



Death Penalty: Should it exist or not?

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MAN, a social animal by instinct, loses sociality at times and is reduced to an animal. This man under normal circumstances is supposed to be reasonable and prudent, which Tagore considered as belonging to a place where the clear stream of reason has not lost its way into the dreary desert sand of dead habit. This dead habit or rather the deviation of the

The only way to destroy the criminal is by reforming the man who is a criminal. To destroy his bodily life is nothing but a stupid blunder.

Through the nineteenth and the twentieth century, more and more crimes were removed from the purview of capital punishment, not only in Britain but across the whole of Europe, until today when only a few countries retain capital punishment. At the end of 2004, 120 countries have abolished the death penalty in law or practice. Turkey prohibited death

for evil.

Death Penalty is irrevocable. This irrevocability has made it a sin for some counts:

1. The possibility of error: Sometimes an innocent person might be put to death. In a country like U.S.A in 2004, six prisoners were released after it emerged that they were innocent of the crime for which they were sentenced to death. In Bangladesh also there is an incident of framing offence of death penalty against

penalty and this incompetence is making capital punishment a moral disgrace. It is well within the power of existing governments to provide means whereby murderers, as well as other criminals, can be isolated in institutions where they can be humanely treated as patients or people of unsound mind. And this must be made part of a general campaign of educative and remedial treatment of crime outside prison walls. Otherwise prisons will be, what they too often are, places for disposing of the materials which we manufacture outside. This process of first carefully manufacturing criminals and then killing them is an insult to our intelligence and culture.

The world is passing through a crucial stage and the newborn spirit of a kindly intelligence is struggling for manifestation. A new law of human life has been impressed upon us and is superseding the old ideas that served us provisionally in the past. The essence of this law is mercy, brotherhood.

Abolitionists often quote Jesus' treatment of the adulteress in the Gospel of John as support for their position. When a woman had been sentenced to death by stoning, Jesus used a clever ploy to gain her freedom. On many occasions, Jesus taught about forgiveness people who have wronged you. All the noble and pious men of all ages are again vindictive treatment. The holy prophet of Islam also taught us forgiving and sympathy. Gautam Buddha to Rama, all have sung the triumph of humanity and rejected vengeance.

Now comes the brutality of the execution of the death penalty. The traditional mode of execution, still available in a few states, is hanging. Here is an account of the 1992 execution in Arizona of Don Harding, as reported in the dissent by U. S.

Supreme Court Justice John Paul Stevens on an incident of death penalty by electrocution: "When the fumes enveloped Don's head he took a quick breath. A few seconds later he again looked in my direction. His face was red and contorted as if he were attempting to fight through tremendous pain. His mouth was pursed shut and his jaw was clenched tight. Don then took several more quick gulps of the fumes.

"At this point Don's body started convulsing violently...His face and body fumed a deep red and the veins in his temple and neck began to bulge until I thought they might explode. "After about a minute Don's face leaned partially forward, but he was still conscious. Every few seconds he continued to gulp in. He was shuddering uncontrollably and his body was racked with spasms. His head continued to snap back. His hands were clenched.

"After several more gulps, the

most violent of the convulsions subsided. At this time the muscles along Don's left arm and back began twitching in a wavelike motion under his skin. Spittle drooled from his mouth."

More than two centuries ago, the Italian jurist Cesare Beccaria in his highly influential treatise *On Crimes and Punishments* (1764), aptly asserted: "The death penalty cannot be useful, because of the example of barbarity it gives men." True, and even if the death penalty were a "useful" deterrent, it would still be an "example of barbarity."

It is also often argued that death is what murderers deserve, and that those who oppose the death penalty violate the fundamental principle that criminals should be punished according to their deserts--"making the punishment fit the crime." If this principle is understood to require that punishments are unjust unless they are like the crime itself, then the principle is unacceptable. It would require us to rape rapists, torture torturers, and inflict other horrible and degrading punishments on offenders. It would require us to betray traitors and kill multiple murderers again and again, punishments impossible to inflict. Some whose love one was a murder victim believe that they cannot rest until the murderer is executed. But the feeling is by no means universal. Kerry Kennedy, daughter of the slain Senator Robert Kennedy, has written: "I was eight years old when my father was murdered. It is almost impossible to describe the pain of losing a parent to a senseless murder... But even as a child one thing was clear to me: I didn't want the killer, in turn, to be killed. I remember lying in bed and praying, 'Please, God. Please don't take his life, too.' I saw nothing that could be accomplished in the loss of one life being answered with the loss of another."

The vast preponderance of the

evidence shows that the death penalty is no more effective than imprisonment in deterring murder and that it may even be an incitement to criminal violence in certain cases. In U.S.A death penalty states as a group do not have lower rates of criminal homicide than non-death penalty states. During the 1980s, death penalty states averaged an annual rate of 7.5 criminal homicides per 100,000 of population; abolition states averaged a rate of 7.4.

