

[Capital Punishment: Time to Abandon It?](#)

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ANALYSIS

Capital Punishment: Time to Abandon It?

Execution is inherently inhumane, unfairly applied and ineffective in deterring crime

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According to amnesty international's briefing for the European Union and India Summit on September 7, 2005, 120 countries have abolished the death penalty in law or practice. Some of the countries that have repealed it for all crimes are Australia, Canada, South Africa, Venezuela, New Zealand, Mauritius and the 25 countries of the European Union. India is among 76 countries that retain the death penalty. Amnesty International's annual report on official judicial execution states that in 2004 there were 3,797 executions in 25 countries. The People's Republic of China was the most prolific executioner of the world, carrying out more than 3,400 executions. This was followed by Iran (159), Vietnam (64), USA (59) and Saudi Arabia (35).

Methods of execution in the modern era include hanging, stoning, beheading, shooting, electrocution and, more recently, lethal injection. Many countries retain hanging as the standard mode, notably India, Pakistan, Malaysia, Japan, Singapore and Egypt. Some nations use firing squads, either exclusively or for certain classes of crime or criminal. For instance, in Egypt and India military personnel are shot, while civilians are hanged. Six countries stone condemned criminals to death. Beheading is used in Congo, the United Arab Emirates and in Saudi Arabia, where 35 men and one woman were publicly beheaded in 2004. Five countries use lethal injection. It is the most popular mode in the United States, accounting for 58 of 59 executions in 2004.

The death penalty can be found in human society as far back as history can reveal. It is present in India's ancient scriptural epics, the Ramayana and Mahabharata, as well as in the laws of ancient Egypt. The earliest written version is the 18th century bce code of King Hammurabi of Babylon. Numerous crimes in these ancient codes called for death. In the 7th century bce, the Draconian Code of Athens made every crime punishable by death--hence the term draconian, meaning extremely harsh. Every ancient religion endorsed capital punishment, with at least the exception of Jainism and Buddhism, though rulers of both religions were known to have executed criminals.

Today there is a vigorous international debate over the death penalty. On one side are the "abolitionists, " who want to eliminate it; on the other are the "retentionists, " who want to keep it. Abolitionists, of which I am one, focus on the issues of morality, effectiveness and fairness in application. Retentionists assert that deterrence and retribution justify the continued use of capital punishment across the world. In my opinion, their position is fraught with the dangers of undermining the cherished values and principles of a civilized society. It would be worthwhile to delve deeper and assess the ground realities, beginning with the most common rationale for the death penalty, that it deters others from committing crime.

Evaluating the deterrence rationale: There is a lack of convincing evidence to indicate that the death penalty deters crime more effectively than other punishments. A study conducted for the United Nations concludes, "It is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment." Statistics show that countries without the death penalty have a lower murder rate than those with it. For example, the murder rates in Germany, Britain, Italy, France, Netherlands and Sweden are less than two per 100,000 people per year, whereas the rate in the US is 6.3. In Canada, the murder rate has fallen 23 percent since the death penalty was abolished in 1976. The Canadian statistic supports the contention that abolishing the death penalty can lower the homicide rate rather than increase it.

The US experience is instructive. In 1972, the Supreme Court banned the death penalty. Five years later, the court reinstated it, with certain conditions. Many states thereupon reintroduced the death penalty on the rationale that it deters violent crime. However, there is no conclusive statistical evidence that states with the death penalty have lower rates of homicide than those without it. One US-based nonprofit organization, the Death Penalty Information Centre (<http://www.deathpenaltyinfo.org>) claims that states without the death penalty have

lower murder rates than states where executions take place. But this statistic, even if true, would not take into account the unique demographics of various states, such as a lower poverty rate, which could account for the lower murder rate.

