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**A misinformed call**

States that retain the death penalty subscribe to a model of retributive justice: an eye for an eye, a nail for a nail. But as Gandhi said, an eye for an eye will make the whole world blind. Such is the condition of Pakistan at this critical juncture. Our society is so blinded by the rising intolerance and violence that calls for violence and bloodshed have become a regular feature in societal discourse.

Pakistan had maintained a moratorium on the death penalty up until the terrorist attack on APS in 2014. The rationale for lifting the moratorium was severe punishment for a severe crime.

At least 56 ‘convicts’ have been executed by military courts since then (while a major self-confessed terrorist seems to have ‘escaped’ any penalty at all), with a high rate of convictions (around 641 convictions in total out of 646 trials conducted).

Under international human rights law, the death penalty can only be imposed following the decision of a final, competent court, after all guarantees of due process and fair trial have been met.

Here is where the first problem in Pakistan arises. Due process and fair trial in Pakistan are not seen as fundamental rights (as they should be) but as luxuries that accused persons can be stripped off. Outside the military court framework, there is the heart-breaking case of Mazhar Hussain that one must bear in mind any time we decide to discuss the death penalty in Pakistan. Mazhar Hussain was a poor resident of Sihala village, near Islamabad. He was so poor he couldn’t afford a lawyer to defend himself in a case where he was accused of murder.

Mazhar’s father tried to fight his son’s case but he died before he could see justice being done. Mazhar was convicted and sentenced to death by a Sessions Court in April 2004. The Supreme Court acquitted Mazhar in 2016, two years after he had already died in jail, after spending 19 years on death row (experiencing death row phenomenon, which is inhumane treatment at the very least). Mazhar’s case isn’t an exception: it is the rule because our criminal justice system is severely flawed and because the possibility of human error is something that can never be entirely ruled out.

In the backdrop of this malfunctioning criminal justice system, State Minister for Parliamentary Affairs Ali Muhammad Khan did something a truly ignorant, populist politician would do. He tabled a resolution in parliament, during question hour, demanding that killers and rapists of children be hanged publically. Unfortunately, the opposition didn’t have the sense at that time to point out quorum in the Assembly so the resolution passed. Let us not forget that this state minister had previously supported child marriages on the floor of the house so his own internal contradictions are quite evident.

Since the move, many politicians and celebrities have weighed in on the issue, extending their support for the move, while conceding the penalty is barbaric but that a barbaric crime merits a barbaric response. Reliance has been placed on the “deterrent” argument. The presupposition in the death penalty deterrent argument is first, that murder, rape, or acts of terrorism are carried out as a result of a rational process of analyzing costs and benefits for the rapist, murderer or terrorist; and second, that this fear of the death penalty will provide enough of a disincentive for the prospective rapist, criminal or terrorist to not perpetrate that crime.

This is a problematic way of thinking, considering that many of these crimes occur impulsively rather than being pre-meditated; and also because statistics/studies have illustrated that the death penalty has no measurable deterrent effect.

Studies from Azerbaijan, Poland, Serbia, Estonia, South Africa, Albania and other countries establish that the death penalty has no measurable effect on murder rates in general. In many of these countries that abolished the death penalty, murder rates declined by an average of six murders per 100,000 population in ten years. This data is consistent with data from the US, which has consistently shown lower murder rates in states that do not have the death penalty, as opposed to those states that do.

Another argument being peddled by proponents of this move is the ‘what the family wants’ argument. No one except for the victims’ families can be considered an authority on what these families want but there are two important questions for us to consider here.

First, how do we, as a collective, wish to honour the memory of our loved ones who are no longer present in this world? Do we wish to honour them with respect for values civilized societies hold dear (inviolable dignity of man) or do we wish for our justice system to respond in an equally violent manner as the criminal? If we opt for the latter, surely, we are not in a morally superior position to the actual murderer or rapist because the value for human dignity we seek to uphold is clearly subject to erosion.

Second, at present, does Pakistan have a legal system under which a penalty as irreversible as the death penalty should be enforced, and in fact, extended to be applied publically as well? When a society starts making determinations of who is deserving of death, the result is a lot of arbitrariness, rather than affirmations of rule of law. Due to the irreversible nature of the penalty, there is no margin for human error. Hanging someone refuses to take this into account, while publically hanging someone additionally condones acts of public violence.

Abolition of public hangings is grounded in the reality that they are particularly sadistic and barbaric. Many have argued that just the sight of violence has the potential to corrupt public morality. John Scott, in 1773, warned, with respect to public hangings, “such spectacles certainly harden the human heart”. In a society already plagued with violence, calls for public enforcement of violent penalties only encourage the cycle of violence.

So what we should be asking ourselves instead of pushing for public hangings is: what kind of people are we that we wish to witness and experience people being executed? What is wrong with us that we feel it is acceptable to gather around a person being drained of their life? This debate has exposed many of the inherent problems within our own society: we are increasingly inclined to turn towards barbarism and violence rather than rationality and reform.

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