

Death Penalty – Legal foul by a State

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Opening the wounds again!



Baljit Singh Daduwal handing over Balwant Singh Rajoana's will to Akal Takht Jathedar Gurbachan Singh in Amritsar. (HT photo)



Bhai Balwant Singh Rajoana's – in police custody.

Now that the atmosphere has ostensibly improved in India and The Punjab, the hanging of Bhai Balwant Singh Rajoana, is very uncalled for . It will open the old wounds. It will obtund the local development. Irrespective of which community the victims of death penalty belong, **the following articles show the overall negativity of the impending doom.**

1. THE UNFRAMED LIVES HAMMERED BY THE CAPITAL PUNISHMENT

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Overview

Capital punishment is a subject you can always count on for a lively discussion with plenty of opinions and lots of questions. However, there has been a lot of controversy surrounding the death penalty. Whenever the word "Capital punishment" comes it is the issue which is always hot on people's minds. When we hear the word capital punishment, we imagine that first strike in our mind is a prisoner hanging with a rope. CAPITAL PUNISHMENT is slipped under the radar of lives of society. The term "capital" derives from the Latin *caput*, meaning "head". Thus, capital punishment is the penalty for a crime so severe that it deserves decapitation (losing one's head).

Capital Punishment in India

Arguments against Capital Punishment

- The death penalty is killing. All killing is wrong, therefore the death penalty is wrong.
- The death penalty is a violation of HUMAN RIGHTS
- Torture and cruelty are wrong- Some executions are botched and the executed suffer extended pain. Even those who die instantly suffer mental anguish leading up to the execution.
- Criminal proceedings are fallible - Many people facing the death penalty have been exonerated, sometimes only minutes before their scheduled execution. Others, however, have been executed before evidence clearing them is discovered. Whilst criminal trials not involving the death penalty can involve mistakes, there is at least the opportunity for mistakes to be corrected.
- Since in many cases at least the defendants are financially indigent - therefore end up being represented by court-appointed attorneys whose credentials are often highly questionable, opponents argue that the prosecution has an unfair advantage
- The race of the person to be executed can also affect the likelihood of the sentence they receive. -Death-penalty advocates counter this by pointing out that most murders where the killer and victim are of the same race tend to be "crimes of passion" while inter-racial murders are usually "felony murders;" that is to say, murders which were perpetrated during the commission of some other felony (most commonly either armed robbery or forcible rape), the point being that juries are more likely to impose the death penalty in cases where the offender has killed a total stranger than in those where some deep-seated, personal revenge motive may be present.
- It can encourage police misconduct
- It is not a deterrent - anyone that would be deterred by the death penalty would already have been deterred by life in prison, and people that are not deterred by that wouldn't be stopped by any punishment. This argument is typically supported by claims that those states which have implemented the death penalty recently have not had a reduction of violent crime. A stronger variant of this argument suggests that criminals who believe they will face the death penalty are more likely to use violence or murder to avoid capture, and that therefore the death penalty might theoretically even increase the rate of violent crime.
- It has also been argued that the death penalty does not deter murder because most murders are either "crimes of passion" or are planned by people who don't think they'll get caught (however this argument could be used for any penalty).
- Some people argue that the death penalty brutalises society, by sending out the message that killing people is the right thing to do in some circumstances.
- It is claimed that the death penalty psychologically harms the executioners, in some cases contributing to "Perpetration-Induced Traumatic Stress", and that even when this does not occur, killing a helpless person in a situation in which the executioner is not in danger may harm the executioner in other ways, such as decreasing his or her sense of the value of life. The suggested conclusion is that when capital punishment is not absolutely necessary to defend society, society has no right to ask executioners to risk their own mental health in such a way. Various arguments argue that statistics show the death penalty either makes no difference to the number of murders, or actually causes them to increase.

