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Don't hang 'em

Bikram Jeet Batra

The stage is set for the UN General Assembly (UNGA) to formally call upon states that maintain the death penalty to "establish a moratorium on executions with a view to abolishing the death penalty". Recently, the third committee of the UNGA passed a moratorium resolution, the vote being 99 in favour, 52 against, 33 abstentions and eight absentees.

The 52 naysayers notwithstanding, this is a historic vote. Although the UNGA had in 1971 and 1977 proclaimed the desirability of abolishing the death penalty, resolutions calling for abolition of the death penalty and moratorium on execution were restricted to the Geneva-based erstwhile UN Commission on Human Rights, an institution with only 53 states as members. This is the first time that the UNGA, the UN's highest body with membership of all states, would endorse a call for moratorium and eventual abolition.

Despite not being binding on UN member states, the UNGA resolution adds strength to an international trend favouring abolition of the death penalty. This is why it was so fiercely opposed by a motley group of states led by Singapore. Those opposing this resolution were predominantly members of the Organisation of Islamic Countries and the Caribbean. But they also included US, North Korea, China and Zimbabwe. The loudest opposition unsurprisingly came from the states that execute a large number of persons every year (China, Iran, Iraq, US, Pakistan and Sudan account for about 90 per cent of all executions worldwide) or those who have among the highest per capita execution rates (Singapore).

It is surprising that India joined the ranks of those voting against the resolution. Given that India retains the death penalty, a vote in favour was always unlikely but an abstention would have been logical. Unlike most of the other countries that voted against the resolution, India has been moving away from executions in the recent past, despite rhetorical references to the death penalty by domestic politicians and the resort to such punishment by the judiciary

The Indian delegate defended the 'no' vote on the ground that this was largely a question to be determined by sovereign states and that the draft resolution went against India's statutory law.

The former is a lame argument given that the death penalty has been constantly held by various UN bodies to be a human rights concern which cannot be limited to 'domestic jurisdiction'; the latter is based on an incorrect understanding of Indian law.

Under current Indian law, the decision to execute a condemned prisoner is taken by the executive, albeit through the president or governor who decide on the 'mercy petition'. This is a constitutionally



provided power that is independent of the judicial award of the death sentence. Therefore decisions, both on execution of a particular prisoner, as also on not executing any prisoner and declaring a moratorium, are

within the domain of the executive. Such decision-making does not interfere with substantive Indian law. Therefore, abstaining or even supporting the recent resolution too would not violate any Indian legal provisions and would be well within the right of the government.

While the misinterpretation of Indian law by the Indian delegate is surprising, his factual reference to executions in India is shocking. India's claim in the UN that only one execution had been carried out since 1995 is contradicted by figures of the National Crime Records Bureau (ministry of home affairs). Their report, Prison Statistics: 1996, refers to seven hangings, while the 1997 and 1998 editions provide details of another four hangings.

India merely abstained from voting on the last resolution on the subject, on April 20, 2005, at the UN Commission on Human Rights. Given that there has been no dramatic change of circumstances since, the present decision to vote against the UNGA resolution is inexplicable. Should the government not choose to change its vote or at the very least abstain from voting in the upcoming final round at the UNGA, it will miss its chance to be on the right side of the death penalty debate.

The writer is a Delhi-based lawyer.