

State Violence & the Death Penalty: The Myths on Capital Punishment

“For years I have been unable to see anything in capital punishment but a penalty the imagination could not endure and a lazy disorder that my reason condemned. I argue for an immediate abolition of the death penalty.”

– Albert Camus (1913-1960), “Reflections on the Guillotine”.

“Death sentence on Death Sentence is an inviolable command of compassionate culture and fundamental expression of social justice grandeur. No civilized state shall have authority inflict death penalty even in the rarest of rare cases, lest it be condemned as guilty of barbarity and devoid of humanity. Universal respect for Human Rights commands absolute abolition of capital punishment as no state, committed to social justice and human rights can stultify or demolish the right to life of any life of any human being”

– V.R. Krishna Iyer,¹ former Supreme Court Judge.

COMMENT

Capital Punishment, known also as the death penalty, is the execution of a convicted criminal by the state as punishment for crimes known as ‘capital crimes’ or ‘capital offences’. Today, the death penalty in most countries in the world has been totally abolished with the UN strongly in favour of abolishing it. The UN General Assembly, recently, passed a moratorium on executions, the vote being 99 in favour and 52 against, 33 abstentions and 8 absentees. This is a historic vote in that an overwhelming majority of its members endorsed the abolition of the death penalty. Similarly, through a statute, the International Criminal Court in July 1998 also opposed the death penalty. Besides, this UN decision comes in the wake of the recent endorsement by the EU Parliament, by a large majority, of its proposal to move a resolution in the UN Assembly for a universal and unconditional moratorium on executions. The EU’s stand followed from the hanging of Saddam Hussein and two of his aides. The fact that the EU stand on the death penalty has been laid down as a pre-condition for membership of the EU and that all the 27 constituent States are members of the Council of Europe, a pan-European human rights

Everyone has a Right to Life!**



“Every human being has the right to life. This Right shall be protected by law. No one shall be arbitrarily be deprived of his life...” – International Covenant on Civil and Political Rights, Article 6

body, that champions the removal of the death penalty from the statute, lends the current Indian initiative enormous weight and legitimacy.

On the other hand, along with a cabal of states — the US, Singapore, a number of Islamic countries, North Korea and Zimbabwe — India is an exception. On April 20, 2005 on the last UN resolution India abstained from voting! Its support for the death penalty is shocking considering that India is seen as a land of ‘ahimsa’ — of Buddha, Mahavira and Gandhi. The fiercest opposition are from those States that readily execute a large number of persons each year (China, Iran, Iraq, Pakistan, Sudan and the US account for 90 per cent of all executions worldwide) or those who have among the highest per capita execution rates (Singapore)!

Among the various reasons for totally abolishing the death penalty is the fact that the execution of a person by the State ultimately brutalises even those indirectly engaged in the whole act of execution. After all, executions carried out in the name of a nation’s entire population, involves everyone. An execution is the killing of a human being by the State. The State can exercise no greater power over a person than that of deliberately depriving him or her of life. Thus, central to the case of its abolition is the question of whether the State has the right to execute. The answer to this is given clearly by the UN. When it was established, the UN saw the need to remind its members of what could happen when a state believed that there was no limit to what it might do to a human person. The massive extent of state barbarity and terror during World War II and the consequences for people worldwide were still unfolding in December 1948, when the UN General Assembly adopted, without dissent, the Universal Declaration of Human Rights. The Declaration is a pledge to promote basic rights as the foundation of freedom, justice and peace. The rights it proclaims are inherent in all human beings. These Rights are not privileges that may be granted by governments for good behavior and they may not be withdrawn for bad behavior. Fundamental human rights limit what a state may do to a man, woman or child. Thus, no matter what justification a government supplies in executing prisoners and what methods of execution is used, the death penalty cannot be separated from the issue human rights. The Declaration recognises each person’s right to life and categorically states “None shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Further, the Human Rights Committee set up under the International Covenant on Civil and Political Rights has recognised, “The right to life... is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation...”. In a general comment on Art.6 of the Covenant, issued in 1982, the Committee concluded, “all measures of abolition (of the death penalty) should be considered as progress in the enjoyment of the right to life within the meaning of Art.40.” and that “Every human being

has the right to life. This right shall be protected by law. No one shall be arbitrarily be deprived of his life”.