2. The Case Against the Death Penalty

INTRODUCTION TO THE "MODERN ERA" OF THE DEATH PENALTY IN THE UNITED STATES

In 1972, the Supreme Court declared that under then-existing laws "the imposition and carrying out of the death penalty... constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." (*Furman v. Georgia*,

408 U.S. 238). The Court, concentrating its objections on the manner in which death penalty laws had been applied, found the result so "harsh, freakish, and arbitrary" as to be constitutionally unacceptable. Making the nationwide impact of its decision unmistakable, the Court summarily reversed death sentences in the many cases then before it, which involved a wide range of state statutes, crimes and factual situations.

Executions resumed in 1977. In 2002, the Supreme Court held executions of mentally retarded criminals are "cruel and unusual punishments" prohibited by the Eighth Amendment to the Constitution.

ACLU OBJECTIONS TO THE DEATH PENALTY

Despite the Supreme Court's 1976 ruling in *Gregg v. Georgia, et al*, the ACLU continues to oppose capital punishment on moral, practical, and constitutional grounds:

Capital punishment is cruel and unusual.

Capital punishment denies due process of law.

The death penalty violates the constitutional guarantee of equal protection.

The death penalty is not a viable form of crime control.

Capital punishment wastes limited resources.

Opposing the death penalty does not indicate a lack of sympathy for murder victims.

Changes in death sentencing have proved to be largely cosmetic.

A society that respects life does not deliberately kill human beings.

CAPITAL PUNISHMENT IS NOT A DETERRENT TO CAPITAL CRIMES

A punishment can be an effective deterrent only if it is consistently and promptly employed. Capital punishment cannot be administered to meet these conditions.

Persons who commit murder and other crimes of personal violence often do not premeditate their crimes.

If, however, severe punishment can deter crime, then permanent imprisonment is severe enough to deter any rational person from committing a violent crime.

CAPITAL PUNISHMENT IS UNFAIR

CAPITAL PUNISHMENT IS IRREVERSIBLE

CAPITAL PUNISHMENT IS UNJUSTIFIED RETRIBUTION

CAPITAL PUNISHMENT COSTS MORE THAN INCARCERATION

CAPITAL PUNISHMENT IS LESS POPULAR THAN THE ALTERNATIVES

INTERNATIONALLY, CAPITAL PUNISHMENT IS WIDELY VIEWED AS INHUMANE AND ANACHRONISTIC

3.

Arguments for and against capital punishment in the UK.

Background.

Capital punishment is the lawful infliction of death as a punishment and since ancient times it has been used for a wide variety of offences. The Bible prescribes death for murder and many other crimes including kidnapping and witchcraft. By 1500 in England, only major felonies carried the death penalty - treason, murder, larceny, burglary, rape, and arson. From 1723, under the "Waltham Black Acts", Parliament enacted many new capital offences and this led to an increase in the number of people being put to death each year. In the 100 years from 1740 - 1839 there were a total of up to 8753 civilian executions in England & Wales, the peak year was 1785 with 307 as transportation was not an option due to the American War of Independence. Remember that the population in 1800 was just 9 million.

Reform of the death penalty began in Europe by the 1750's and was championed by academics such as the Italian jurist, Cesare Beccaria, the French philosopher, Voltaire, and the English law reformers, Jeremy Bentham and Samuel Romilly. They argued that the death penalty was needlessly cruel, over-rated as a deterrent and occasionally imposed in fatal error. Along with Quaker leaders and other social reformers, they defended life imprisonment as a more rational alternative.

By the 1850's, these reform efforts began to bear fruit. Venezuela (1853) and Portugal (1867) were the first nations to abolish the death penalty altogether. In the United States, Michigan was the first state to abolish it for murder in 1847. Today, it is virtually abolished in all of Western Europe and most of Latin America. Britain effectively abolished capital punishment in 1965 (for the full story of abolition [click here](#)).

The USA, together with China, Japan and many Asian and Middle Eastern countries, plus some African states still retain the death penalty for certain crimes and impose it with varying frequency. [Click here](#) for a detailed list of abolitionist and retentionist countries.

Is capital punishment ethically acceptable?

