

Despite the lack of a fair trial

Indian governor gives green light for executions over Rajiv Gandhi assassination

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Nearly nine years after the murder of prime minister Rajiv Gandhi on May 21, 1991, the Indian state is pressing to shut the case and execute three men despite the many questions that remain over the murky circumstances of the assassination and the flawed character of the legal process under which the three were convicted.

Last Monday the governor of the Indian state of Tamil Nadu, Fathima Beevi, rejected appeals of Murugan, G. Perarivalan and Chinna Shanthan for mercy while at the same time commuting the death sentence for S. Nalini, Murugan's wife, to one of life imprisonment. The three have sent mercy petitions to the Indian president—the last line of appeal.

The four have spent nearly a decade in solitary confinement. For the last two years, they have been on death row after being convicted of conspiracy in January 1998 under India's oppressive Terrorism and Disruptive Activities (Prevention) Act (TADA) and sentenced to hang along with 22 others. The special TADA provisions override the basic legal rights of the accused and enable the police to use intimidation and coercion to extract confessions.

The verdict was confirmed last May by the Indian Supreme Court despite grave doubts about the manner and legality of the accuseds' convictions. Such was the shaky nature of the case that three other accused had their sentences reduced to life imprisonment and the remaining 19 were released. A further appeal to the Supreme Court was rejected on October 8.

The executions were due to be carried out on November 5 after the Tamil Nadu Governor rejected their clemency petitions. But at the last minute the executions were called off after a legal challenge to the Governor's decision. On November 25, the Madras High Court ruled that Fathima's order was not valid, as she had failed to consult with the state government as prescribed by the constitution. Her decision last week was taken on advice from the Tamil Nadu cabinet headed by Chief Minister M. Karunanidhi.

From the outset the case has been a highly political one. Rajiv Gandhi was killed in a blast set off by a female suicide bomber during an election rally in Madras. His murder was thought to have been ordered by the Liberation Tigers of Tamil Eelam (LTTE), the guerrilla organisation fighting for a separate Tamil state in Sri Lanka. Gandhi's government had sent troops to northern Sri Lanka under the Indo-Lankan Accord signed with Sri Lankan president J.R. Jayawardena. Although the LTTE never acknowledged responsibility for the assassination, it certainly had a motive: after initially supporting the Accord, the LTTE rapidly came into conflict with the Indian troops as they sought to impose their control over the area.

But the LTTE was not the only group with a motive to kill Gandhi. As the Accord soured the Sri Lankan government under president Premadasa, who had opposed the involvement of Indian troops from the outset, called

on Gandhi to remove the Indian army. When India delayed Premadasa is believed to have secretly supplied arms to the LTTE and it is not beyond the bounds of possibility that other Tamil groups aligned to the Sri Lankan government may have been involved in Rajiv Gandhi's death. Other commentators have pointed to the possible involvement of sections of the Indian ruling elite who were hostile to Gandhi and did not want to see him back in power.

As a result the long, drawn-out legal process, from the trial to the various appeals, has been bound up with conflicting political interests. Sections of the ruling class are keen to press ahead with the executions to set a precedent for other political cases. In Tamil Nadu, however, where there have been rallies and protests against the executions, politicians and parties are concerned at the political impact if the death sentence is carried out.

Thousands of people attended a rally in Madras on November 30 organised to pressure the state's chief minister Karunanidhi to recommend clemency in all four cases. Many of those who took part wore black shirts or in a few cases black hoods, and shouted slogans including "Death penalty is legal murder by the government" and "They are our people, their lives are our lives". The demonstration was organised by a number of Tamil parties and organisations, including the Tamil Nationalist Party, the president of which, P. Nedumaran, is known for his pro-LTTE sympathies.

Petitions for the death sentences to be commuted to life imprisonment have also been made by individuals and human rights organisations, both in India and internationally—including Asian Human Rights Watch and Amnesty International—which have called into question the validity of the verdict and the sentences.

The initial police investigation into Gandhi's murder was carried out by a Special Investigation Team (SIT) appointed by Central Bureau of Investigations (CBI) and led by CBI joint director D.R. Karthikeyan. Following the investigation, the SIT charged 41 persons on May 20, 1992 including the LTTE leader V. Prabakaran, its Intelligence Chief Pottu Amman and Deputy Chief of the Women's Intelligence Wing of the LTTE, Akila.

The top LTTE leaders were not available for the trial in India and another 12 were already dead—two, including the suicide bomber Thanu, died in the blast. Others died in the police dragnet including Sivarasana, accused by police of being the mastermind. He allegedly committed suicide along with others, when the CBI surrounded their hideout. As a result the CBI proceeded against 26 others who were already in detention. The trial took place over four years in a special court in Madras and resulted in the death sentence for all 26.

