

## Why Should Death Sentence Not Be Abolished?

**“An eye for an eye will make the whole world blind.”**

-The famous quote of Mahatma Gandhi

**“Capital punishment is the most premeditated of murders.”<sup>1</sup>**

-Albert Camu, French author, philosopher

**“I cannot believe that to defend life and punish the person that kills, the state should in its turn kill. The death penalty is as inhuman as the crime which motivates it.”**

- Eduardo Frei, President of Chile, while commuting the death sentence in 1996<sup>2</sup>

### Life, Long Live!

“The Commission ... recommends that the death penalty be abolished for all crimes other than terrorism related offences and waging war.”<sup>3</sup>

This line has been taken from the Report No-262 of the Law Commission of India, submitted to the government on August 31, 2015. This recommendation of the commission is being considered as an important step towards abolishing death penalty.

The Supreme Court had directed the Commission to prepare a report to decide on ending death penalty. The Law Commission had earlier in its 35<sup>th</sup> report submitted in 1967 also deliberated on it. But the Commission had then recommended that death

penalty should not be abolished. In 1980, the Supreme Court had also voiced its opinion in favour of continuing with death sentence. However, the SC had said that death sentence should be pronounced only in the rarest of the rare cases.

Laws on death penalty exist in India since 1861. Even after Independence, it was included in different laws for different crimes and it still remains so. At present as per the law of our country, there are 61 offences for which death penalty can be pronounced. Of this, there are 45 offences which are not related to culpable homicide. There are 22 laws where there is provision for death sentence. As per the Indian Penal Code (IPC), there are 11 cases where death sentence can be pronounced. Further, there are 50 other offences which are not a part of IPC and yet death sentence can be pronounced.<sup>4</sup>

Death sentence has a special appeal in society. People feel that death sentence will rid society of offences and offenders. Time and again this belief comes to the fore very strongly. Like when cases of rape and terrorism are reported, people come to the streets and demand death penalty for the convict. The demand for justice through death actually is a mindset belonging to the Middle Ages.

### Raising Voices against Capital Punishment

Those who believe in a civilised society and value human life oppose such harsh punishments. But in today's time, opposition to capital punishment is also considered as disloyalty towards society. Thus the

<sup>1</sup> [https://en.wikipedia.org/wiki/Reflections\\_on\\_the\\_Guillotine/](https://en.wikipedia.org/wiki/Reflections_on_the_Guillotine/)

<sup>2</sup> <http://www.thehindu.com/2003/09/04/stories/2003090403281000.htm>

<sup>3</sup> The Death Penalty; Report No-262, Law commission of India/ <http://lawcommissionofindia.nic.in/reports/Report262.pdf>

<sup>4</sup> <http://www.deathpenaltyindia.com/death-penalty-in-india/>

Law Commission's recommendation to abolish death penalty at this point in time is very crucial.

It is not that it is witnessing opposition today. Death penalty is being opposed since 1931. Even the constituent assembly had a long debate on it. Human life is precious and the members were concerned about the mistakes that may be committed while delivering justice. Even after Independence, several Members of Parliament raised their concerns in the house and some are still debating on it.

### **Does death sentence help stop crime?**

Supporters of death penalty argue that it helps stop criminal activities. But facts do not prove so. It is not that in all those countries where death sentence has been abolished, crime rate has increased.

There is no statistic to prove that it has helped stop terrorist activities. Pakistan had stopped pronouncing capital punishment for many years, but the ban was withdrawn after the recent terror attack on school children in Peshawar. Within a few months after the incident, 200 people were given death sentence. But terrorist activities have not stopped.

We know well how India's criminal justice system which passes through different stages works. We are all well aware how the police takes the confession of accused, how witnesses are created. How the law has a preconceived notion about the poor, backward, dalits and minority classes. And it does not end there. The fight for justice is very expensive and the poor always lose the case, most of the people getting death sentence belong to this category. Therefore, it is necessary that we give a thought about it.