Why would the death penalty not decrease the murder rate? W.T. McGrath wrote in his 1956 book *Should Canada Abolish the Gallows and the Lash?*: "Murderers might be classified arbitrarily into three groups--the insane killer, the person who strikes in a moment of blind fury, and the deliberate killer who murders for gain. Which of these three will be deterred by the possible consequences of his crime? Obviously not the insane killer who is living in a world of his own. Surely not the impulsive killer who is in the grip of a passion he cannot control. Surely not the deliberate killer, who has based his decision to kill on considerations of profit and loss; life in prison would make it an unprofitable transaction indeed. He does not expect to be caught." Logic reasons that rational people will be deterred from murder because of the existence of the death penalty, but since most murders are unplanned, a logical analysis is not feasible.

China is the world's record executioner, imposing the death penalty for 68 crimes, including murder, rape, drug trafficking, pimping, habitual theft, re-selling of VAT receipts (a form of tax evasion), stealing or dealing in national treasures or cultural relics, publishing pornography, selling counterfeit money and economic offences such as graft, speculation and profiteering. Even killing a panda, the national animal, is a capital offense.

China considers information regarding the death penalty a state secret, and a realistic estimate of the judicial carnage is not divulged by the communist regime. Amnesty International (<http://www.amnestyusa.org/abolish>) is the only organization that systematically monitors and records executions and death sentences in China. Its annual death-penalty log revealed that China sentenced at least 3,152 people to death and executed more than 1,876 during 1997. These figures represent a drop from 1996, at the peak of the "Strike Hard " anti-crime campaign, but are comparable to figures for the previous three years. Amnesty International stated, "1996 was an exceptionally high year for executions, and 1997 just marks a return to the level before then." It concluded that the sharp increase in the number of executions in 1996 did not in any way deter crime rates.

In spite of the profusion of executions, the crime rate in China has shown an increase in recent years. Violent crimes, such as murder and robbery and crimes

associated with gangs abroad, such as trafficking in narcotics, smuggling of gold and relics, and counterfeiting of currency and credit cards, have multiplied. In 1997, the Special Rapporteur for the United Nations on extra-judicial, summary and arbitrary executions stated, "The death penalty is not an appropriate tool to fight the growing crime rate in China."

Rather than deterring crime, there is evidence that capital punishment actually increases the murder rate. The most dramatic is from a study done by Bowers and Pierce in New York State, examining the period between 1907 and 1963, when the state carried out more executions than any other state. It was revealed that there were, on average, two additional homicides above the normal rate in the month after an execution. They surmised that this periodic rise in homicides might be due to a "brutalizing " effect of executions, similar to the effect of other violent events, like publicized suicides, mass murders and assassinations. One researcher concluded there to be a penchant of persons with criminal tendencies to commit a crime with the intent of getting executed. Playwright George Bernard Shaw observed, "Murder and capital punishment are not opposites that cancel one another, but similars that breed their kind." In a poll conducted by the Journal of Criminal Law and Criminology, more than 80 percent of professional criminologists interviewed were of the opinion that capital punishment does not lower murder rates.

The abolitionist view: In addition to contending that the death penalty does not, in fact, reduce the crime rate, those opposed to it cite several other ethical and practical issues. There is, for example, the fallibility of the judicial system. Death penalty trials are prone to errors, and the possibility of sending an innocent man to the gallows is always lurking in the background. Forensic DNA evidence was a boon to prosecutors in trying and convicting criminals. But at the same time, DNA evidence has in the last 30 years proven 107 people innocent of the crime for which they were sent to death row in the US. Several of the India-based saints interviewed for this article [see sidebar below] complained that the justice system in India is highly corrupt, and one can bribe one's way out of even murder charges.

Then there are the astounding costs of death penalty cases, at least as prosecuted in Western countries. According to a study of North Carolina State, a murder case costs us\$2.16 million more with a death penalty than with a sentence of life imprisonment. This includes all the expenses from trial through appeals and execution compared to incarceration for 40 years. It is estimated that the death penalty costs the US justice system an extra one billion dollars a year.

