

DEATH PENALTY—An Affront to Human Dignity

The Indian Constitution protects the right to life enshrined in Article 21, but for long the death penalty is being awarded by the Law courts unaware of the trauma and mental torture every awardee undergoes till he is executed.

Even Section 302 of Indian Penal Code provides for punishment upto death to the convict. In 1999 the Union government proposed for extending the death penalty for the crime of rape— a proposal that drew country wide criticism. Although the apex Law Court of India, Supreme Court of India has held on many occasions that death penalty can only be awarded in the “rarest of rare cases”, yet the number of persons being brought in this category is indeed depressing. The apex court falling prey to its human tendencies have, in many cases, extended the limitation of “rarest of rare case” and awarded the most inhuman punishment of death penalty even to such cases where only one political leader was killed, but took a lenient view in cases where many persons of a particular religious community were burnt alive in riots case and commuted the death sentence to that of life imprisonment.

On the one hand, we worship the father of the nation, Mahatama Gandhi for his principle of ahimsa, but on the other hand, have simply forgotten that he gave us the golden rule of humanity, “Hate the sin, not the sinner !” When we hear about a murderer, rarely do we understand what drove him to murder; more often we wish to kill him. The feeling toward a murderer, which drives us to champion execution, is identical to the wish for revenge the murderer feels for what he believes to be the horrendous injustice in his life. We feel as murderous towards him as he do toward those he had killed. This makes a murderer, if he is imprisoned, even more murderous. Just as the murderer’s murder accomplishes nothing, so too the death penalty has not in any way succeeded in preventing crime.

In plain words, if I have to define the curse of death penalty, I would say, it is a murder by the State. It certainly adds judicial murders to social murders. No Law or custom, for that matter can justify the uncivilized rule— Blood for Blood ! Any country which still carry out such punishment are condemned as medieval. If a pre-meditated,planned murder shocks us for its cold-blooded cruelty, because of its intentional taking away of someone’s life which can never be given back. Is not judicial execution more shocking—since it is the most pre-meditated,planned and cold blooded taking of life than can ever be ? Any Law or judicial pronouncement which justifies the awarding of death sentence must and should be condemned and society’s role in opposing such act takes the center stage. Each member of the intelligensia must come forward and express their concern that death penalty is not only contrary to justice, but also contrary to the law as well. It needs to be borne in mind that in one case the Supreme Court says that a sentence of death should not be given as a rule but only in exceptional cases and in another case, it does not feel hesitant to treat it as an exceptional case, without applying its mind toward the human psychology, his feelings and emotions. In the case of Kehar Singh and Satwant Singh, the alleged assassin of the former Prime

Minister Indira Gandhi, the Supreme Court became a party to the political vendetta or social hysteria and saw the two accused as enemy of the deceased leader of the country and without any whims or reason ordered them to be hanged till death ! Many in India feel that Kehar Singh, and Satwant Singh were wrongly convicted and hanged. A day may come when the Supreme Court too regrets its confirmation of Kehar Singh's death sentence. But can it then give back Kehar Singh his life ? Why then persist with this pretence of infallibility which is assumed by the courts when they sentence people to death ? Be it as it may, but why did they decide to distinguish the same crime if committed by Kishori, the person who burnt alive four members of a Sikh family in the anti-sikh riots in New Delhi, and commuted his death sentence to that of life imprisonment. Was the life of those four sikhs less valuable than that of Indira Gandhi ? If the dastardly act of burning alive four innocent people can be brought out of the category of "rarest of rare case" as they call it, Why can't the apex court take such a view in all cases of murder ? A sane penal system must look at these conditions rather than to increase the weight of punishment to reduce the incidence of crime. The policy adopted by the Law courts in the country have brutalise the judicial system solving the problem of crime.

One thing we all must bear in mind that no punishment can act as a deterrent for the criminal. With the passage of time, it has been shown that the deterrent theory is not only outdated but without basis in a civilized society like ours. Had the punishment of death a deterrent, then the number of murders and serious crimes ought to have come down. Yet such number have not come down. To the contrary it is on the rise. Further, if justice means redressal of a wrong and not revenge, can the taking of a life be the answer for taking another's life ? Deterrence also means,"setting an example" so that others will not repeat the same crime. Is that ethically justifiable ? If A has committed a crime, he must be punished for that crime. But is it permissible to punish X so as to set an example that will deter Y or Z from committing a similar crime in the future ? How can justice hold me responsible for what others may choose to do tomorrow ? Thus, the deterrence function of death penalty is surely not an argument in its favor. In fact, it is wholly unjust to regard a criminal as a born inhuman. The propounders of reformist theory have a solid argument. It is possible that by keeping a person alive and his conscience haunting him every minute of the wrong done by him, he can be cured and his criminal state of mind is reformed enabling him to become a law-abiding citizen and lead a normal life. But killing a human being in a most gruesome fashion in public gaze, lower our eyes in shame, every time a human being is hanged. To think otherwise, is only to brutalize the system of justice, which should be humane and never brutal.

To conclude, I must say that we Indians love to regard ourselves as the most civilized country in the world in terms of humane and spiritual values. Can then we continue to hang people in the name of justice when nearly a quarter of the world has already stopped doing so ? So, for the sake of civilization, we all must strive for doing away of death penalty from the Statute books, leaving life imprisonment as the maximum punishment for any crime. Let KARUNA always prevail upon every Judge while awarding sentence to the accused.