### **Extracts from the Law Commission's report on death sentence**

The report submitted by the Law Commission under the chairmanship of Justice A.P. Shah has recommended abolition of death sentence in all cases except terrorism. A few special points from the 251 page report<sup>5</sup>-

- The death penalty does not serve the penological goal of deterrence any more than life imprisonment.
- Retribution has an important role to play in punishment. However, it cannot be reduced to vengeance. The notion of "an eye for an eye, tooth for a tooth" has no place in our constitutionally mediated criminal justice system. Capital punishment fails to achieve any constitutionally valid penological goals.
- In focusing on death penalty as the ultimate measure of justice to victims, the restorative and rehabilitative aspects of justice are lost sight of. Reliance on the death penalty diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention and rights of victims of crime.
- The constitutional regulation of capital punishment ... has failed to prevent death sentences from being "arbitrarily and freakishly imposed".
- The exercise of mercy powers ... have failed in acting as the final safeguard against miscarriage of justice in the imposition of the death sentence.
- In retaining and practicing the death penalty, India forms part of a small and ever dwindling group of nations. That 140 countries are now abolitionist in law or in practice, demonstrates that evolving standards of human dignity and decency do not support the death penalty. The international trend towards successful and sustained abolition also confirms that retaining the death penalty is not a requirement for effectively responding to insurgency, terror or violent crime.
- ...by the expanded and deepened contents and horizons of the right to life and strengthened due process requirements in the interactions between the state and the individual, prevailing standards of constitutional morality and human dignity, the Commission feels that time has come for India to move towards abolition of the death penalty.

<sup>5</sup> Law commission of India <http://lawcommissionofindia.nic.in/reports/Report262.pdf>

- Although there is no valid penological justification for treating terrorism differently from other crimes, concern is often raised that abolition of death penalty for terrorism related offences and waging war, will affect national security. However, given the concerns raised by the law makers, the commission does not see any reason to wait any longer to take the first step towards abolition of the death penalty for all offences other than terrorism related offences.
- The Commission accordingly recommends that the death penalty be abolished for all crimes other than terrorism related offences and waging war.
- ...the Commission sincerely hopes that the movement towards absolute abolition will be swift and irreversible.

### The truth behind death penalty

Lets have a look at the process of death penalty and who are those getting death sentence.

“... Who, by and large, are the men whom the gallows swallow? The white-collar criminals and the corporate criminals whose wilful economic and environmental crimes inflict mass deaths or who hire assassins and murder by remote control? Rarely. With a few exceptions, they hardly fear the halter. The feuding villager, heady with country liquor, the striking workers desperate with defeat, the political dissenter and sacrificing liberator intent on changing the social order from satanic misrule, the waifs and strays whom society has hardened by neglect into street toughs, or the poor householder — husband or wife — driven by dire necessity or burst of tantrums — it is this person who is the morning meal of the macabre executioner.

Historically speaking, capital sentence perhaps has a class bias...

- Justice V.R. Krishna Ayer, 1979<sup>6</sup>

Justice V.R. Krishna Ayer's opinion appears to be endorsed by the Death Penalty Research Project. The Head of the Death Penalty Research Project Dr Anoop

Surendranath who is an Assistant Professor at the National Law University in an interview with Outlook<sup>7</sup> said:

“...an overwhelming majority of the convicts on death row are from backward castes, dalits and minorities. Most of them are actually first-time offenders and not habitual offenders as is widely believed. Most of them were convicted on the basis of recoveries arising out of confessions in a police station (such confessions are inadmissible as evidence in a court of law). Over 80 percent of them, I would say, were tortured. And of course virtually all of them are poor...”

It means everything is not right in our criminal justice system and this is being seen in the entire judicial process right from investigation of a case to pronouncing of a sentence. It is a matter of great concern as it is a question of life and death of a person.

It must be noted that once a death penalty is executed, there would be no other means to correct the error. A life once gone goes forever. So it is always better to chose life over death.

### Hiring a lawyer is so expensive, who will defend the case

A research on death penalty states that most of the people given death penalty belong to the economically backward class. They are not in a position to pay high fees charged by the lawyers to fight the case both in the lower and the higher courts. Those who have the means, hire better and renowned lawyers to defend their case. And hence these people mostly do not appear in the list of convicts given death sentence.