Many aspects of the trial undermine the credibility of the verdict and the sentences. Foremost is the fact that it was carried out under the draconian

provisions of the TADA legislation, which provided for the entire proceedings to be held virtually in secret under the auspices of a specially appointed judge. Two news agencies, the *Press Trust of India* and the *United News of India*, were permitted to cover the pre-trial proceedings, including the arguments by the prosecution and defence lawyers. But on May 20, 1992 the court issued an order placing severe restrictions on what could be published.

The special TADA court was established within the precincts of Poonamallee jail in Madras, where most of the 26 suspects were detained. Much of the proceedings is unavailable. But one of the defence lawyers, Thuraismy, has pointed out that the entire prosecution case rested on circumstantial evidence. The police did not have a single witness to prove the existence of a conspiracy or involvement of any of the 26 in the conspiracy. Some written and coded wireless messages were produced to try to establish a connection between the accused and the LTTE leaders in Sri Lanka, and to prove that the LTTE alone was responsible.

The prosecution case relied heavily on “confessions” extracted by SIT from the defendants while in police detention without the presence of a magistrate or a lawyer. All these statements were retracted by the authors (17 out of 26 accused) who stated under oath that the police had used threats and coercion to force them to put their signatures on blank sheets of paper. TADA allows the use of confessions made before a police officer of the rank of a Superintendent of Police or above, not only against accused but also against other co-accused, effectively undermining the legal principle of presumed innocent until proven guilty.

Only two of the accused, Nalini and Perarivalan, were charged with direct involvement in the murder. Perarivalan was accused of purchasing the batteries used to detonate the bomb. He was an employee at the lodge where the alleged “mastermind” Sivarasan was living. Even in his so-called confession, Perarivalan has stressed that he understood what was happening only after hearing news of the assassination. Yet he is one of the three still facing the noose.

Nalini was accused of accompanying the suicide bomber Thanu to buy clothes and shoes and of later going with her to the Gandhi rally. The prosecution argued that she had prior knowledge of the assassination but in her statement she denied knowing about the murder attempt when she arrived at the meeting.

Most of the accused were charged with actions of a minor nature in relation to the case. Yet despite the lack of clear evidence, all 26 were found equally guilty of participating in a conspiracy to murder and in terrorism. Indian criminal procedure requires the court to adjourn after a conviction before the sentencing. But in this case, which took years to complete, the judge took just two hours to announce the death sentences for all the convicted. Lawyers for the defence branded the decision a “judicial massacre”.

Further flaws in the proceedings were exposed when the Supreme Court issued its decision on May 11, 1999 on an appeal by the 26. Only four of the death sentences were upheld; three were commuted to life imprisonment and the remaining 19 were freed on the basis that they had already served their sentences. One of the judges, Justice Thomas, issued a dissenting opinion, which upheld the death sentences against Murugan, Santhan and Perarivalan but argued that Nalini's sentence should also be commuted to life imprisonment as her child would be orphaned if both she and Murugan were executed.

The Supreme Court revealed that two of the 26—Shanti and Selvaluxmi, the wives of other accused—had been found guilty of conspiracy simply on the basis of their marital relationship. It ruled that the two were not involved in any conspiracy but nevertheless found them guilty of “harbouring” their husbands. Justice Thomas commented in his judgement on Shanti: “She is the wife of [Jayakumar]. Except the fact that she accompanied her husband from Sri Lanka in September 1990 and continued to live with him in India we are unable to find any involvement

of her in the conspiracy to murder Rajiv Gandhi. Learned Special Judge has considered her case, tagging it with her husband's case... We have not come across any material, apart from her living with her husband..., to suggest that she had any role in the conspiracy. It is very unfortunate that for the role played by her husband she has been sentenced to death.”

Significantly, the Supreme Court also ruled that the 26 should not have been detained and convicted under TADA and acquitted them of all charges under the legislation. But it upheld the death sentences of the four under the criminal conspiracy and murder provisions of the Indian Penal Code. If the charges had been heard in a criminal court rather than in a TADA court, much of the prosecution evidence—the “confessions” in particular—would not have been admissible. Yet the Supreme Court explicitly ruled out any arguments that the TADA procedures cast doubt on the convictions.

The Supreme Court ruling sets a precedent for the use of the TADA provisions for convicting people in cases other than terrorism. Defence lawyer Rama Subramaniam commented: “What the Court has done is to signal to policemen that every serious crime should have had a TADA charge pegged to it so that the confessional statements could be used.” In comments reported in the *Frontline* magazine, the SIT chief Karthikeyan admitted: “It would have been near-impossible to secure convictions without the special provisions of TADA.”

Over the five months since the stay of execution, the case has been stalled. When the Tamil Nadu court ruled that the state governor could only consider the clemency appeals on advice, it placed the onus on the state government to take a stand. As one commentator noted, by forwarding the petitions to the governor without a cabinet recommendation, “obviously, the state government and the ruling Dravida Munnetra Kazhagam (DMK) wanted to absolve itself of taking sides in the matter”.

