



Is it time to abolish the death penalty?

Posted at: 14/12/2018

Is it time to abolish the death penalty?-The death penalty is error-ridden, arbitrarily imposed and unfairly targets the poor

- As a punishment, the death penalty makes no sense: how does killing a person who has killed a person show that killing is wrong.
- Most of the civilised world has abolished it.
- India certainly does not need it as it serves no purpose.
- No study has shown that the death penalty deters murder more than life imprisonment.
- For deterrence to work, the severity of the punishment has to coexist with the certainty and swiftness of the punishment.

Problems with death penalty

- The death penalty is error-ridden. The death penalty unfairly targets the poor and marginalised.
- Those without capital get the punishment. Penurious prisoners on legal aid get it the most, while others with private lawyers remain untouched.
- Abolishing the death penalty will ease, not enhance, the tax-payer's burden.

A safer country

- India's murder rate has declined continuously since 1991 and is at present the lowest in our recorded history except for 1963.
- Studies show that a more equal sex ratio has more to do with declining murder rates than killing murderers. Nobody wants to undergo the trauma of administering the death penalty
- Governments kill prisoners to show that they are tough on crime. There is nothing muscular or tough about killing a man who is at your mercy.

Life can only be seen to be protected if those who take it away are proportionately punished

- The death penalty has been criticised for far too long without an understanding of its nuances.
- It is criticised mainly on three counts: arbitrariness, irreversibility and human rights.
- Its constitutionality has not only been upheld in India but also in the bastion of liberal democracy that is the U.S.
- The retention of the death penalty is not a reflection of “uncivilised” polity in theocratic states that have come to be defined by violence but a creation of the individual geopolitical circumstances of each state.

Geopolitical circumstances

- The Law Commission of India has attempted to analyse the need for the death penalty on two separate occasions.
- While the 35th Report 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 for the first 240 pages.
- The exception to abolition came in cases of terror. As noted by the 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.

Rarest of rare cases only

- The death penalty is also often criticised on its practical implementation.
- Some argue that it is arbitrarily meted out and others find its irreversibility repugnant.
- However, both these sets of criticisms are reflections of bad syllogism.

The SC will have to answer whether absence of political will is sufficient to override the right to life

- The moral foundation of judicial killing has been questioned and it has been judged untenable in many countries.
- 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. Only a few political parties have demanded the abolition of the death penalty in India, including the Communist parties and the DMK.

- B.R. Ambedkar, in the Constituent Assembly debates, opposed it on the principle of non-violence.

Constitutional scepticism

- In 1962, the Law Commission supported the death penalty stating that India's particular circumstances were such that it could not "experiment" with its abolition.
- In 1991, the Supreme Court cited its use in defending law and order as the reason for its continuance.
- That said, India has looked to the judicial administration of death with greater constitutional scepticism.
- In 1980, in *Bachan Singh v. State of Punjab*, a Constitution Bench articulated the "rarest of rare" threshold stating that "judges should never be bloodthirsty".

Problems in implementation

- Implementation of the death penalty has also been deeply problematic. As the recent Death Penalty India Report by the National Law University, Delhi, indicates, the structural flaws in our criminal procedure and criminal justice system are most pronounced in death penalty cases.
- Due to biases in criminal investigations, the marginalised — whether by religious and caste denominations, or class — are disproportionately subject to the death penalty.
- And delays in the criminal justice system disproportionately affect those who suffer the tyranny of the uncertainty of their life.
- India also retains the death penalty as an option for non-homicide offences where the instrumentality argument is the most attenuated.
- In 2015, the Law Commission called for abolition of the death penalty for ordinary crimes, and activists continue to argue for abolishing it altogether.