Indeed, like murders, which take place outside the law, the death penalty denies the value of human life. By violating the right to life it removes the foundation for the realisation of rights enshrined in the Declaration. A related aspect of the death penalty is State denial of the automatic right of appeal to the Supreme Court in case the death sentence is confirmed by the High Court. This also demands a re-examination and reviewing the State’s right to reject the appeals against the death sentence. To prevent the miscarriage of justice the death sentence awardees must have an automatic right to appeal to the highest court in the land.

For these and several other reasons it has become absolutely essential to demand the abolishment of the death penalty. The death penalty reinforces the notion of retributive justice, a medieval concept that must have no place in a civilised society. The counter-argument holds that someone who has committed a heinous crime like murder must likewise be deprived of life. Does this mean that a rapist should be raped, or that a torturer must be tortured? Since 1998, ever since the then Home Minister L.K. Advani propounded his ‘death penalty to the rapist’ stand, the issue over the effectiveness of such a step keeps surfacing. Most women’s and human rights groups rejected the death penalty for rape as this demand is “...like offering a highly populist but simple-minded answer to an issue that is, at best, complex. Genuine law reform is the need and not playing to the gallery with mis-guided sense of women’s honour”.² Besides, as leader of the Opposition Advani wanted Mohammed Afzal Guru not only hanged but hanged without day as any delay would not be in national interest!!!³

The ban on the death penalty also stems from the deep belief that this cause is life-affirming especially as it applies to the ‘sanctity of life’ according to which life that cannot be bestowed by human hands must not be taken away by human intervention, or the hand of the State. As Albert Camus had noted: the death penalty is ‘theoretically defensible’ murder on the part of the State.⁴ Aside from assaulting the basic respect for the right to life, the death penalty has, historically, ill served the purpose of the administration of criminal justice.

The above and the related facts demonstrate the highly contentious nature of the death penalty. In India, where rights violations are rampant, the campaign against the death penalty continues to be sidelined. Just as economic, social and cultural rights tend to be viewed as second-level rights, the death penalty too is regarded as a secondary concern amidst the vastness of other human rights violations particularly the number of extra-judicial killings, custodial and encounter deaths, disappearances and the cases of torture. The death penalty may also encompass other human rights

violation. When a state jails people solely because of their beliefs, it violates the right to freedom of belief and expression. It is also used as a political witch-hunt in silencing political opponents and make political capital e.g. the execution of the former Prime Minister of Pakistan, Zulfikar Ali Bhutto in 1979 or more recently the hasty execution of Saddam Hussein to silence any possibility of the court's judgements being challenged. Whenever and wherever used, the death penalty finally and unalterably severs a person's right to hold opinions and speak freely because it takes that person's life.

The current Indian law on state execution was first legalised in 1898 under British colonial rule and it is the Executive that takes the decision to execute a person albeit though the president or governor who decide on the "mercy petition". This is a constitutionally provided power that is independent of the judicial award of the death sentence. After Independence, in 1949, a Commission was set up which recommended that capital punishment must be less painful and quick as possible. The death penalty was subsequently retained through Art.21 of the Constitution and Section of the Indian Criminal Procedure Code of 1973. These powers are however restricted by the 1983 Supreme Court ruling – capital punishment is a drastic measure that should be imposed only in the 'rarest of rare' cases. The ruling has ironically become controversial. Instead of leading to a significant reduction the Judgement has merely increased the number of executions! In 1996 and 1997 there were 7 and 4 executions resp. In 2006, various courts have given death penalty to 56 people in 32 cases.⁵ This upsurge in death verdict inspite of the Supreme Court ruling has raised the pertinent question as to whether or not the acid tests are being legitimately and properly applied? Since then there has been demands on its abolishment. The demand was first raised in the 60s and the Law Commission had then favoured its retention. Subsequently, in 2002 a number of human rights groups called for the abolition of the death penalty when 3 people, accused of attacking the Indian Parliament on December 13, 2001 were sentenced to death. The case led to an outcry because many believed that the accused had not been given a fair trial. The risk of executing innocent people is increased when the international criteria fair trial fail to be enforced. It is undeniable that no matter how careful and fair the judicial process may be it is impossible to eliminate the chance of judicial error. The drawbacks of the judicial system are many. Investigations are crude and archaic. Convictions are based on oral evidence. Witnesses are generally tutored and often tortured so as to extract a confession. Individuals are even forced into being scapegoats for more powerful with money, political clout and brute force. Witnesses become helpless victims of circumstance. The imposition of the death penalty also depends on such random factors as the competence of lawyers, the strength of

evidence, the tampering of proof, the capacity of witnesses to sustain cross examination, the integrity of the witnesses, plea-bargaining or pardons granted and in the case of Dalits characterised by naked caste prejudices of the judiciary, etc. Besides, the death penalty is an irrevocable punishment. Once done it cannot be undone. Mistakes can be rectified. Death cannot. Inevitably this results in execution of people, innocent of any crime. This is crucial when developments like the application of DNA testing have shown previously convicted persons having been found innocent. According to the American Civil Liberties Union, for instance, between 1973 and 2003, 110 death row inmates in 25 States in the US were found to be innocent. Evidently, this is a violation of fundamental human rights. In such a situation, what guarantee is there that the right person is being executed? History has shown that it is not uncommon for the wrong person to be sent to the gallows! Clearly, the law courts cannot be trusted to always deliver a "right" punishment!