Though the constitution of each nation guarantees equality before the law, several studies reveal that discrimination and procedural unfairness in death-penalty cases are epidemic. Ethnic and religious minorities, the unprivileged, disempowered poor and less-educated are more likely to be convicted and sentenced to death. Studies in the US reveal that 95% of death-row inmates are classified poor, and a disproportionate number are from minority groups. For example, in Texas, of 400 people currently on death row, 31% are white, 41% black, 27% Hispanic and one percent "other." The state's population is 50% white, 12% black and 34% Hispanic.

Abolitionists hold that the death penalty is a violation of human rights and an outrage to the intrinsic worth and sacredness of human life. The Universal Declaration of Human Rights directs, "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment "--though neither the Declaration nor the subsequent binding covenants based upon it actually forbid the death penalty in every circumstance (e.g., treason in time of war). Not only is the death penalty a human rights violation, but the biased manner in which it is applied is a clear violation of the dignity of persons. It is time we strive to transcend the gruesome history of capital punishment and face the daunting challenge of providing basic human rights to all, irrespective of social or economic status and class distinctions. The European Union strongly considers the death penalty a "denial of human dignity " and is of the opinion "that the abolition of the death penalty contributes to the progressive development of human rights." The basic human rights philosophy is universal, based on human values and a spiritual essence that is common to all religions. Hinduism emphasizes that "All humanity is one family " and urges us to treat every member of the family with due respect and dignity. The theory of uncompromising human dignity echoes in the splendid expression of Ramakrishna Paramahansa, "Each soul is potentially divine."

Conclusion: Crime changes its contours with the passage of time, and the evolution of the culture from which it emerges. As society progresses rapidly, the concept of criminality and punishment also undergoes a change. The arbitrariness of a particular punishment is further highlighted when measured in terms of evolving standards of human decency. We should not allow the burden of our past to weigh us down. We must make an earnest attempt to recognize that we need to infuse fresh laws, ideals and beliefs to replace an obsolete mode of punishment which is not worthy of a humane society. The Hindu lawgiver Manu said that laws would change with the maturity of the human race (See Manu Dharmashastras 1.85 on the changing duties of man through the yugas).

Before we decide to unflinchingly extinguish the flame of another human life, it

would further the cause of mankind if we strive to ignite the sleeping embers of our minds and humanize the penal system by remembering that "every saint has a past and every sinner a future." Imprisonment for life without the possibility of parole is a befitting alternative to capital punishment. Italian criminologist Cesare Beccaria's essay "Crimes and Punishments, " published in 1764, still holds contemporary relevance. He believed that while the death penalty is successful in shocking people momentarily, it does not leave a lasting impact on people's mind. "The death of a criminal is a terrible but momentary spectacle and therefore a less efficacious method of deterring others than the continued example of a man deprived of his liberty."

United Nations Secretary-General Kofi Annan has aptly enunciated his view of the future of capital punishment around the world. "The forfeiture of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process. And I believe that future generations, throughout the world, will come to agree." Mahatma Gandhi was firmly against the death penalty: "I cannot in all conscience agree to anyone being sent to the gallows. God alone can take life because He alone gives it." And let us end with the words of the Rig Veda 10.137.1: "Ye enlightened men, uplift once more the fallen and forlorn, lowly and forlorn; ye illustrious men, raise him who has sinned and degraded himself, restore him to life again."

Saint's Voices

Hinduism's holy men hold varying opinions on criminal execution

Swami Vishveshwarananda, President, Omkarananda Ashrams, Rishikesh: To my belief, in no way do we have a right to take the life of a convict, whatsoever the situation may be. It is more appropriate to keep such a crime-maker permanently behind the bars, but in a strict and consistent way. One important reason not to take the life of a convict is that in rare cases the judgment may be wrong. Such errors have truly happened. We have, with great care, to do our best, but we have to understand clearly, that the final and perfect judgment or punishment is in God and God alone. We are not here to take life, but we are here to improve the life and make the life better. Hinduism teaches us that we have to try to reach the Truth. Even the most imperfect man has to come to this path eventually. So, our duty is not to cut his life short, thereby stopping his progress, but to improve him. This is an act of a very high wisdom, which clearly states that capital punishment has to

vanish. The convict may go to his next life full of anger and revenge. In lifelong imprisonment are the chances for a true improvement and betterment, which adds much to our great and timeless culture.