The state clearly has no absolute right to put its subjects to death although, of course, almost all countries do so in some form or other (but not necessarily by some conventional form of capital punishment). In most countries, it is by arming their police forces and accepting the fact that people will from time to time be shot as a result and therefore at the state's behest.

Britain.

The rates for unlawful killings in Britain have more than doubled since abolition of capital punishment in 1964 from 0.68 per 100,000 of the population to 1.42 per 100,000. Home Office figures show around unlawful killings 300 in 1964, which rose to 565 in 1994 and 833 in 2004.

America.

In most states, other than Texas, the number of executions as compared to death sentences and murders is infinitesimally small. Of the 1099 executions carried out in the whole of the USA from 1977 to the end of 2007, Texas accounts for 406 or 37%.

Singapore.

Singapore always carries out death sentences where the appeal has been turned down, so its population knows precisely what will happen to them if they are convicted of murder or drug trafficking - is this concept deeply embedded into the sub-consciousness of most of its people, acting as an effective deterrent?

In 1995, Singapore hanged an unusually large number of 7 murderers with 4 in 1996, 3 in 1997 and only one in 1998 rising to 6 in 1999 (3 for the same murder). Singapore takes an equally hard line on all other forms of crime with stiff on the spot fines for trivial offences such as dropping litter and chewing gum in the street, caning for males between 18 and 50 for a wide variety of offences, and rigorous imprisonment for all serious crimes.

Arguments against the death penalty.

There are a number of incontrovertible arguments against the death penalty.

The most important one is the virtual certainty that genuinely innocent people will be executed and that there is no possible way of compensating them for this miscarriage of justice. There is also another significant but much less realised danger here. The person convicted of the murder may have actually killed the victim and may even admit having done so but does not agree that the killing was murder. Often the only people who know what really happened are the accused and the deceased. It then comes down to the skill of the prosecution and defence lawyers as to whether there will be a conviction for murder or for manslaughter. It is thus highly probable that people are convicted of murder when they should really have only been convicted of manslaughter. Have a look at the cases of [James McNicol](#) and [Edith Thompson](#) and see what you think.

A second reason, that is often overlooked, is the hell the innocent family and friends of criminals must also go through in the time leading up to and during the execution.

There is no such thing as a humane method of putting a person to death irrespective of what the state may claim (see later). Every form of execution causes the prisoner suffering, some methods perhaps cause less than others, but be in no doubt that being executed is a terrifying ordeal for the criminal. What is also often overlooked is the mental suffering that

the criminal suffers in the time leading up to the execution. How would you feel knowing that you were going to die tomorrow morning at 8.00 a.m.?

There may be a brutalising effect upon society by carrying out executions - this was apparent in this country during the 17th and 18th centuries when people turned out to enjoy the spectacle of public hanging. They still do today in those countries where executions are carried out in public. It is hard to prove this one way or the other - people stop and look at car crashes but it doesn't make them go and have an accident to see what it is like. It would seem that there is a natural voyeurism in most people.

The death penalty is the bluntest of "blunt instruments," it removes the individual's humanity and with it any chance of rehabilitation and their giving something back to society. In the case of the worst criminals, this may be acceptable but is more questionable in the case of less awful crimes.

Will Britain restore capital punishment in the future?

Support for the death penalty in Britain seems to be slowly declining although it is supported by many young people who were not born when we still had it. In the short term (say the next 10 years), there is no realistic chance of reinstatement, however, despite majority public support for such a move. Reintroduction of something that has been abolished is always much more difficult than introducing something entirely new.

Should capital punishment be re-introduced in Britain?

There are very real issues of human rights that will effect us all if it were to be reintroduced.

Will the government introduce laws that are just and contain sufficient safeguards and will the judiciary administer them properly?

Can these scenarios ever be seen as justice?

Should we only execute people for the most awful multiple murders as a form of compulsory euthanasia rather than as a punishment or should we execute all murderers irrespective of the degree of guilt purely as a retributive punishment for taking another person's life and in the hope of deterring others?

What about crimes such as violent rape, terrorism and drug trafficking - are these as bad as murder? How should we punish such offences?

