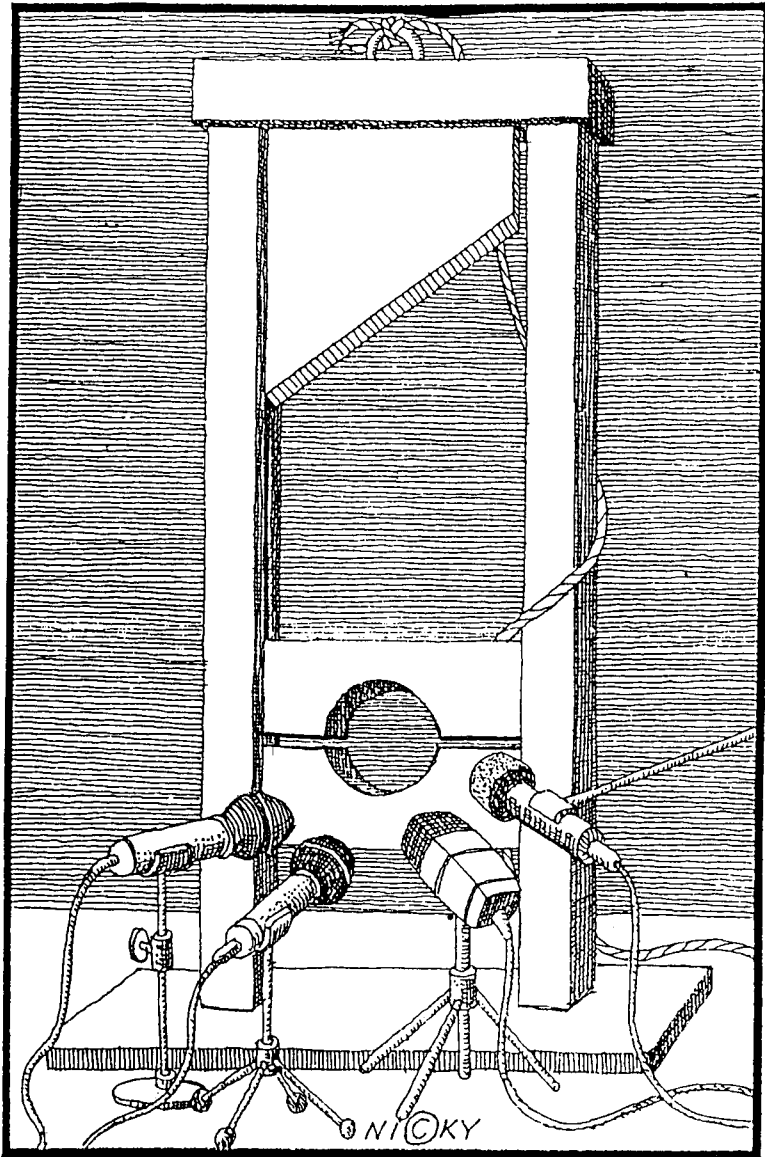


# A NOTE ON RAJIV GANDHI ASSASSINATION CASE



## **A NOTE ON RAJIV GANDHI ASSASSINATION CASE**

The Campaign Against Death Penalty acquired an urgency and added importance in 1998 when a designated court in Chennai sentenced to death all the accused tried under Terrorist and Disruptive Activities (Prevention) Act and other Laws and Act in connection with the bomb blast in Sriperumpudur on May 1991 which killed the former Prime Minister Rajiv Gandhi and 18 others including police officers. This verdict unprecedented in the history of modern India was rightly described as "judicially sanctioned mass assassination" by one of India's most eminent jurists Justice V.R. Krishna Iyer and invited universal condemnation by the civil and human rights organisations all over the world.

41 persons were identified by the Central Bureau of Investigation as being involved in the crime in various ways. 12 of them died before the trial could start. Three of them were declared proclaimed offenders. The remaining 26 were apprehended and tried. All of them were sentenced to death.