All this raises another disturbing question: how any person or persons can sit in judgement of another and impose so barbaric a sentence as death!? This leads to the abominable characteristic of the death penalty, namely, that it is invariably and disproportionately imposed on the poor and against racial or ethnic minorities. It is therefore correctly held that capital punishment is pronounced on those without capital! In India, in particular, those facing execution are largely Dalits. As an exploited and oppressed community Dalits among other poor people are in no position to arrange any proper defense of themselves before the law-courts or pull strings in the appropriate quarters, to challenge the death sentence. When they do begin to stand up and fight back in defense of their rights — the right to be human — the upper castes retaliate by hunting and killing them in cold blood. The recent incident, in which a Dalit woman 'panch', Urmila Bai, committed suicide after multiple rapes by the son of an upper caste sarpanch, is a glaring example of an atrocity stemming from Dalit assertion. On the other hand, the upper-caste-dominated State imposes the death penalty on largely the poor and Dalits. In 2002 the State in Bihar sentenced 4 Dalits to death under the now lapsed draconian Act, TADA. In 1992 the Chief Minister of Bihar had even admitted that innocent people had been detained under this draconian legislation. When the condemned Dalits appealed against the verdict, the Supreme Court rejected their appeal by 2 votes to 1. The dissenting judge however noted the "defective" investigation of the killings, particularly in the recording of witness statements. For example, he noted, their statements were taken well after the incident! He was also highly critical that the prosecution failed to examine the investigating police officer and to undertake an identification parade of the accused. Similarly, in another case, in the Coimbatore serial bomb blast of February 14, 1998, Judge K. Uthirapathy did not impose the death penalty on the

accused.⁶ His decision was based on the fact that the schedule for examining of witnesses was drawn up randomly and not enough time was given to the defense to prepare itself; the examination had also caused prejudice; many witnesses were examined in the absence of the accused, who were at that time had been produced in another court for other cases. Judge Uthirapthy stated, "These circumstances and factors, therefore, outweigh the legal ingredients for awarding the death penalty...". What these cases indicate is that in the name of "law and order" the poor are hounded with Dalits being executed by the State.

Since the withdrawal of TADA another draconian legislation, viz., the Prevention of Terrorism Act (POTA), is in force that makes a terrorist act punishable with death. Its first conviction of death penalty is known as the Parliament Attack case (December 13, 2001). Over the years, the government has been expanding the list of offences for which the death penalty is pronounced. With POTA, there are now special courts under the Terrorist Affected Areas (Special Courts) Act, 1984, the Commission of Sati (Prevention) Act and the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 — all these legislations can impose the death penalty on those found guilty of the respective crimes.²

Another related concern is the undue delay in State execution. This unnecessarily forces the convicted to go through the trauma of waiting indefinitely for the last day of his or her life. From time to time there are also judicial rulings that are highly discriminatory and insensitive. For instance, the case of Pratap Naik, a Dalit boy of 14 studying in Class VIII. He was arrested

on February 26, 1989 on false murder case related to a land dispute and was incarcerated till 2003. He was subsequently acquitted by the High Court in 1994 but due to sheer court negligence he continued to be imprisoned for 13 years! He was finally set free by the Supreme Court in 2005 through the help of a human rights activist and compensated with Rs.8 lakh though the demand was for Rs.10 lakh. This and similar other cases are irreversible miscarriages of justice. They spotlight not only the arbitrary nature of how the death penalty is enforced but also how insensitive judges are when they relate to the disadvantaged poor.