Moreover, Chief Minister Karunandidhi had put himself on record on a number of occasions as an opponent of capital punishment. “In principle, I am against the award of capital punishment, and 67 countries around the world, including the UK, have abolished capital punishment,” he told the press just hours before the Madras court ruled that his government had to make a recommendation to the governor. Last week's decision makes clear that whatever the moral qualms of Karunandidhi, the Tamil Nadu government has decided that three of the four should go to the gallows.

At the national level, the Bharatiya Janata Party (BJP), which leads ruling National Democratic Alliance (NDA) government, has called for the executions to go ahead. BJP spokesman Venkaiah Naidu said that the four accused should be “mercilessly punished for the heinous crime”. But the Samatha Party led by Defence Minister George Fernandez, who is known to be an outspoken supporter of the LTTE, has publicly demanded the overturn of the death sentences. Other BJP allies include the Tamil Nadu-based parties—the MDMK and PMK—that have called for the commutation of the death sentences to life imprisonment.

Congress (I), the main opposition party, has also supported the hanging of the three. Last November Congress leader Sonia Gandhi, the widow of Rajiv Gandhi, called on the Indian President to commute Nalini's death sentence. Others are insistent that all of the convicted be executed. When a call for clemency was raised by Tamil Nadu delegates at an All India Congress Committee session last May, it was shouted down by other Congress leaders.

Significantly the main Stalinist party, the Communist Party of India (Marxist)—CPI (M)—has also supported the execution of Murugan, Perarivalan and Shanthan. Seeking to justify support for the Indian state by pointing to the LTTE's terrorist activities, CPI (M) Political Bureau member, Prakash Karat, wrote in the *Frontline* magazine in January: “The question of clemency to Nalini should be viewed by them on the basis of humanitarian consideration and international norms to which India subscribes. But to ask for the wholesale annulment of the death sentences,

which were based on incontrovertible evidence gathered by the Special Investigation Team, is to play into the hands of the LTTE and its destructive tactics.”

The support of both the BJP and Congress for the death sentence indicates that substantial sections of the ruling class regard the executions as a key test for further political crimes. That conclusion is reinforced by the court rulings themselves and the jubilant response in the media to the initial TADA court decision sentencing all 26 to the gallows. As Judge Navaneethan wrote in that judgment: “Giving deterrent punishment alone can deter other potential offenders and in future dissuade our people from associating with any terrorist organization to do such diabolical and heinous crimes.”

Frontline magazine in a cover story on Navaneethan's decision in February 1998 lent its support for the execution of the 26 in the following terms: “Reactions have varied on the sentencing. Some commentators have muttered, albeit *sotto voce*, that death is an excessive punishment for peripheral conspirators. Some SIT personnel themselves expressed surprise at the severity of the sentencing. This position, however, has been sharply challenged by those who understand the seriousness of the threat terrorism poses to the democratic system in India... Given the unwillingness of lower courts in several terrorism-affected areas of the country to deliver justice in the face of terrorist threats, Judge Navaneethan's order will undoubtedly be saluted by victims of such crimes.”

The *Frontline* article clearly points to the frustrations in ruling circles with the failure of the courts to impose the death penalty. To date the legal system has been guided by a Supreme Court precedent that established that the death penalty should only be used in the “rarest of the rare” cases. As Amnesty International has pointed out, however, many executions nevertheless take place. “[O]n average a dozen executions are carried out in India every year for criminal offences. Most of those executed are the poor and illiterate. Statistics on the application of the death penalty within the country continue to be unavailable despite repeated requests for this information.”

But the death penalty has been rarely used in political cases. Hundreds of Kashmiri separatists are currently being held in Indian prisons in many cases without trial under the TADA provisions and other draconian security legislation. Some have been in jail for years. Other separatist fighters from the north-eastern states and members of Maoist guerilla groups from the northern and central states are also languishing in jail. Amnesty International pointed out in a 1998 report that even though TADA lapsed in 1995, its provisions are still used by the security forces.

“According to a human rights lawyer in Kashmir, during the period when TADA was in force, many of the cases were vaguely worded and did not always link an alleged crime to a specific individual. A militant group would be accused of a particular violent act, but the individual members of this group were not necessarily named in the First Information Report (FIR). These cases have remained under investigation, even after the repeal of TADA, and suspects arrested since the repeal of TADA are frequently accused of having participated in the crime at the time the FIR was registered.”

If the execution of Murugan, Perarivalan and Shanthan proceeds it will establish a precedent for the imposition of the death penalty that will be used not only in terrorist cases but also against other political opponents. In conditions where the economic policies of successive Indian governments have produced a deepening social divide between rich and poor and sharpening social tensions, the ruling class is seeking to strengthen its state apparatus for use against socialists, militant workers and anti-government protestors. In the hands of the police, who are notorious for their arbitrary arrest of strikers, baton charges and shooting of demonstrators, the death penalty would be another tool of intimidation and terror.



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