The alternatives.

What are the realistic alternatives to the death penalty?

Any punishment must be fair, just, adequate and most of all, enforceable. Society still views murder as a particularly heinous crime which should be met with the most severe punishment. Whole life imprisonment could fit the bill for the worst murders with suitable gradations for less awful murders. Some 44 people are currently serving whole life tariffs in the UK.

"Life without parole" versus the death penalty.

Many opponents of capital punishment put forward life in prison without parole as a viable alternative to execution for the worst offenders, and surveys in America have shown that life without parole (LWOP) enjoys considerable support amongst those who would otherwise favour the death penalty.

The Numbers Game "death versus deterrence".

If we are, however, really serious in our desire to reduce crime through harsher punishments alone, we must be prepared to execute every criminal who commits a capital crime irrespective of their sex, age (above the legal minimum) alleged mental state or background. Defences to capital charges must be limited by statute to those which are reasonable. Appeals must be similarly limited and there can be no reprieves. We must carry out executions without delay and with sufficient publicity to get the message across to other similarly minded people. This is similar to the situation which obtains in China and would, if applied in Britain, undoubtedly lead to a large number of executions to begin with until the message got through. I would estimate at least 2,000 or so in the first year if it were applied for murder, aggravated rape and drug trafficking. This amounts to more than 7 executions every day of the year Monday through Friday.

"Mad or Bad".

Are criminals (particularly murderers as we are discussing capital punishment) evil or sick? This is another very important

issue as it would seem hardly reasonable to punish people who are genuinely mentally ill but more reasonable to use effective punishment against those who are intentionally evil. As usual, as a society, we have very confused views on this issue - there are those, notably some social workers and psychiatrists, who seem to believe that there is no such thing as evil whilst the majority of us do not accept that every accused person should be let off, (i.e. excused any responsibility for their actions) due to some alleged mental or emotional condition. Will advances in mapping the human genome over the next couple of decades allow us to predict those people who are prone to committing violent and murderous crimes and so prevent them before they happen?

Capital punishment and the media.

Three hundred years ago there was no media. Newspapers first started in England around 1725 and were expensive and of very limited circulation. In any case few people could read at that time. So public executions were vital to show that justice had been done and provide a deterrent to others. In particularly heinous cases of murder the execution could be carried out near the scene of the crime so that the local people could see the murderer punished, or the criminal could be gibbeted near the scene to remind people of the punishment. By 1800 newspapers were more widespread and public execution was abolished in England, Scotland and Wales in 1868. Reporters were still allowed to witness some executions for some years afterwards, but by the 20th century, typically newspapers would merely state that so and so was executed yesterday for the murder of ... at such and such prison. No details of the execution were made available and so the story would be two paragraphs unless there was some special feature such as a protest outside the prison. Radio and later television news would also carry a similar brief report.

In the USA reporters are always permitted to attend executions and they receive a lot of coverage at state level. However the media's attitude to executions varies widely depending on the age and sex of the criminal, the type of crime and method of execution.

The Future.

I wonder if in another hundred years we will, as a world still have capital punishment at all or for that matter prisons, or whether we will have evolved technological means of detecting and correcting potential criminals before they can actually commit any crime. It seems to me that we must first find this technology and then educate public opinion away from its present obsession with punishment by demonstrating that the new methods work, pointing out the futility and waste of present penal methods, especially imprisonment and execution.

Punishment will remain popular with the general public (and therefore politicians) as long as there are no viable alternatives and as long as crime continues its present inexorable rise. Logically, however, punishment (of any sort) cannot be the future - we must progress and therefore we will.

Until this utopian point is reached, which I believe it ultimately will be, I think that we will see the use of the death penalty continuing and its reintroduction in countries that had previously abolished it. Most of the Caribbean countries are trying to get it re-introduced.

It is clear that in strict penal societies such as Singapore, that the crime rate is much lower than in effectively non-penal societies such as Britain. It is, therefore, logical to assume that Singaporean style policies are likely to be adopted by more countries as their crime rates reach unacceptable proportions.