A study on the fees of renowned lawyers in India found that these lawyers charge between Rs 75,000-Rs 25 lakh for one appearance/hearing in the Supreme Court. Of them some charge more for appearing in the High Court than in the Supreme Court.

Generally lawyers charge between Rs 50,000-Rs 7 lakh for one hearing in the High Court. It is not easy for the poor to get justice. As they are not able to hire good

<sup>6</sup>As quoted in CONSULTATION PAPER ON CAPITAL PUNISHMENT (page28) , May 2014, Law Commission of India

<sup>7</sup><http://www.livemint.com/Politics/BvOZE6z7Oyl6LiHZxWVlzL/How-much-do-Delhis-top-advocates-charge.html>

lawyers to defend their case, at times the court is unconvinced and pronounces death sentence/ rigorous imprisonment. In the higher courts also, their poverty does not let them have a strong defence.

### **What's happening across the globe?**

Globally, 140 countries have abolished death penalty or have stopped pronouncing such sentences. Except Belarus, all other European countries have abolished death sentence or have put a ban on it. In 98 countries, death penalty has been abolished for all kinds of crimes. In seven countries, death sentence has been abolished for ordinary offences. In 35 other countries, though there is a law on death penalty, it is never pronounced.

There are 58 other countries where death penalty is used, including America, China, Pakistan, Bangladesh, Indonesia and India, although in these countries too people are raising their voices against it.

### **Change in China**

China is known for using death penalty more than any other nation in the world. But it is now working towards abolishing death penalty. In 2011, it abolished death penalty for 13 kinds of offences and this year it abolished death penalty for nine more cases. However, there are still 46 offences in which death penalty is given.<sup>8</sup>

### **Does death sentence have anything to do with masculinity?**

It is generally believed that a death sentence brings justice. Justice which believes in revenge. An eye for an eye, a life for a life, violence for violence is what justice is all about. If you have not been able to take revenge, it means that you do not have the strength to get justice. This concept of justice originated from the age of barbarians. This suited the kings and emperors well. Today, there are neither kings nor emperors and yet this concept of justice is still popular in democratic countries and is a part of our law books.

This punishment depicts violence, strength and power. It means one has been able to take revenge. At times

this mindset works at the individual level and at times across the board. Across the board this justice of revenge is sometimes taken by society, caste or even state. Look at the murder of a few people or incidents of killing. We often get to see that when a murder takes place, the revenge is taken on a particular community or caste. It is said that this is justice. This concept of justice affects the poor and the weak. Revenge is another connotation of masculinity. It is generally considered that if you are not able to take revenge you are not a man. This view of masculinity believes in violent justice.

### **Is this the concept of justice in a civilised society?**

Where is humanity in this justice? In a civil society, the objective of giving punishment is to reform the guilty. The punishment should be such that it helps the convict change into a better human being in the future and be an asset for society. Does death sentence give the convict an opportunity to transform?

### **Sexual assault and death sentence**

A major prerequisite of death sentence is murder, a heinous offence which is not ordinary and the influence of which will remain forever. Is sexual assault the same as death? Does it mean that the victim of sexual assault is dead? Do we feel that victims of sexual assault will never be able to lead a normal life? If it is not so, then why the demand for death sentence for the convicts of sexual assault? It is a crime and the convict should be punished. The trials in the sexual assault cases should be faster and the cases should be resolved soon.

It must be understood that sexual assault cases have not stopped and will not stop despite death sentences being pronounced. Sexual assault cases can be checked only when such cases are solved faster.

In this system of justice, there are certain facts which remain untouched—the survivor and the offender's family members. The family members of the accused include women and children. It is very important to think about them.

<sup>8</sup> <http://www.livelaw.in/chinese-law-makers-votes-for-abolition-of-death-penalty-for-9-more-crimes/>



### **National leaders speaking against death penalty**

Opposition to death sentence is nothing new in this country. This has been worrying our national leaders since a very long time. They have never hesitated to voice their opinion against it. But today, speaking against death penalty is considered as disloyalty towards the state. If those national leaders were alive today and would have again voiced their opinion against death penalty, would they also have been judged as unpatriotic or disloyal towards the country?