Swami Pragyand, Sai Pragya Dham, Delhi: Hindu Avatars, such as Lord Rama or Lord Krishna, come to Earth to destroy evil forces. Saints, on the other hand, are supposed to be models of compassion. The saint never kills anybody. Instead, he tries to reform them. Sage Valmiki, for example, was a robber who was reformed. Reforming a person is quite a difficult job, whereas killing somebody is a relatively easy job. So the Gods come to the Earth to destroy the evil persons. And the saints take birth to reform the people. Therefore, in the Sanatana Dharma, the tradition accepts capital punishment. But the tradition of saints does not accept capital punishment. The saint would always seek to reform a person by ridding him of his evil tendencies.

In the present time and age capital punishment is not relevant. Today people commit offenses out of frustration and revenge. When someone has committed murder, we need to probe into the circumstances that led him to do so. According to the Bhagavad Gita, no action is by itself sinful or meritorious. It is the motive in the heart of the doer which leads him to take a particular action that is the determining factor.

I have personally seen someone being hanged to death, and therefore I can tell you that it is very cruel punishment. Let me clarify I could see this hanging because the jail superintendent was a friend of mine and I had expressed to him my desire of witnessing a case of hanging. This man who was hanged before me in the jail was a dacoit, an armed robber, and his mother came to meet him. He was asked by the jail authorities about his final wish. Someone suggested to him that he should meet his mother, but he refused to meet her when she came there. The dacoit said that she could not have been his true mother, as if she had been a true and good mother she would have prevented him from going ahead from childhood on the path of stealing things. It is because she did not prevent him from thieving that he finally landed up becoming a dacoit.

It is true that the rich get away from capital punishment due to their influence and power, and the economically poor man cannot escape it. I am sorry to point out that today there is a lot of corruption, even amongst members of the judiciary. Because the poor man cannot bribe the corrupt, he cannot escape the punishment.

We have to change the viewpoint of the person. If we are successful, the person will change. Reformation, not capital punishment, is the way out. Our scriptures have always laid a lot of emphasis on nonviolence. Somebody who has turned to violence due to his personal circumstances in life can be transformed, made a nonviolent and reformed human being.

Swami Parmatmananda Saraswati, a senior disciple of Swami Dayananda Saraswati based in Rajkot, Gujarat: Capital punishment is allowed under Hindu tradition. Lord Rama is the embodiment of dharma, yet he killed King Bali, who had stolen his own brother's wife. I do not know what great saints and gurus have said about capital punishment in the past. It is true that times have changed. Technological advancement has made life more comfortable, and we have more means of communication. But the nature of crime has remained the same. Sometimes I feel that the crimes today are even more heinous than in the past. Hence capital punishment, if sanctioned by the scriptures, should continue.

Acharya Mahamandaleshwar Swami Jagdish Muni Ji Maharaj, Head of Sant Mandal Ashram, Vaishno Yati Akhara, Haridwar: The scriptures speak both for and against the system of capital punishment. The scriptures give the ruler or the government the power to use capital punishment. However, the saints and mahatmas do not believe in capital punishment. They believe in reforming people. There are a large number of instances in which saints have reformed criminals, in some cases so much so that the reformed people themselves became saints. Rishi Valmiki is one such example. He was a dacoit who used to kill people for money. But the saints reformed him, and he himself became a saint. The rishis whom Valmiki attacked as a dacoit could have killed him or gotten him killed through the help of others, but they chose to reform him. In the Sikh tradition, Guru Nanak came across a criminal named Sajjan, a rogue who would offer shelter and food to pilgrims and travelers and, while they slept, kill them and take all their belongings. He had plans to do the same with Guru Nanak. But Guru Nanak Dev Ji's interaction with him influenced Sajjan so much that he left his criminal activities and became his disciple. All these instances show that the saints have reformed people who might have received capital punishment. But so far as the ruler is concerned, he goes by the constitution of the country and can use capital punishment to govern his nation. There is no doubt that it is a cruel way to punish somebody. But when someone is himself cruel and has been given adequate chance to reform himself and still is not willing to mend his ways, in such circumstances giving capital punishment is justified.