I do not believe that the majority of people who support capital punishment or other severe punishments, do so for sadistic reasons but rather out of a feeling of desperation that they and their families are being overwhelmed by the rising tide of crime which they perceive the government is doing too little to protect them from. I think there would, in the long term, be sufficient support for non-penal methods of dealing with criminals if these were proved to be effective.

We should start by introducing stricter discipline from "the bottom up," i.e. start with unruly children at school and on the streets and progress through young thugs and older thugs before we think about restoring capital punishment. This way, we might bring up a generation or two of disciplined people who might not need the threat of execution to deter them from committing the most serious crimes.

It is noticeable that whilst Singapore retains and uses the death penalty, it also has severe punishments for all other offences, including caning for many offences committed by young men who are usually the most crime prone group. Thus, Singapore provides discipline at all levels in its society and has the sort of crime figures that most countries can only dream of.

Can capital punishment ever be "humane"?

I have never personally believed that any form of death, let alone execution, is either instant or painless, so which method of capital punishment should a modern "civilised" society use?

Should our worst criminals be given a completely pain free death even if the technology exists to provide one, or should a degree of physical suffering be part of the punishment?

Whatever method is selected should have some deterrent value whilst not deliberately causing a slow or agonising death.

British style, [hanging](#) is an extremely quick process that is designed to cause instant and deep unconsciousness and also benefits from requiring simple and thus quick preparation of the prisoner. It also seems to have substantial deterrent value.

[Lethal injection](#) may appear to be more humane than other methods to those who have to administer and witness it, but it is a very slow process. It is essential that the catheter actually goes into a vein rather than through it or round it if the prisoner is to die a pain free death. If it doesn't, then the person may suffer a great deal of pain but will be unable to communicate this due to the paralysing effects of the second drug. The biggest single objection to lethal injection is the length of time required to prepare the prisoner, which can take from 20 to 45 minutes depending on the ease of finding a vein to inject into.

The [gas chamber](#) seems to possess no obvious advantage as the equipment is expensive to buy and maintain, the preparations are lengthy, adding to the prisoner's agonies, and it always causes a slow and cruel death. It is also dangerous to the staff and witnesses.

[Electrocution](#) can cause a quick death when all goes well, but seems to have a greater number of technical problems than any other method, often with the most gruesome consequences. (This may in part be due to the age of the equipment - in most case 70-90 years old!)

[Shooting](#) by a single bullet in the back of the head seems greatly preferable to shooting by a firing squad in that it is likely to cause instant unconsciousness followed quickly by death rather than causing the prisoner to bleed to death, often whilst still conscious.

It is easy to condemn capital punishment as barbaric, but is spending the rest of one's life in prison so much less cruel to the prisoner or is it merely a way of salving society's conscience and removing the unpleasantness for the staff and officials?

Conclusion.

At the end of the debate, we would seem to be left with three options.

- 1) Not to have the death penalty and the genuine problems it causes and continue to accept the relatively high levels of murder and other serious crimes that we presently have.
- 2) Reintroduce capital punishment for just the "worst" murderers which would at least be some retribution for the terrible crimes they have committed and would permanently incapacitate them. It would also save a small amount of money each year which could, perhaps, be spent on the more genuinely needy. This option is unlikely to reduce overall crime levels.
- 3) Reintroduce the death penalty in the really strict format outlined above and see a corresponding drop in serious crime whilst accepting that there will be a lot of human misery caused to the innocent families of criminals and that there will be the occasional, if inevitable, mistakes.

4.The Case Against The Death Penalty

by Hugo Adam Bedau

Despite the Supreme Court's 1976 ruling in Gregg v. Georgia, the ACLU continues to oppose capital punishment on moral and practical, as well as on constitutional, grounds:

- Capital punishment is cruel and unusual. It is a relic of the earliest days of penology, when slavery, branding, and other corporal punishments were commonplace. Like those other barbaric practices, executions have no place in a civilized society.