### **“They do not support death penalty, are they not men?”**

Often, taking revenge for an offence is associated with masculinity. It is considered justice as well. This theory of revenge is also associated with prestige, the power of masculinity, the authority of men. We can easily notice this in the violence taking place around us. The scripts of our movies are based on revenge. The stories of revenge shown in our movies depict power and authority. The motive behind taking revenge is also associated with masculinity.

But both in India and abroad, many people have opposed this punishment. An Amnesty International<sup>9</sup> report presents the opinion of many people opposing death sentence-

### **Contrary to Ahimsa**

Mahatma Gandhi (The Harijan, 19<sup>th</sup> March, 1937)

“I do regard death sentence as contrary to ahimsa. Only he takes it who gives it. All punishment is repugnant to ahimsa. Under a state a governed according to the principle of ahimsa, therefore, a murderer would be sent to penitentiary and there given a chance of reforming. All crime is a kind of disease and should be treated as such...”

### **I would support the abolition of death sentence**

Dr B.R. Ambedkar, 3<sup>rd</sup> June, 1949, during a debate on death penalty in the Constituent Assembly

“Rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of death sentence itself. That, I think, is the proper course to follow, so that it will end this controversy. After all, this country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.”

### **It is a question of respect for life**

Jay Prakash Narayan, Freedom Fighter

“To my mind, it is ultimately a question of respect for life and human approach to those who commit grievous hurts to others. Death sentence is no remedy for such crimes. A more humane and constructive remedy is to remove the culprit concerned from normal milieu and treat him as a mental case. I am sure a large proportion of the murderers could be weaned away from their path and their mental condition be sufficiently improved to become useful citizens. In a minority of cases, this may not be possible. They may be kept in prison houses till they die a natural death. This may cast a heavier economic burden on society than hanging. But I have no doubt that a humane treatment even of a murderer will enhance man's dignity and make society more human.”

### **Death penalty has served no purpose**

Former Chief Justice Y.V. Chandrachud, 1989

“...I believe that the time is now ripe for asserting that the death penalty ought to be abolished ... It would not be far from right to say that the death penalty neither deters the criminal who is determined to kill, nor does it act as a fear in the mind of a marginal criminal who is always optimistic that he will not be found and if found

<sup>9</sup> Lethal Lottery: The Death Penalty in India ; A study of Supreme Court judgments in death penalty cases 1950-2006 / Amnesty International and PUCL (Tamil Nadu & Pudduchery), 2008

not to be convicted of murder and if so convicted will not be sentenced to death... Since the death penalty has served no purpose, neither logic nor experience would justify its continuance on the statute book... The death sentence ... must be discarded once and for all.”

**It is impossible to eliminate the chance of judicial murder...**

Justice P.N. Bhagwati, while pronouncing the judgement in the Bachan Singh vs State of Punjab case, 1982

“It is, therefore, obvious that when a judge is called upon to exercise his discretion as to whether the accused shall be killed or shall be permitted to live, his conclusion would depend to a large extent on his approach and attitude, his predilections and preconceptions, his value system and social philosophy and his response to the evolving norms of decency and newly developing concepts and ideas in penological jurisprudence...”

“...The views of judges as to what may be regarded as special reasons are bound to differ from judge to judge depending upon his value system and social philosophy with the result that whether a person shall live or die depends very much upon the composition of the Bench which tries his case and this renders the imposition of death penalty arbitrary and capricious...”

“... However careful may be the safeguards erected by the law before death penalty can be imposed, it is impossible to eliminate the chance of judicial murder...”

**Conclusion**

Human life is precious. The right to life is above everything else. It is fundamental, it is natural. It is the birth right of every human being. No one has the right to take it away from someone and the law should not at all be given this right and especially in a country which believes in constitutional democracy. A human life is priceless. If you are committing a murder, killing someone, it is a crime. But legal sanction to kill someone for the offence is also wrong.

Will this not help continue the cycle of violence?

Today we raise slogans to save ourselves from the slogans of death (murdabad)

We raise slogans of life (zindabad), which means let life continue even of our opponents. It is violation of human rights to raise slogans of death (murdabad) even for our opponents. It is violation of human rights.

So let's raise slogans of life. Zindagi Zindabaad!

Long Live! ... Long Live!!... Life, Long Live!!!

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