Acharya Mahamandaleshwar Swami Samvidananda Saraswati Ji Maharaj, Head of Kailash Ashram, Nashik: The system of capital punishment has been there since the

ancient times. Now a debate is going on as to how relevant it is in the present times. I believe capital punishment should no longer be given.

Hinduism is full of compassion and forgiveness. Leave aside human beings, we are supposed to be kind even to insects and animals. We are not supposed to kill a small insect. Therefore, taking the life of a human being is a very big issue for us. Our Hindu dharma is very clear that use of violence against anyone is not allowed. Any other type of punishment may be given, but we should not take anyone's life. Our scriptures and Vedas do not favor capital punishment. They advocate the principle of nonviolence.

In the Mahabharata battle the person who had killed the children of Draupadi was captured and taken to Draupadi. She was asked whether he should be killed. Draupadi asked that he be set free, saying, "If he is killed, his mother will also have to go through the same trauma and grief that I am going through because of his killing of my children. As a mother, I would not like his mother to go through this level of grief." The killer was given other punishment, but was not killed.

Mahamandaleshwar Mahanirvani Akhara, Swami Vishweshwaranand Giri Ji Maharaj, Head of Sannyas Ashram, Mumbai and Sannyas Ashram Spiritual Centre, New Jersey: Our scriptures do have provision for giving capital punishment. The idea behind it is that the people who are criminals and are indulging in acts of cruelty will continue if not given capital punishment. The Mahabharata has a verse which means: "The person who engages in putting up a fire, who gives poison to others, who kills others with the help of a weapon, one who abducts a person or money, one who tries to occupy the land of another, one who abducts a lady not belonging to him, all these people are to be labeled as atattayi [extremists]. Such people should definitely be punished suitably and, if need be, with capital punishment." In addition, in Manu Smriti (8.128) it is written that if someone betrays the king after winning over his faith or betrays the common people of the nation after winning over their faith, such a person also should be given capital punishment.

If you see this whole issue of capital punishment from the viewpoint of a saint, the saints will tell you that those who have committed something wrong should be forgiven. If somebody harms a saint physically, they will forgive that person. But so far as some terrorist or criminal, society will not forgive him, because he poses a threat to the peace. Without strict laws against criminality, no nation or society can feel safe and secure. But a punishment like capital punishment should only be given

to such a person who has really done something heinous in nature.

Capital punishment is indeed a cruel way of punishing anybody. There are no two opinions on this. We have also to keep in mind that when a criminal kills somebody his mental state is different than when he is given capital punishment by the concerned authorities. When capital punishment is given to somebody, we feel it is cruel, and we feel sympathy and compassion towards him. But at the same time, we need to ask this very criminal why he was not sympathetic and compassionate to the person whom he killed or tortured.

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HISTORY

How the World's Religions View Capital Punishment

All major religions advocate reform, repentance and forgiveness, yet most endorse execution

In all the major religions of the world, mercy, compassion and forgiveness form the crux of the religious teachings. However, the injunction that those who take the life of others must pay with their own lives is equally dominant.