- Opposition to the death penalty does not arise from misplaced sympathy for convicted murderers. On the contrary, murder demonstrates a lack of respect for human life. For this very reason, murder is abhorrent, and any policy of state-authorized killings is immoral.
- Capital punishment denies due process of law. Its imposition is arbitrary and irrevocable. It forever deprives an individual of benefits of new evidence or new law that might warrant the reversal of a conviction or the setting aside of a death sentence.
- The death penalty violates the constitutional guarantee of the equal protection of the laws. It is applied randomly at best and discriminatorily at worst. It is imposed disproportionately upon those whose victims are white, on offenders who are people of color, and on those who are themselves poor and uneducated.
- The defects in death-penalty laws, conceded by the Supreme Court in the early 1970s, have not been appreciably altered by the shift from unfettered discretion to "guided discretion." These changes in death sentencing have proved to be largely cosmetic. They merely mask the impermissible arbitrariness of a process that results in an execution.
- Executions give society the unmistakable message that human life no longer deserves respect when it is useful to take it and that homicide is legitimate when deemed justified by pragmatic concerns.
- Reliance on the death penalty obscures the true causes of crime and distracts attention from the social measures that effectively contribute to its control. Politicians who preach the desirability of executions as a weapon of crime control deceive the public and mask their own failure to support anti-crime measures that will really work.
- Capital punishment wastes resources. It squanders the time and energy of courts, prosecuting attorneys, defense counsel, juries, and courtroom and correctional personnel. It unduly burdens the system of criminal justice, and it is therefore counterproductive as an instrument for society's control of violent crime. It epitomizes the tragic inefficacy and brutality of the resort to violence rather than reason for the solution of difficult social problems.
- A decent and humane society does not deliberately kill human beings. An execution is a dramatic, public spectacle of official, violent homicide that teaches the permissibility of killing people to solve social problems -- the worst possible example to set for society. In this century, governments have too often attempted to justify their lethal fury by the benefits such killing would bring to the rest of society. The bloodshed is real and deeply destructive of the common decency of the community; the benefits are illusory.

Two conclusions buttress our entire case: Capital punishment does not deter crime, and the death penalty is uncivilized in theory and unfair and inequitable in practice.

Deterrence

The argument most often cited in support of capital punishment is that the threat of executions deters capital crimes more effectively than imprisonment. This claim is plausible, but the facts do not support it. The death penalty fails as a deterrent for several reasons.

Unfairness

Constitutional due process as well as elementary justice require that the judicial functions of trial and sentencing be conducted with fundamental fairness, especially where the irreversible sanction of the death penalty is involved. In murder cases (since 1930, 99 percent of all executions have been for this crime), there has been substantial evidence to show that courts have been arbitrary, racially biased, and unfair in the way in which they have sentenced some persons to prison but others to death.

Opinion

The media commonly report that the American public overwhelmingly supports the death penalty. More careful analysis of public attitudes, however, reveals that most Americans would oppose the death penalty if convicted murderers were sentenced to life without parole and were required to make some form of financial restitution. In California, for example, a Field Institute survey showed that in 1990, 82 percent approved in principle of the death penalty. But when asked to choose between the death penalty and life imprisonment plus restitution, only a small minority--26 percent--continued to favor executions.(53)

A comparable change in attitude toward the death penalty has been verified in many other states and contradicted in none.

Abolition Trends

The death penalty in the United States needs to be put into international perspective. In 1962, it was reported to the Council of Europe that "the facts clearly show that the death penalty is regarded in Europe as something of an anachronism...."(56)

Today, 28 European countries have abolished the death penalty either in law or in practice. In Great Britain, it was abolished (except for treason) in 1971; France abolished it in 1981. Canada abolished it in 1976. The United Nations General Assembly affirmed in a formal resolution that, throughout the world, it is desirable to "progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment."(57)

The whole world Sikh Community prays for the Victims and for the aversion of a sudden sad demise.

You may voice your opinion against this brutality by calling your elected representative in India or abroad.

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