

Death penalty debate rages anew in India

By B Gautam

No human system is fallible. As long as the death penalty exists, the risk of sending the innocent to the gallows can never be totally eliminated

INDIA is once again hotly debating capital punishment. This time the discussion has been provoked by the death sentence given to Dhananjay Chatterjee, who was convicted of raping and murdering a 14-year-old schoolgirl. Indian President A P J Abdul Kalam has stayed Chatterjee's hanging and is examining a clemency petition from his family.

In the meantime, there is intense debate in the media over the relevance of the death penalty. While some influential members of the government and public argue that Chatterjee deserves no mercy and that his sentence should not be commuted to one of life, others feel that this form of punishment negates the very idea of reforming a criminal.

The latter group's point of view is gaining ground, and not just in India. Amnesty International's latest information shows that 80 countries have abolished capital

punishment for all crimes; 15 nations have done away with it for all but exceptionally brutal crimes, such as wartime atrocities; and 23 countries are "abolitionist", retaining the death penalty in law but not having carried out executions for the past 10 years or more.

Seventy-eight other states and territories retain and use capital punishment, but the number of executions is declining every year.

Scientific studies consistently fail to find any evidence that the death penalty serves as a deterrent to serious crime. A UN survey conducted in the US in 2002 concluded, "It is not prudent to accept the hypothesis that capital sentence deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment."

Moreover, the homicide rate in countries that have abolished this form of retribution has not risen. For instance, in Canada, the murder rate per 100,000 of the population actually fell from a peak of 3.09 in 1975 — a year before the abolition of capital punishment — to 2.41 in 1980. This figure has since continued to decline.

In India, what could perhaps be looked into is a longer "life

term" in place of the 12 or 14 years (and sometimes less) now in vogue. In the US, the length of life in prison is coterminous with the natural life of the convicted person.

Those in India who oppose the abolition of capital punishment fear that a convict, once free, could prove to be a menace to society. However, a good reformatory justice system would allay this fear.

The death penalty is no answer to murder. State-sponsored killing cannot be condoned, and the idea of a "tooth for a tooth and an eye for an eye" is not only primitive but places India and others in the Dark Ages.

Besides, you cannot prevent a crime of passion with any kind of law. Nor can you check a serial killer. You cannot hang a man twice. You cannot stop a terrorist committed to a cause, since he has no fear of losing his own life. The deterrent hypothesis thus stands quashed.

Worse, as long as the death penalty exists, the risk of sending the innocent to the gallows can never be totally eliminated. After all, no human system is infallible. A 1987 study revealed that up to 350 people convicted of capital crimes in the US between 1900 and

1985 were innocent. Some of them escaped by minutes, but 23 were actually executed.

In India, it is quite likely that there have been significant miscarriages of justice given the state of the judiciary and the complexities of society. The legal system is not only bogged down in archaic law but also suffers from a terrible manpower shortage. It takes years for a verdict to be reached in a criminal case, and instances of judicial error due to work pressure cannot be ruled out.

In a country ridden with caste, communal and religious disparities, and far-from-perfect policing, instances of wilful conviction are probably not uncommon.

On a positive note, two recent cases of clemency have originated with the relatives of victims. Sonia Gandhi, president of India's ruling Congress Party, obtained clemency for Nalini, one of four sentenced to death for the murder of her husband, former Prime Minister Rajiv Gandhi.

And the widow of Australian missionary Graham Stewart Staines, who together with his two young sons was burned alive by Hindu activists in India, has recommended clemency for the murderers. COURTESY JAPAN TIMES

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Tackling the Hudood laws

PRIME MINISTER CHAUDHRY SHUJAAT HUSSAIN HAS SOUGHT the advice of the Council of Islamic Ideology on the proposed amendments to the Hudood Ordinance. He said that the related ministry had sent him the draft for the approval of the cabinet but he thought it fit to consult the CII before approving it. Some people have heaved a sigh of relief, thinking that the CII will quickly resolve the problem of purging the existing Islamic law contained in the Ordinance of all its negative aspects. A number of Women Commissions set up by governments in the past have recommended that Hudood (Quranic punishments) be made fair for women and the minorities. The latest Commission, headed by Justice (Retd) Majida Rizvi, has advised that since all Islamic law could be prosecuted through the concept of Tazir (punishment by the judge) the Hudood could be safely abolished altogether.