Hinduism: The divinity in every human being is beautifully enunciated in the Brahmasukta of Atharvaveda: "Indeed these killers are Brahma (God); these servants (or slaves) are Brahma; these cheats and rogues are also manifestation of one and the same Brahma itself." That said, ancient Indian lawgivers considered danda (punishment) as essential for the maintenance of dharma. The king was called Dandadharita, wielder of the scepter of punishment. The Mahabharata refers to four kinds of punishments: gentle admonition (dhigdanda), severe reproof

(vagdanda), imposition of fine (arthadanda) and lastly capital punishment (mrityudanda). Capital offenses in India included murder, arson, manslaughter, poisoning, sale of human flesh, theft, adultery, forgery, treason and destruction of a temple.

In ancient India, the use of the death penalty is referred to by Kautilya, Manu, Yajnavalkya and Kamandaka. Manu stated that if the king does not "inflict punishment on those worthy to be punished, the stronger would roast the weaker like fish on a spit." In another verse he says, "The king who pardons the perpetrator of violence quickly perishes and incurs hatred." The South Indian Tirukural, written by Tiruvalluvar circa 200 bce, states in verse 550, "A ruler's punishing cruel criminals by execution is like a gardener's removing weeds from his garden." The same scripture offers in verse 541 advice as valid today as it was 12 centuries ago: "Investigate well, show favor to none, maintain impartiality, consult the law, then give judgment--that is the way of justice."

Jainism: Ahimsa is central to Jain philosophy, which does not allow for the killing of even small creatures. However, according to Jain legal expert Lekh Raj Mehta, "Jain rulers, in fact, dealt with instances of crime as was done by any other ruler, including by capital punishment, though it was rare." These rulers also maintained armies, he said, which necessarily fought and even eliminated opponents. The issue of statecraft is not dealt with much in Jain scriptures, according to Mehta. The overriding Jain principles are nonviolence, search for truth, forgiveness and reform.

Buddhism: Buddhist philosophy clearly advocates the rehabilitation of criminals. There is the famous story of Buddha himself reforming--to the astonishment of the local king--the feared murderer and highway robber Angulimala. The Dhammapada says, "Hatred does not cease by hatred, hatred ceases by love; this is the eternal law." At issue, however, is the actual practice of Buddhist rulers. One of the earliest, Emperor Ashoka, circa 200 bce, said, "The state should not punish with vengeance." Nevertheless, that he did resort to execution is documented in his rock edicts. The 4th century Chinese monk Fa-Hsien wrote that he met a king of India who "governed without capital punishment." While most Japanese Buddhist rulers employed capital punishment, there were notable exceptions, including Emperor Shomu in the 8th century. One might be surprised to learn that Buddhist Tibet had the death penalty until 1920, when it was eliminated by the 13th Dalai Lama, Thubten Gyatso. In modern times, four countries have Buddhism as their state religion: Bhutan, Cambodia, Sri Lanka and Thailand. Of these, Cambodia eliminated the death penalty in 1993, and Bhutan eliminated it in 2004. Thailand has more than 1,000 prisoners awaiting execution. Sri Lanka reactivated the death penalty in

2004 after a 27-year moratorium.

Judaism and Christianity: The Old Testament prescribes death by stoning for a number of offences, including blasphemy, idolatry, homosexuality, being a false prophet, adultery, not observing the Sabbath and disobeying parents. Deuteronomy 21:18-21 states, "If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not harken unto them: Then shall his father and his mother lay hold on him, and bring him out..... And all the men of his city shall stone him with stones, that he die: so shalt thou put evil away from among you; and all Israel shall hear, and fear." Christians have varying views of the death penalty--liberal Christian groups and the modern Roman Catholic Church oppose it; conservative groups support it. Judaism is similarly divided, with Reform Jews and others vigorously opposed to the death penalty. The State of Israel can impose the death sentence for treason and war crimes.

Islam: In Asian and Middle Eastern countries, violent and nonviolent crimes are punishable by death under Islamic and Sharia laws: murder, drug trafficking, armed robbery, apostasy, adultery, blasphemy, sorcery, prostitution, conjugation between partners not married to each other, converting to Christianity or Judaism, plotting to overthrow the Islamic regime and conspiring against the government.

With Mahua Das