The number of executions carried out by the Indian State is not known but with the Right to Information Act, it is now possible to access this information. In May 2005, the People's Union for Democratic Rights (PUDR) asked the Government of India to make public all information on executions since Independence. The media subsequently reported of 55 executions since Independence. PUDR has however challenged this figure. Based on the information of a 1967 Law Commission report, PUDR showed that at least 1,422 people were executed between 1953 and 1963 in 16 States.⁷ (See Box below)

December 10, was observed as Human Rights Day with the Day Against Capital Punishment an occasion to also raise awareness of the general public, the Government and others on the various mis-conceptions on retaining this form of barbarism. Above all, there is need to explain the urgency to abolish capital punishment as there are several cases of miscarriage of justice and the danger of innocent persons being sent to the gallows!

Number of people executed in various states from 1953--1963 ⁷												
States	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	Total
Andamans	0	0	0	0	1	1	0	0	0	0	2	2
AP	20	3	15	12	13	8	20	16	9	3		119
Bihar		6	3	7	3	5	2	4	4	2	0	36
Gujarat		2	1	2	1	0	3	4	1	2	5	21
HP		0	0	0	0	0	0	1	0	0	0	1
Kerala		11	9	2	0	5	10	16	9	7	15	84
MP				6	10	7	5	7	1	3	0	39
Madras (St)		44	53	56	50	59	71	45	51	33	23	485
Maharashtra		4	4	5	4	4	6	8	10	7	4	56
Manipur	0	0	0	0	0	0	0	1	0	0		1
Mysore (St)	1	1	4	1	2	1	3	3	0	0		16
Orissa		2	3	1	0	0	1	0	0	0	3	10
Punjab		10	11	16	11	12	12	20	21	11	4	140
Tripura		0	0	0	0	0	0	0	0	0	0	0
UP		24	46	41	54	41	47	47	44	36	17	397
West Bengal		1	1	2	4	1	1	2	0	3	0	15
Total (yearly)	21	108	150	151	153	144	181	174	150	107	73	1422

Source: PUDR

Number of persons executed in Pune / Nagpur (Maharashtra) between 1950-98 ²	
Year	Number of persons executed
1950	6
1951	4
1952	5
1953	2
1955	1
1958	1
1959	2
1960	2
1961	2
1962	3
1965	1
1968	2
1969	1
1971	3
1972	1
1973	1
1974	1
1975	4
1977	1
1978	4
1983	2
1988	2
1991	4
1992	1

MYTH: The death penalty is an exemplary form of punishment.

FACT: Albert Camus the famous French author in his essay, "Reflections on the Guillotine" gave a fitting response to this absurd claim. He pointed out that the claim was a contradiction. He queried, "How can a furtive assassination in a prison courtyard be exemplary?!" He responded that there is no proof that the fear of the penalty made a single murderer a resile. On the contrary, citing medical reports, he maintained that this claim often leads to a morbid fascination over thousands of criminals.

The punishment, if at all

exemplary, is so in a very negative manner! The doctor is left with this impression of a horrible experience, of a murderous vivisection, followed by a premature burial. Such a punishment destroys the condemned, degrades the executioner, arouses public manifestations of sadism and excites a hideous vainglory in certain criminals, while forestalling nothing. It is nothing but a form of revenge: a punishment that penalizes without forestalling is indeed called revenge. It is a quasi-arithmetical reply made by society to whoever breaks its primordial law. But revenge is rooted in instinct and ought not to be granted the sanctity law, which is intended to correct and not otherwise.

Camus further maintained that even if the principle of revenge is provisionally accepted, capital punishment turned out to be arithmetically unjust as a general rule, a person is undone by waiting for capital punishment well before he or she dies. Two deaths are inflicted on the condemned: the first being worse than the second, whereas s/he killed but once. Camus also draws attention to the culpability of the larger society: the victim, to be sure, is innocent. But can a society that is supposed to represent the victim lay claim to innocence? Is it not responsible, at least in part, for the crime it punishes so severely?

The death penalty imposes a definitive penalty on a person whose culpability is often relative. It denies the condemned person's natural right to live and an opportunity to make amends. But without such a right, moral life itself would imperiled.

The death penalty, then, is society's revenge on an individual, and this cannot form the basis of a civilised polity! Individuals seek to escape the unstructured life of nature—nasty, brutish, and short – by forming a common bond that guarantees them security. The death penalty is a gross violation of this compact!⁴

Myth: India opposes the UN Resolution of a moratorium on the death penalty as this decision is determined by a Sovereign State and thus the Resolution goes against India's statutory law.

FACT: This is a hollow argument. For the simple reason that the death penalty has been constantly held by various UN agencies to be human rights issue which cannot be limited to the "internal" or "domestic jurisdiction". The other related claim is based, surprisingly, on incorrect understanding of Indian law.

Under current Indian law, the decision to execute a condemned prisoner is taken by the executive, albeit through the President or governor who decides on the 'mercy petition'. This is a constitutionally provided power that is independent of the judicial pronouncement of the death sentence. Therefore decisions, both on the execution of a particular prisoners, as also on not executing any prisoner and declaring a moratorium, are within the domain of the Executive. Such decision-making does not interfere with substantive Indian law. Thus, abstaining or even supporting the recent resolution too would not violate any Indian legal provisions and would be much within the right of the government.⁵

Finally, the claim to just a single execution being carried out India since 1995 is equally shocking!? Figures of the National Crime Records Bureau (Ministry of Home Affairs) itself contradict this Government figure! The NCRB Report, Prison Statistics: 1996, refers to 7 executions (hangings) while the 1997 and 1998 editions provides details of another 4 executions. This glaring contradiction is similar to claim on the number of executions since the Independence. The human rights groups Peoples' Union for Democratic Rights (PUDR) however raised questions on those executions prior to 1953 and from 1964 onwards! The National Crime Records Bureau (NCRB) has only published execution figures post 1995 – that leaves at least 30 years unaccounted for according to PUDR.⁷

MYTH: The Supreme Court Judgement of awarding the death penalty only in the rarest of rare cases has a salutary affect; it thus reduces the number of executions.

FACT: The reality is the other way around! Since the issue of 'the rarest of rare' criterion the law has been used in a arbitrary manner and as per the interpretation by the judges. A judgement ultimately depends on the judge's feelings of moral outrage and lie in the realm of the totally subjectivity.

The subjective factors such as judicial authorities' lack of empathy with the lives of such accused makes the

awarding of the extreme penalty more likely. The death penalty to Nalini in the Rajiv Gandhi case is illustrative of the role of subjectivity in the imposition of capital punishment. (See Box below)

MYTH: The death penalty serves as a deterrent against heinous crimes.

FACT: At first glance, this appears to be highly plausible! Empirical evidence⁸, however, fails to support this claim. For instance

In the State of Travancore, there were 962 murders between 1945 and 1950 when the death penalty was not in force. Five years later, from 1950 when it was re-imposed, there were 967 murders. In Canada, after the abolition of the death penalty in 1976, the homicide rate declined. In the US a survey for the last 20 years carried out in September 2000 showed that homicide rate with the death penalty had been 48 to 101 per cent higher than in those without.

Playing God: The Arbitrary Nature of the Death Penalty by Rakesh Shukla, (lawyer, Supreme Court of India)

In the Rajiv Gandhi assassination case, the trial court awarded capital punishment to all the 26 accused. The Supreme Court acquitted 19 of the accused – it found them innocent of any crime. The facts speak for themselves.

All the evidence for and against an accused individual is adduced before the trial court. The prosecution and police produce whatever material evidence they have to establish the guilt of the accused. The individual accused of a crime adduces witnesses and material to show that he is innocent. Generally, no additional evidence is produced by either side at any stage after the trial is over. Thus, it is on the very same evidence that the Supreme Court found that there was no material to show the culpability of 19 of the accused in the Rajiv Gandhi case, while the trial court directed that they be “hung by the neck till dead”. The evidence for acquittal and the death penalty in Geelani and Singh’s case remained the same.

The fallibility of human judgement cannot be more clearly demonstrated. The criteria formulated by the Supreme Court that the death penalty is to be awarded in the “rarest of the rarest” case of exceptional depravity and brutality ultimately depends on the judge’s feelings of moral outrage and lie in the realm of the totally subjective. In fact, the award of the death penalty in Nalini in the Rajiv Gandhi case is illustrative of the role of subjectivity in the imposition of capital punishment. Justice Quadri, after observing that “the taking of life, when it cannot be given, is a divine function,” went ahead and awarded the death penalty to Nalini! While resolving his dilemma in favour of death for Nalini, the Judge observes that Rajiv Gandhi “was a young popular leader so much loved and respected by his fellow citizens”. The judge goes on to say that Nalini joined the gang of conspirators “only because she was infatuated by the love and affection developed for Murugan”. These factors seem to have weighed strongly with the judge! But what if a judge did not have such a high opinion of Rajiv Gandhi?

The presiding judge, Justice Thomas, on the other hand, commuted Nalini’s capital punishment to life imprisonment. The fact that Nalini had a small child born in captivity, and that the death sentence on Murugan, the child’s father, had been confirmed, weighed with the judge. Concern that an innocent child is not orphaned through judicial decree appears to have swung the balance in favour of life in Justice Thomas’ mind. However, this factor did not influence the other two judges on the bench who confirmed the death sentence on Nalini.

Unfortunately, judges are as subjective as any other human being. There can be no doubt that caste, class and gender biases operate in decisions to award capital punishment. The South African Constitutional Court, while declaring the death penalty unconstitutional, reached the conclusion that “poverty, race and chance play roles in the outcome of capital cases and in the final decision as to who should live and who should die”. Studies the world over have found that the percentage of poor persons being awarded the death sentence is much higher.

As far as retribution is concerned, the less said the better. At most it may be understandable in a mob, anguished over the murder of a beloved leader that screams, “Hang the villains!” It should have no role to play in the psyche of a judge who is not expected to be swayed by populist sentiment and on whom has been conferred the power of life and death over a fellow human being. The calculated and cold-blooded execution of a person convicted of murder does not serve any purpose. In the case of Nalini, as the majority of two out of three judges awarded capital punishment, it was the President who commuted the death sentence to life imprisonment.

Further, this claim's commonsense logic rests on questionable assumptions, namely, that all or most of those who commit such heinous crimes do so after rationally calculating the consequences. Murders are most often committed in moments of passion when extreme emotion overcomes reason. They may also be committed under the influence of alcohol or drugs, or in moment of panic, for example when the perpetrator is caught in the act of stealing. Some people who commit violent crime are highly unstable or mentally ill.

Evidently, the deterrence theory is not borne out by the facts. If the death penalty did deter potential offenders more effectively than other punishments, one would expect to find that in analyses of comparable jurisdictions, those which have the death penalty for a particular crime would have a lower rate of that crime than those which do not. Similarly, a rise in the rate of crimes hitherto punishable by death would be expected in a State which abolish the penalty and a decline in crime rate could be expected among states which introduce it for those crime. Yet study after study has failed to establish any such link between the death penalty and crimes rates.⁹ Way back in the 50s the United Kingdom Royal Commission on Capital Punishment had concluded, "there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall"

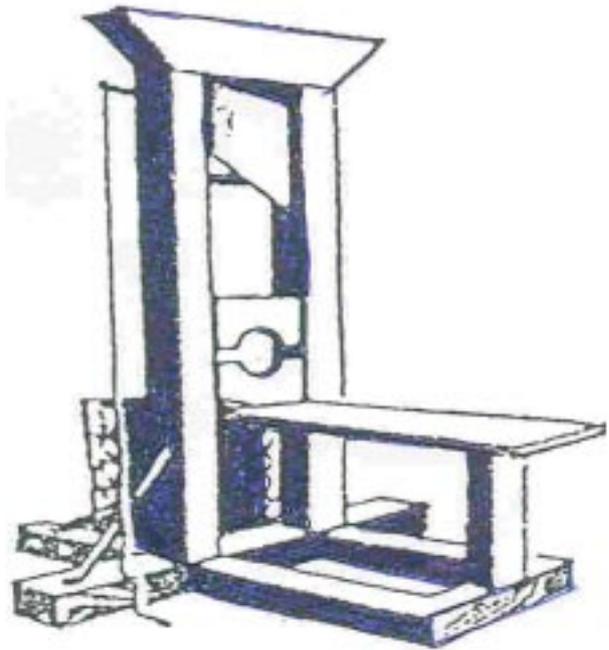
In none of these cases can fear of the death penalty be expected to deter.

* one study found that a high proportion of criminals are so tensed up at the time of their crime as to be impervious to the results to themselves; others manage to persuade themselves they can get away with it;

Yet another study showed that criminals who plan serious crimes in a calculated manner may decide to proceed despite the risks in the belief they will not be caught. The key to deterrence in such cases, then, is to increase the likelihood of detection, arrest and conviction. The death penalty may even be counter-productive in that it diverts official and public attention from efforts needed to bring real improvements in combating crime.

Finally, US criminologists have pointed that if the death penalty does indeed deter homicide more effectively than does imprisonment, which effect can at most be slight, since any major effect would have been detected by the studies already made. In their view there is now room for debate "only about whether the marginal deterrent effect is nil or very small in relation to total homicide volume".

Lack of evidence and various studies indicate that the death penalty has no effect in reducing the crime rate or the rate of terrorist activity in any country. Crime rates are linked to many other factors – social,



"... I argue for an immediate abolition of the death penalty..." Albert Camus

economic and political. Countries, which have abolished the death penalty, do not have consequent higher crime rates than the one that retain it. Besides, these countries have an effective police system, investigation agencies and a speedy judicial mechanism to guarantee that an appropriate punishment of some kind is meted out to the guilty, to the extent that law evokes respect and fear in all citizens. In other words, it is the certainty of punishment that has the effect of deterring crime, not the quantum of punishment.

MYTH: Executing a criminal for a heinous act (and thus "incapacitated) ensures that s/he never repeats the crime i.e. prevents recidivism (crime committed on release)

FACT: This is not borne out by facts! First, once killed, a person is incapacitated forever. A policy of execution to incapacitate cannot, however, be based solely on the undeniable fact that dead people cannot commit crimes. Such a policy must rely on the assumption that the state can accurately determine at the time of sentencing which prisoners will repeat that crimes: if not, the state must be willing to include among those executed a considerable number of people who would not do so. The incapacitation-by-death argument also assumes that it is impossible to find another effective means of preventing recidivism.

Evidence today indicates that the real rate of recidivism among prisoners convicted of murder tends to be low. On release, most are doing well in the wider society. Only one prisoner was reconvicted of murder. The evidence above by the UK Royal Commission arrived a similar conclusion – i.e. of low recidivism rate among prisoners convicted of murder in other European and

English speaking countries studied. Only 3 cases of recidivism emerged. As for the risk of new crimes committed while the person concerned was still in prison, this too was found to be low. Figures analyzed by the US criminologists too corroborate these findings. They found, for example, that the incidence of killings in prison by inmates convicted of murder was low or nil. It came out with the conclusion that “paroled murderers do sometimes repeat their crime, but ...among parolees who commit homicides, they rank very low”

Supporters of the incapacitation line have pointed out to cases in which inadequate parole procedures have resulted in the release of convicted killers who should not have been set free. But the response must not be to execute more prisoners but rather to improve the parole system.

Incarceration in prisons, etc., has one advantage over the death penalty as a means of incapacitation: the errors which result from fallible judicial systems can be corrected, at least partially. The death penalty, on the other hand, takes the lives of offenders who might well have been rehabilitated.

MYTH: Criminals committing heinous crimes must be executed because justice so demands and society’s outright condemnation of such heinous crimes.

FACT: Like the line of deterrence and incapacitation, the retribution argument too is fundamentally flawed. Retribution as a basis for the death penalty makes impossible demands on the criminal justice system. Demand for the death penalty as a matter of justice runs up against the injustice and arbitrariness of the penalty in practice. A society’s restraints on using the death penalty in certain cases, along with the biases inherent in all legal systems and the sheer fallibility of human judgment, preclude the possibility of creating a system which can ever mete out death in a fair manner.

According to studies retributive capital justice is tainted by bias and by the influence of factors beyond the control of courts of justice, such as poverty of the defendant, which prevents him to fight from engaging competent counsel skilled in the art of criminal defense.

Once, it is acknowledged that not everyone who commits murder must die (and the facts show that all societies acknowledge this) then doubts about the fairness of selecting those who are to be executed must arise.

There is no convincing argument that society cannot find ways other than killing to express its condemnation of crime. Indeed, the publicity surrounding an execution; may divert attention from the crime to the person who committed it. Far from being condemned for his or her deeds, the criminal may actually become a focus of sympathy.

Unlike the death penalty non-lethal punishment can reflect the values of society rather than the values of the killer. In this context, the heritage of Buddha/Gandhi on non-violence stands in stark contrast to the violence of the death penalty. It symbolizes a culture of compassion for all living creatures (now constitutionalised in Art.51A). As such there is the moral mandate that no one shall be deprived of life by the State as it brutalizes humanity and sanctifies barbarity. Retributive justice, based on an eye for an eye, makes the whole world blind, as Gandhi powerfully put it. These are perennial humanist values and therefore an approach the State cannot kill, even if a mass murderer is found guilty. After all, as some criminologists believe, some men are born with criminal instincts; therefore, a man guilty of heinous crime must not invite hate, because he is built in different way and needs to be understood, counseled and treated. Indeed, there has been ample evidence in recent times that ‘medical situations’ (such as neglected treatment of brain and nerve problems, and chronic ill health) give rise to murderous impulses in certain people, who are not influenced one way or the other by the death penalty. At any rate, pronouncing the death penalty can often really be unfair. There are cases, for instance, when one judge acquits an accused and two judges give the death penalty as in the Dalit cases cited above. The only conclusion from that can be drawn from this is that the judgement of the court demonstrates a high degree of subjectivity! In addition, the flouting of procedures by the investigation, exaggerated and faulty witness accounts makes the conviction itself absolutely suspect. As Albert Camus had noted: the death penalty is ‘theoretically defensible’ murder on the part of the State.