On the other side, the MMA has vowed to militantly defend the Hudood laws and the notorious Blasphemy Law. Some conservative journalists have gone so far as to predict that the MMA will be able to mobilise the masses effectively against any change in the Hudood laws and that there will be 'blood on the streets' of the country. As for the authority of the CII, it has been challenged by the MMA. Because of the literalist-mindedness of its earlier composition, the CII as advisory body on Islamic laws was kept vacant by President Pervez Musharraf far beyond the time period allowed after expiry of its term. Finally when the new members were announced, the MMA denounced them as 'angutha-chaap' (rubber stamps) even though the new members were more scholarly and knowledgeable than earlier members. The MMA boss Qazi Hussain Ahmad went to the extreme of accusing one member of the CII of being a Qadiani, which is a sure-fire formula for sabotaging any religious reformist measure. So the newly constituted CII has its task cut out for it: it can either sit on it a long time or kowtow to the clergy or take the plunge and say what needs to be said by way of enlightened opinion.

It is not that there is no enlightened opinion in the country against the extremism of the clergy. There are learned people who think that the Hudood and Blasphemy laws could be amended to remove their unfairness without flouting the Islamic edicts. But such scholars are most reluctant to take on the militant Islamists on this issue because of fear of abuse and ostracism which can end in violence. Even so, at least one courageous scholar, Javed Al Ghamidi, appeared on a private TV channel earlier this month to say that these laws were defective in their methodology of registering cases against women. He said the Islamic law was defective in testimony because the Holy Quran did not decree half a witness in cases other than the law of contract. He said new thinking had to be undertaken

en or the law would continue to create and pose problems. He also asserted that there was no ground in Islam for separating Hudood and Tazir. There is thus weakness in the orthodox position since some Hudood have been categorised as such even though the punishments are not fixed in the Holy Quran. The problem in Pakistan is violence and lack of rationality, a deadly combination.

Chaudhry Shujaat Hussain has pushed the problem on to the desk of the CII. The matter will be shelved if the CII submits to the threatened violence of the clergy. The political parties too need to come out clearly in favour of the amendments if the CII is to take heart. But that may be easier said than done. For instance, the PPP is lukewarm over the infamous Blasphemy Law. The 'Islamists' in the PPP point to Zulfikar Ali Bhutto Bhutto's Islamisation to defend the laws even though they are aware of the broad consensus within the MMA that no woman should become the prime minister of Pakistan. The PML-N is already convinced that the laws are okay and it is quite possible that even Chaudhry Shujaat Hussain may 'residually' still think so. As if to remove the cobwebs of doubt in Islamabad, the MMA government in the NWFP is more sure-footed about how it is going to make Islam tougher for the common man. It is making *namaz* obligatory and is warning that it will raze to the ground any commercial building constructed now without an inbuilt mosque, even though the NWFP chief minister says there will be no coercion (sic!) under the new regulations leading to the enforcement of the controversial Hisba law.

The obligation to improve the law is on the Muslim community for its own sake. The function of constant improvement is made difficult by the violent rift that exists between the dominant orthodox and thinking Muslims. The issue becomes internationalised when an Islamic state falls foul of the Universal Declaration of Human Rights which it has signed as a member of the United Nations. Victimisation of women and the minorities under Islamic law is a concrete reality and Pakistan must do something about it urgently. We propose that while the government goes about cobbling a workable consensus to do away with these laws or to amend them significantly, it should take remedial *administrative* measures to lessen the sufferings of the victims. For instance, as stated by religion minister Ijazul Haq, administrative measures — already in place but hardly ever resorted to — should be made obligatory to prevent the abuse of the Blasphemy Law. Since over 90 percent of the women victimised by the Hudood Laws are exonerated by the superior judiciary, administrative measures could be adopted in their case too. Meanwhile, discussion at the intellectual level must be pursued vigorously and courageously by all. ■