The case was tried under the notorious Terrorist and Disruptive Activities (Prevention) Act (popularly known as TADA) in combination with other Acts and Laws in force. TADA came into being in 1985 and was discarded by the Central Government in 1995 by being allowed to

lapse. It was discarded because of the extensive criticism of its draconian nature, including:

1. The provision for keeping an arrested person in police custody for 60 days
2. Provision to keep the arrested person in judicial custody for 180 days without charge for 180 days which could be extended to one year.
3. Conducting trials before special courts, which may sit 'in camera', and can take place in a jail.
4. Withholding identity of prosecution witnesses from the defence until the witnesses get into the witness box.
5. For certain categories of offences under this act the burden of proof is changed and put on the person accused of committing a 'terrorist act'.
6. Persons convicted after such trials are liable to receive considerably higher penalties than if they had been convicted under ordinary criminal laws. They can be sentenced to death. Appeals to High Courts are excluded. They must be made within 30 days of judgement, that too only to the Supreme Court.
7. Allowing confessions obtained during police custody by a senior police officer can be admitted as evidence. This was the most draconian feature of

TADA and held as such by the vast majority of the members of Lok Sabha which finally decided to allow the Act to lapse.

Even according to the prosecution charge sheet, most of the accused played only a subsidiary role in the plot to kill Rajiv Gandhi. One gave shelter to the main perpetrators of the crime before or after the event; one lent a camera to a photographer who covered the event; another acted as courier between them carrying messages between them and passed on battery cells for detonating the bomb. At most they were accessories to the crime, even according to the prosecution charge. If one goes by the narrative of the prosecution many of them were inescapably caught in the conspiratorial dragnet cast by the main perpetrators who were dead before the trial was commenced. Moreover the way the trial was conducted was not even in accordance with the very restrictive procedures under TADA.

All the 26 persons convicted and sentenced to death by the designated Court filed appeal petitions in the Supreme Court challenging the verdict. The Supreme Court in Death reference 1 of 1998 struck down the charges of Terrorist and Disruptive activities framed against all, acquitted 19 of them, commuted the sentence to that of life imprisonment to three and confirmed death sentences for four viz., S.Nalini (A1); T.Suthenthiraraja @ Santhan (A2); Murugan (A3); C.Perarivalan (A18)

Twelve of the accused, who played a pivotal role in the offence, are already dead. Excepting Dhanu and Hari Babu who died in the bomb blast, all the others committed suicide, apprehending arrest and torture. Those who were apprehended and tried are minor players in the conspiracy. The evidence shows that all of them merely followed the dictates of Sivarasan, who planned and led the conspiracy and the actual offence. It is not that they are therefore innocent, but their culpability is less than that of the leaders who are no more. It is most unlikely that if Sivarasan, Subha and others had been caught alive and prosecuted, those who are now sentenced to death would still have been sentenced to death along with them. In all probability, the Court, either at the first or Appellate instance would have found a lesser sentence sufficient for them. There is no reason to come to a different conclusion now merely because the main perpetrators of the crime did not wait to come before the Court.

The penal principle of Deterrence, even if one is to subscribe to it, does not require that the minor players should be executed when the main players have cheated the hangman by killing themselves.

The extreme penalty of death is inappropriate in a case where there is even a slight suspicion that the conviction is obtained by coerced confessions.

The case was charged and tried under TADA, and Sec.15 of TADA which allows a confession made to a police officer

admissible in evidence was made use of to extract confessions from the accused. The case is mainly proved on the basis of the confessions. The nature of these confessions can be gauged from the fact that barring one, all the accused who confessed did so at the fag end of a 60 day period of police remand. What they may have undergone in that period is presaged by the suicide of ten of their co-accused who decided to die rather than fall into the hands of the police. All of them told the Court that the confession had been extracted from them by coercion. While that may not have been regarded by the Court as reason enough to disbelieve the confessions, it raises enough doubt to rule out the application of the extreme punishment.

When the case is tried under a Law that is admittedly draconian, the extreme punishment is inappropriate, for error cannot be ruled out in such a prosecution.

TADA was allowed by Parliament to lapse because of the widespread criticism of its draconian character. While technically it is not wrong that cases which were earlier booked under TADA are allowed to be tried under TADA, such a practice would be most improper when the Act lapsed not for any other reason but because of its draconian character.