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penalty: In 1975, only a year before the Supreme Court affirmed the constitutionality of capital punishment, two African-American men in Florida, Freddie Pitts and Wilbert Lee, were released from prison after twelve years awaiting execution for the murder of two white men. Their convictions were the result of coerced confessions, erroneous testimony of an alleged eyewitness, and incompetent defense counsel. Had their execution not been stayed while the constitutional status of the death penalty was argued in the courts, these two innocent men probably would not be alive today.

Overzealous prosecution, mistaken or perjured testimony, faulty police work, coerced confessions, the defendant's previous criminal record, inept defense counsel, seemingly conclusive circumstantial evidence, community pressure for a conviction -- such factors help explain why the judicial system cannot guarantee that justice will never miscarried. That's why the blunders' list is long.

Despite all of these negative sides, those who consider death penalty as the most effective source for evicting crimes, can take into account the example of Canada. In Canada homicide rate has dropped by 27 percent since the death penalty was abolished in that country (for ordinary crimes) in 1976.

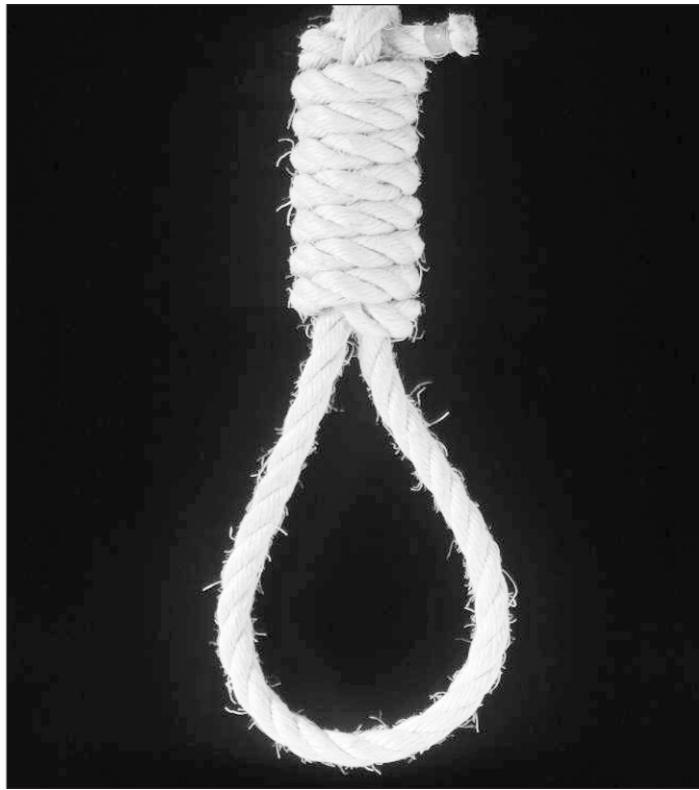
Now the moot question comes: should the death penalty exist? In the present social background of India and Bangladesh, the answer from majority of people will come as "no". In Bangladesh in 2004, 120 people were sentenced to death. Amnesty expressed grave concern on this huge death penalty. But people of Bangladesh and India are too disturbed by the ongoing anarchy by the criminals, so perhaps it would not be a pragmatic approach to abolish death penalty completely. In Bangladesh the random killing of criminals by RAB is gaining support from the public even though it is unconstitutional, not to talk about what will be the attitude of the people if the point of abolition of death penalty comes.

It is true that there are some severe barbaric cases like Sihab murder case, and in these cases if culprits would have not been given death penalty public opinion would surely go against the judgments. Those who don't want the death penalty in the civilized countries must have to face the question -- should those persons deserve to exist in the civilized society who can commit heinous crime like what happened with Rahela in Savar? (The woman was raped, her spinal cord was cut off).

But what about the offenders who

first commit crime just for survival, or being provoked by the politicians?

How long will it be working as an ultimate solution to kill criminals without killing the reasons of the criminality? Has U.S.A succeed to



secure the peace in society by giving huge death penalty? If rape, murder still subsist there then can we succeed to have security by imposing death penalty one after another? In this

respect our judiciary can follow the cases of Indian courts: The Hon'ble Supreme Court of India in the case of Bachhan Singh defined the term "rarest of the rare cases". However in this very case Justice Bhagwati who wrote the dissenting opinion declared that the capital punishment is unconstitutional in nature but he concurred as far as the decision was concerned in the rarest of the rare cases.

Justice Bhagwati in the aforesaid case further reiterated that all the capital punishment sentences should automatically go to the Supreme Court for review. In Clause I of the Supreme Court's verdict in Macchi Singh vs State of Punjab (1983), the

Supreme Court explained what manner of commission of murder could be described as one in the rarest of rare category. It said: "When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community." For instance, the court said, when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner, then it could be said that the murder was committed in an extremely brutal manner.

In Clause V of the judgment in the Macchi Singh case, the Supreme Court dealt with the personality of the victim, to reach the conclusion whether the case was in the 'rarest of rare' category. In Bachhan Singh vs State of Punjab (2002), the Supreme Court

suggested that there be evidence to show that the convicts would be a menace and threat to the harmonious and peaceful coexistence of society.

