

## Death Penalty: Why Not India Join The Global Mainstream?

(Date of publication not known)

**K. Balagopal**

The President of India<sup>1</sup> is believed to be a political novice, and his political acts have been understood as such. For instance, a more artful person than he would not have allowed himself to get implicated without protest in the Bihar Assembly dissolution mess. Likewise his recent recommendation on clemency petitions of death-row convicts pending with his office may be construed as proof that he is also a novice in the exercise of executive powers. Otherwise, it would seem, he would not have so guilelessly recommended commutation of the Death Penalty in all the 50 applications.

Novice or not, he has done a good thing by rekindling the debate on Death Penalty, that too by the positive act of recommending clemency. The Press has reported his statement at some gathering that he has found that only the poor are getting hanged. That is indeed one of the many reasons why complete abolition of the Death Penalty is sought by human rights activists, though poor may not be the exact word for it. Those who are on the margins of the economy, the society and polity -- the poor, the socially disadvantaged and those politically beyond the pale -- are the ones who get the extreme punishment. It is not that the crimes they are hanged for are never heinous. They may well be. But others who commit equally heinous crimes manage to avoid the hangman, indeed any punishment at all, to an extent disproportionate with their proclivity for crime. It need not be that judges let them off willfully: it is the way justice works. It works not only through the abstractions of law and the solemnity of evidence. It works also through society and its political, economic and social structures.

What will happen to the President's recommendation is to be seen. One of the grey areas of Constitutional interpretation is whether the President, while exercising the sovereign's power of clemency, is bound by the opinion of the Union Cabinet as he is in the exercise of less exalted executive powers. It depends on the relative obduracy of the Union Cabinet and the Presidential conscience whether this issue is going to be settled now.

That Death Penalty is objectionable, among other things, because it reeks of revenge is a well known argument. It is not that the desire for revenge is necessarily inhuman, for we all know of situations where we sympathise with that desire in victims of injustice. Yet it is found objectionable as a guiding principle of penal justice because revenge, even when

---

<sup>1</sup> A.P.J Abdul Kalam. President of India from 2002 to 2007

understandable, is believed to be a reaction born of weakness, whereas justice rendered by society organised as a civilised entity is expected to eschew human weakness.

But in at least two of the cases pending with the President, even the principle of revenge does not require that those on death row be hanged, for the revenge was had at the time of the offence itself. Dhanu who blew up Rajiv Gandhi blew herself up along with him, and the five militants who attacked Parliament died in the shootout that followed. Even revenge should not require that their associates be hanged.

If criticism of the principle of revenge -- called retribution in polite talk, namely jurisprudence -- did not get us hot under the collar, we would be able to see an anomaly in the usual equation made by popular morality: when he has killed, what is wrong in killing him in turn? Nobody would say: if he has burnt another's house why should not the law burn his house? If he has broken another's leg, why should not the law, in cold blood, aim a rod at the middle of his leg and break it into two? The alternative of keeping the offender out of society's way for a time calculated to render him contrite is deemed sufficient punishment in such offences, at least by those who regard themselves as modern. How are murder and treason so different that they require recourse to the archaic moral equation? But more is wrong with this moral equation than that it is archaic. It places the totality of the moral guilt on the offender, which is never fair, even in extreme cases such as Dhananjoy Chatterjee's<sup>2</sup>. Every one of us is a little guilty of the cruelty of the Dhananjays of the world, and hanging them is one way of evading that fact.

But the President has a very contemporary argument in his defence. These days we Indians wish to be global, and not live outdated autarchic lives. Well, the majority of the countries of the world are no longer imposing the Death Penalty. Some have banished it from the law, some have suspended it for extended periods, and some have confined it to war-related offences. It is true that the strong anti-democratic currents sweeping the world after 11 September 2001 have put pressure on these countries to reverse the trend, but as of now the pressure has on the whole not succeeded. Would India not like to go global in this area, join the global mainstream? Or do we wish to transport into this realm too the equation we have tacitly accepted in international politics: global means the US, in which case there is no hope for those on death row, for the US is next only to China in the gruesome frequency of the recourse to the Death Penalty.

---

<sup>2</sup> Security guard who was executed by hanging on August 14, 2004 at Alipore Central Jail, Kolkata for the rape and murder of 14 year-old Hetal Parekh on March 5, 1990