But for the use of TADA, which allows confessions made to police officers admissible in evidence unlike normal law, there would be nothing in this case. To put it bluntly,

the case has been 'proved' by using the facility provided by TADA, now admitted by all to be draconian, to lockup the accused for sixty days in police custody, extract a confession from him / her and use it as evidence to prove the guilt. The voluminous record of the case cannot hide the fact that this is how the Prosecution's case has been proved. Awarding the death sentence on the basis of prosecution based on a lapsed Act, an Act that has lapsed because of a national consensus that it is draconian and unfit for a democratic policy, is most improper.

Death sentence should not be awarded when the proof of the case is based on an admittedly debatable view of the Law - in this instance section 12 of TADA has been interpreted by the learned judges in such a way as to make confessions made under section 15 of TADA admissible even after the charges under TADA are struck down. Such a view can be reversed at any time, but death is irrevocable.

The Supreme Court has held, upon an elaborate consideration of the evidence in this case, that the Sriperumpudur blast is not a Terrorist or Disruptive Act as defined in TADA, though it is without doubt a heinous act. That is, the offence does not attract the provisions of TADA. Having held so, the Court has also paradoxically held that since the charges were framed under TADA, the confessions recorded by police officers can be admitted into the evidence under Sec. 15 of TADA, though the crime does not attract the definition of a Terrorist or

Disruptive offence under the Act. With due respect to the Supreme Court we can say this view must be held to be debatable, to say the least. But we would like to point out that this is a view which is quite likely to be reversed by the Court at some point or other. But if by that time the convicts are hanged, their lives cannot be resurrected.

Leaving aside the considerations that border on questions of a legal nature, the power of clemency vested with the President of India takes into account considerations of a human and moral character that the Law may regard as beyond its ken. Indeed, it is precisely to take account of such considerations that the power of executive clemency is provided for in the Constitution over and above the multiple tiers of Appeal and Review. For instance, should the child of Nalini and Murugan be orphaned in the interests of Justice? Would Justice be defeated if Nalini is allowed to live for the sake of the child? That would be a very insecure Justice indeed. The learned judges of the Supreme Court considered this question and ruled by a majority that indeed justice would be defeated if even one of the two parents is allowed to live for the sake of the child. They said : think of all those children orphaned by the Sriperumpudur blast. That is to say, Justice would require taking revenge for all those children.

The one who kills seeks revenge for some wrong, real or perceived. But the Justice done by Society cannot seek revenge. Then Society and its civilisation would be as

weak as the weakest individual. Would India like to put itself on par with a Sivarasan?

The general arguments of deterrence and retribution in favour of awarding death penalty are equally applicable to the Rajiv Gandhi case. However, the onus of establishing deterrent value of capital punishment is on those who are seeking to retain it. The hanging of Satwant Singh and Kehar Singh for the assassination of Indira Gandhi did not seem to have deterred the murder of Rajiv Gandhi. Recurrence of such political murder is not likely to disappear from the face of the earth.

The attraction that terrorism holds to bitter minds can only be countered by the offer of generosity. If what we seek is to win over embittered minds, we must first give up the embittered mode of thought which argues that those who did not care how many children they orphaned do not deserve greater consideration. The gift of life to those who killed a former Prime Minister of India out of political spite is the best signal India send out that she is generous. The courageous Gladys Staines said, when told of the death of her husband and two sons at the hands of fundamentalist criminals, 'May God forgive them'. Cannot India learn from her nobility?

### **Campaign Against Death Penalty**

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***Chairperson : Justice V.R. Krishna Iyer***

Campaign Against Death Penalty is a nation-wide campaign for the abolition of death penalty irrespective of the nature of offence.

***(a) It seeks to***

***build a nation - wide campaign headed by a committee of eminent citizens.***

***request Jurists to sign an appeal to the President of India calling for the abolition of death penalty.***

***(b) Persuade the Government of India to***

***sign Optional Protocol II of ICCPR***

***amend Sec. 302 of IPC so as to delete the word 'death'***

***exclude provisions that sanctioned death penalty in other statutes***

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**Contribution Rs. 5 /-**