, as a matter of urgency, to halt any plan to execute Mr. Mukesh Kumar, Mr. Vinay Sharma, Mr. Akshay Thakur and Mr. Pawan Gupta. Based on the information brought to my attention, their execution may be a violation of applicable international human rights standards and may thus constitute an arbitrary execution and a violation of the prohibition against torture. I also respectfully call on your Excellency’s Government to commute the death sentence of the four persons concerned.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information on whether the four persons concerned were promptly brought before a judge and/or were afforded the opportunity to challenge the lawfulness of their arrest and detention/deprivation of liberty.
3. Please provide information as to whether any investigation in response to the alleged acts of torture and/or ill-treatment was conducted. Please provide information as to the results of these investigations or, in case no investigation was initiated or conducted, please explain the reasons why.
4. Please explain whether, and how, the trial of the four persons mentioned above was conducted in a manner that is consistent with international fair trial and due process standards.
5. Please provide information on the measures that your Excellency's Government has taken to ensure the independence of the judges involved in the case in order to enable them to perform their professional functions freely and without any undue interference.
6. In light of the fact that no death sentence has been executed in India for the past five years, I would welcome clarification as to the procedure that your Excellency's Government intends to follow to implement the death sentences in the present case. Please explain how the resumption of the death penalty, which would necessarily increase the rate of executions in the country, would be in compliance with the object and the purpose of Article 6 of the ICCPR.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations. Your Excellency's Government's

response will be made available in a report to be presented to the Human Rights Council for its consideration.

Given the importance and urgency of the matter, I may consider to publicly express my concerns in this case. I indeed believe that, given the above circumstances, the public should be alerted to these concerns and the human rights implications of the case. Any public statement on my part would indicate that I have been in contact with your Government's to clarify the issue in question, and recall the State's international legal obligations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions