



Is It Time to Abolish the Death Penalty?

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(This editorial is based on the article "Is it time to abolish the death penalty?" which appears in The Hindu for 14th December.)

Death penalty or capital punishment is the highest degree of punishment that can be awarded to an individual under any penal law in force in any part of the world.

- Although the death penalty in India is long-standing, **the movement to abolish it has gained a lot of momentum in recent times.**
- Recently, the Supreme Court dismissed a petition seeking directions for the immediate execution of the four men convicted in the Nirbhaya gangrape and murder case of 2012.

The Indian Penal Code, 1860 provides for the provision of a death sentence for various offenses like criminal conspiracy, murder, waging war against the nation, dacoity etc. Various other legislation like Unlawful Activities Prevention Act, 1967 also provides for the death penalty.

Under Article 72, the Constitution has created a provision for clemency of capital punishment. Under this Article, the President of India has the power to grant pardon or commute or remit the death sentence in certain cases. Similarly, Article 161 provides for powers of the Governor of the State to grant clemency.

Also, when a Sessions Court awards the capital punishment, it must be confirmed by the High Court of the particular state, and only then the execution can be carried out.

In 2007, the UN General Assembly passed a resolution calling for a moratorium on the administration of the death penalty by the 59 countries that still retained it. India is one of them, even if it does not employ it as frequently as countries such as Iran, China, Pakistan, Saudi Arabia, and the U.S.

Recently, India allowed capital punishment for anyone convicted of raping children under the age of 12.

Why it is Time to Abolish the Death Penalty?

- Most of the civilized world has abolished it. India certainly does not need it as it doesn't serve any purpose.
- **No study has shown that the death penalty deters murder more than life imprisonment.** The evidence is all to the contrary. For deterrence to work, the severity of the punishment has to coexist with the certainty and swiftness of the punishment. The death penalty has not deterred terrorism, murder or even theft.
- **Based on the evidence collected, the legal system cannot be trusted to take one's life.** For example, between January 1, 2000 and June 31, 2015, the Supreme Court imposed 60 death sentences.

It subsequently admitted that it had erred in 15 of them (25%).

- **Those without 'capital' get the punishment.** Poor prisoners on legal aid won't get good lawyers to defend them. Hence, the death penalty unfairly targets the poor and marginalized.
- **The death penalty is impossible to administer fairly or rationally.** The Supreme Court has repeatedly admitted that it has arbitrarily imposed this most extreme punishment. It depends overwhelmingly on the adjudicator's personal beliefs. Judges opposed to it never gave a death sentence; those in favor doled it out.

Why is it NOT the Time to Abolish the Death Penalty?

- **Its constitutionality has not only been upheld in India but also in liberal democracies like that of the U.S.** Therefore, the retention of the death penalty is not a reflection of "uncivilized" polity in theocratic states [a political unit governed by a deity or by officials thought to be divinely guided] that have come to be defined by violence but also by a creation of the individual geopolitical circumstances of each state.
- While the 35th Report (Law Commission) correctly called for its retention in order to see its impact on a new republic, the more recent 262nd Report could not recommend the punishment's absolute abolition despite a rather desperate attempt to do the same.
- **The exception to abolition in cases of terror will also not work.** Unlike Scandinavia, India's neighborhood is not peaceful, and, it does not form the group of nations that facilitate common growth, unlike the European Union. On the contrary, every day, vested interests attempt to destabilize the very idea of our nation from across every border it shares, which makes it difficult to abolish this deterrent named death penalty.
- As noted by the Law Commission itself, cases of violent terror are constant reminders of the need to protect national stability by ensuring appropriate responses to such actions, and the death penalty forms part of the national response.
- A punishment cannot be judged by its impact on criminals but by its impact on those who are still innocent.
- Those who defend the death penalty often do it on the basis of retributive justice (a system of criminal justice based on the punishment of offenders rather than on rehabilitation).
- **It determines that there are certain acts which the society so essentially detest that they justify the taking of the most crucial of rights – the right to life.** For, the state acknowledges that the sacredness of life can only be seen to be protected if those who take it away are proportionately punished. The hanging of Ajmal Kasab and Yakub Memon strongly affirms India's commitment to the protection of life.

Way Forward

- **The capital punishment is not arbitrary because it comes out of a judicial process.** To term the punishment as arbitrary, one has to necessarily prove the process as flawed. However, in the cases of the death penalty, the courts have made sure that caution is exercised in giving the punishment. They are conscious of its irreversibility and have therefore restricted it to only rarest of rare cases that shock the conscience of society. This is reflective in the fact that in the last 13 years, only four people have been executed.
- **Following the gang rape of a young woman in Delhi in December 2012, amendments were made to the Indian Penal Code adding the death penalty for certain categories of rapes and repeat offenders.** This year India introduced the death penalty for those who rape minors. The polarised debate that surrounded Yakub Menon's execution in 2015 was yet another reminder of the pervasive popularity of the idea which needs larger public debate.

- **In 1980, in Bachan Singh v. the State of Punjab, a Constitution Bench articulated the “rarest of rare” threshold stating that “judges should never be bloodthirsty”.** Death must only be imposed where the alternative option is unquestionably foreclosed.
- **In 2015, the Law Commission called for the abolition of the death penalty for ordinary crimes, and activists continue to argue for abolishing it altogether.** Political will in India is still bound by populism. However, the constitutionality of the death penalty will continue to be challenged and, sooner or later, the Supreme Court will have to answer whether the absence of political will is sufficient ground to override the right to life.
- **Also, recently the Supreme Court supported the rights of death row convicts.** It argued that convicts should be allowed to meet with family, friends, lawyers and mental health professionals for a reasonable period of time with reasonable frequency. It is part of their fundamental right to dignity and equality.