Not only in delivering judgement in respect of death penalty, but also we have to make reform in another aspect before taking a reluctant step towards death penalty. There are four countries who have reintroduced death penalty again. Before forwarding to abolish death penalty to a great extent, prison system has to be made effective with accurate reformatory sectors. And the root causes like poverty, mental discord, dirty politics etc -- creating the criminals -- have to be taken into consideration with a far-reaching social programme. Otherwise if we abolish death penalty it will be of no use, in other words if we cling to death penalty, it will also go to create no output.

Hence ultimately we conclude saying that we have for long languished in the labyrinth of latches loop holding the locks laboriously, looked after by the lackluster logic of lost luck. Let's break free from where our mind fearfully starts restraining us from thinking beyond the obvious -- "By freak of fortune or fallacy of fate, circumstances sue people and give destiny a date."

Let not man, the child of destiny, be left to be preyed upon by the voracious judicial discretion of a mere mortal. "Life is pleasant, death is peaceful. It's the transition, which is troublesome."

But for a person who was executed, neither was the life pleasant, nor the death peaceful, what to talk of the transition!

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human behaviour, from the prescribed standards, is justifiable to some extent in the case of an individual but as far as the State's behaviour is concerned, it cannot be allowed under any stretch of imagination to be in any manner not conducive to justice. This justice according to the Aristotelian definition is virtue in action, but this very concept stands shattered if the state is going to punish with vengeance. The purpose of the state towards punishing a convict is not to take revenge but measures corrective in nature.

Death penalty is a barbarous legacy from a less enlightened and less refined age; it is incongruous and incompatible with our present standard of civilization and humanity. Punishment is supposed to be for the protection of society, and for the reformation of the wrongdoer. As to the reformative character of punishment, it is scarcely necessary to point out that capital punishment effectually removes all possibility of this by cutting short the life of the wrongdoer and thus taking away both his chance of reform and our opportunity of discharging the duty of reforming him. As a weaker brother, who has fallen through causes that are inherent in our social structure, and for which we are all more or less responsible, he should claim our care and protection.

penalty in its Constitution in 2004, as did Belgium, Ireland and Turkmenistan are in the same path. 85 countries have abolished the death penalty for crimes. 11 countries have abolished the death penalty for all but exceptional ones. 24 countries can be considered abolitionist in practice. The world wide trend is in favour of abolition of death penalty.

There are also some rational reasons motivating opinion for abolition of death penalty. Firstly, love is unconditional. It is persistent in seeking the good of others regardless of whether they return the favour or even deserve to be treated well on the basis of their own incessant wrongdoing. An ideal community would be made up of free and equal citizens devoted to a balance between individual self-fulfilment and the advancement of the common good. Everyone would contribute to the best of ability and each would receive in accordance with legitimate claims to available resources. What would a community base on this kind of love to do with those who committed brutal acts of terror, violence, and murder? Put negatively, it would not live by the philosophy of "an eye for an eye, a tooth for a tooth, and a life for a life." Rather an ideal community would show mercy even to those who had shown no mercy. It would return good

innocent for revenge by the Police. Who knows how many have to spare their life for this erroneous legal system existing in the sub-continent?

2. Unfair administration: Capital punishment is inflicted disproportionately on the poor and minorities. Poor people are incapable of defending themselves. Recently World Bank representative has aptly termed Bangladeshi justice system anti-poor. Is there any statistic on how many people have faced death penalty just because they are poor for this anti-poverty system?

3. Weakness of the argument from

deterrence: The most recent survey of research finding on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002 concluded "It is not prudent to accept the hypothesis that capital punishment deters murder to marginally greater extent than does the threat and application of supposedly lesser punishment of life imprisonment."

4. The length of stay on death row:

If there were ever any validity to the

deterrence argument, it is negated by the endless appeals, delays, technicalities, and retrials that keep persons condemned to death waiting for execution for years on end.

The conclusion of the matter is that

we are incompetent to execute death

penalty.

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RIGHTS investigation



Lunatic prisoners: A judicial reply

HUSSAIN M FAZLUL BARI

It was found that forty mentally handicapped persons are detained in Sylhet jail as per AIN O Salish Kendro(ASK). Out of them, at least twelve are languishing in prison for a continuous period of more than a decade. The number of mentally handicapped persons in Sylhet prison indicates that number of such persons detained in various prisons all over the country will amount to hundreds.

ASK investigation reveals the tragic story of one Fazlu Mia that on 11-07-1993 traffic sergeant Zakir Hussain brought mentally handicapped persons to Kotwali Police Station stating that said Fazlu Mia was moving frequently and disturbing general people. He was then arrested under section 54 of the code of criminal procedure, 1898. Following the police report, he was sent to custody. The medical officer of jail informed the court that Fazlu Mia was suffering from mental disease of schizophrenia. Since 11-07-93, Fazlu Mia is in jail and police could not find out his relatives to hand him over. Considering his ill mental condition and detention in jail, the court directed the Department of Social Welfare to take necessary steps for rehabilitation of Fazlu Mia, but department took no step in

this regard. Again, directed by the court, the Sylhet jail super sent him to Pabna Mental Hospital where he received letter medical treatment. He was again returned to Sylhet jail. Since then no action has yet been taken for his treatment and rehabilitation and