MYTH: The death penalty is a legally sanctioned law in self-defense of citizens from criminals guilty of heinous crimes and the only available option.

FACT: First and foremost, the death penalty does not stamp out crime. It is a pseudo-solution that diverts attention from the measures needed to prevent crime; by creating the false impression that a decisive measure is being taken. The death penalty does not protect society, but rather distracts attention from the urgent need for methods of effective protection which at the same time uphold and enhance respect for human rights and life.

Indeed, self-defense may be held to justify, in some cases, the taking of life by State: when a country is engaged in warfare (civil or international) or when law-enforcement officials must act quickly to save their own lives or those of others. However, even in such cases the use of lethal force is covered by internationally accepted legal safeguards to check misuse and abuse. The use of force is aimed at countering the immediate damage resulting from force used by others. However, the death penalty is not act of self-defense against an immediate threat to life. It

The World Against the Death Penalty!

An Open Letter to the Prime Minister of India

We, the concerned citizens, urge your Government to support the Resolution called for a global moratorium on executions, at the 62nd session of the United Nations General Assembly (UNGA). Supported by countries from all regions of the world, such a resolution would be an important milestone towards abolition of the death penalty in all countries.

We opposed the death penalty believing it to be a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading punishment. The death penalty legitimises an irreversible act of violence by the state and will inevitably claim innocent victims, as has been persistently demonstrated.

A momentum is gathering to end capital punishment in all countries: 133 countries, from all regions of the world, have abolished the death penalty in law or in practice and only 25 countries carried out executions in 2006.

By adopting a Resolution on a moratorium on executions, the UNGA will take a further, important step towards the fulfillment of the established UN goal of abolition of the death penalty set out by the UNGA in 1977 (Resolution 31/61 of 8 December 1977)

The vote on this Resolution affords India the opportunity to support the eventual abolition of the death penalty at the international level and strengthened world opinion against capital punishment.

A step towards abolishing death penalty would go with the principles of Gautam Buddha and Mahatma Gandhi, of which the whole country is proud.

We recall the words of UN Secretary-General Ban Ki-moon emphasised shortly after assuming office on 11 January 2007: "I believe that life is precious and must be protected and respected, and that all human beings have the right to live in dignity. International law affirms these values. I recognise the growing trend in international law and innovative practice towards a phasing out of the death penalty".

We request you to take note of this growing trend and not lose this opportunity.

Signed By:

** Justice Krishna Iyer, former Supreme Court Judge * Justice Leila Seth, former Chief Justice of Himachal Pradesh * Justice Rajinder Sachar, former Chief Justice, Delhi High Court * Justice S.M. Daud, former Judge, Mumbai High Court * Admiral Ramdas, former Chief of Navy * Mohini Giri, former Chairperson, National Commission for Women * Fali Nariman, Senior Advocate, Supreme Court of India * Upendra Baxi, former Vice Chancellor, Delhi University * Shyam Benegal, filmmaker & M.P. * Medha Patkar, social activist * Maheshwata Devi, Litterateur * Asgar Ali Engineer, Islamic Scholar * Aruna Roy, Social Activist * Lalita Ramdas, Chair of the Board – Greenpeace International * Indra Sinha, Litterateur * Ashis Nandy, former Director, Centre of the Study of Developing Societies * Rahul Bose, Actor * Harsh Mander, former civil servant * Jean Dreze, Development Economist * S. Parasuraman, Director, TATA Institute of Social Sciences * Anand Patwardhan, documentary filmmaker * Naresh Dadhic, Director, IUCAA, Pune University.*

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is premeditated killing of a prisoner who could be dealt with equally well by much less horrendous methods.

Alternatives to the death penalty already exist; in abolitionist countries as well as in those, which retain the death penalty but have abolished it for certain offences. Without doubt there is much still to be done to prevent people becoming victims of crime, including crimes of violence. An alternative exists to the death penalty. Measures to deal with crime effectively include: addressing the relevant socio-economic factors such as poverty, inequality, and unemployment; strengthening social standards on and attitudes towards crime; education through the media on what the public can do to protect itself and reduce the chances for crime; heeling to improve crime detection and arrest of offenders; programmes for the rehabilitation of offenders enabling them to lead productive and even creative lives programmes to address the needs of victims of crime, including the compensation for damages or injuries sustained; and continued study and research into patterns of crime and appropriate ways of preventing and detecting it.

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