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# Death Penalty—State Hate

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**T**he only files the outgoing President, Dr Abdul Kalam, did not clear were the mercy petitions of 50 prisoners on death row, some of them there for as long as 10 years. Going by the rate at which justice is delivered to these convicts, these files will probably be passed on from the present incumbent to the next one, and so on. The situation of the men and women on death row is akin to the situation of the poor tribal who lives at the mercy of the feudal landlord, always fearing for his life, if we abhor the tyranny of the landlord, how can we condone the existence of the death penalty in this country?

Dr Kalam famously said that he did not reject any of the petitions since if he couldn't give life

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to anyone, there was no justification for him to take it. In 2006, he had even gone to the extent of recommending clemency to all the death row prisoners. However, Dr Kalam is not the state. Moreover, as long as the death penalty remains a form of punishment on the statute books, the state will continue to exercise its right to use it. Therefore the only option if convicts are to escape this heinous punishment is to abolish capital punishment altogether. India would not be in a minority if it takes this step. According to the Amnesty International's campaign against death penalty, out of a total of 130 countries that have abolished capital punishment in either law or practice, 50 have done so since 1990 including countries in Africa and Asia. Even Rwanda has abolished the death penalty. Countries that retain capital punishment on their statute books include China, Iran, Pakistan, Afghanistan, Sudan, Singapore and the United States amongst others.

Why should India choose to be in the company of these countries?

Retentionists have for long offered three standard reasons for retaining capital punishment. Firstly, they claim that the existence of this punishment acts as a deterrent to crime. Secondly, that the death penalty offers some reparation to the victim's kin. Thirdly, that some crimes deserve the most severe punishment possible since all crimes are not the same, some are more heinous than most. In legal parlance, these are called the rarest of rare crimes. The first claim has been disproved through research time and again. Countries that abolished the death penalty did not see any significant upsurge in crime after the abolition, nor has a correlation between prevalence of the punishment and a lower crime rate been proved. The second argument is specious in the extreme. In most cases in India, the process of justice is so convoluted and prolonged that the victim's side gives up any hope of justice even before the investigation starts. It is a well known fact that people land up on death row only when they are not rich or powerful enough to bend the police or buy the lower judiciary, or when they cannot afford lawyers' fees. For the rest, whatever may be the victim's desire for reparation or revenge, it is unlikely to be fulfilled if the perpetrator is influential. The investigating agencies and the judiciary will see to that. The third argument is meretricious. Who decides what crime is more heinous? Is the rape of a minor girl and her subsequent murder a worse crime than a drunk driver mowing down six people sleeping on a footpath? The answer, of course, is that both crimes are equally terrible and deserve equally terrible punishment. Yet, for some reason, a distinction is made between the two, and Dhananjay Chatterjee gets to hang, while Sanjeev Nanda gets to roam at large.

THE death penalty is a biblical concept from the Middle Ages. It was liberally used to get rid of erring warlords and kings in Europe in the dark ages, and went on to remain on the statute books of countries in that region. It was a tool of revenge more often than not. When justice needed to be swift, fierce and often arbitrary, the death penalty was often used to control rebels and display the might of the monarch. Thus, in Australia, during

the nineteenth century, horse and cattle stealers were routinely hung by the provincial government to deter the spread of crime and protect the wealth of the squatters, whose large cattle stations were owned by many of those within the government, and who liberally called upon the state to protect their property. Rule of law, in those times, was conspicuous by its absence, and public hangings in England, for instance, were a source of entertainment. But as the judicial machinery evolved, and democratic institutions of law and governance emerged, many countries recognised the redundancy and barbarity of capital punishment, and now, most of the countries that were in the vanguard of the practice of capital punishment have abolished it.

From the tenacity with which India has continued to cling to the notion of capital punishment, one might be fooled into believing that we are willfully ignoring the precepts of our culture that put forgiveness before retribution. This is not the case. Our cultural ethos does not provide for revenge. In fact, it is Indian lawmakers who persist in having this punishment on the statute books in spite of an ever-growing bank of evidence that shows that it is the poor and disempowered who are most afflicted by its use. To justify their laziness in repealing capital punishment, they cite all the reasons mentioned above. If deterrence is the motive for having the death penalty, incarceration for life with no parole would serve just as well. If reparation to the victim's family is the motive, then a speedy mechanism for bringing the guilty to book will give better satisfaction than unnecessarily harsh punishment. Thirdly, there is no standard benchmark for deciding what constitutes a crime that merits the tag 'rarest of rare'.

The single most overriding argument against the death penalty is wrongful conviction. No investigation is fool proof, and no judge is infallible. In every case, there is always a margin of doubt about the perpetrator's guilt. In such a scenario, there is always a chance that a person might be sent to his or her death in spite of being innocent. When the right to life is enshrined in our Constitution, why should the state take it upon itself to abrogate this right? And what reparation will it offer in case of wrongful death? How is such a death different from murder? And yet, since the state cannot be brought to justice, it is only right that such a one-sided equation be balanced. If the state cannot be held responsible

