

CAPITAL PUNISHMENT FOR TERRORISTS

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The world has been witness to many gruesome terrorist attacks for several decades. On 16th Dec 2014, *The Hindu* carried an article on the Peshawar attacks.

“On a chilly winter day in Peshawar, parents rushed to prepare their children for their last journey before sunset. School uniforms with green blazers and grey flannel trousers soaked in blood were cut off from young bodies brought home, before they were bathed and wrapped in white burial shrouds and put into coffins, which then headed for the local graveyards.... Children who escaped saw their teacher being set on fire tied to her chair.”

Numerous heart rending stories often inflame diverse emotions in us all. Such horrifying atrocities inflict upon us anguish, despair and above all an anger that fuel our need for retribution. Most of us feel that the only way to ameliorate the atrocities perpetrated by these criminals is by imposing the death penalty. A reaction such as this is understandable but keeping in mind the circumstances as exists today, it is essential to pause for a moment and reflect. It is important that we do not let a temporary emotion govern a policy decision, especially one that deals with taking someone’s life. While there is no disputing the fact that terrorism is utterly unacceptable and must be curtailed, capital punishment for the terrorists is not the solution even for the “most serious crimes” since it serves no real purpose but instead, impairs international co-operation and heightens the risk of it being used arbitrarily.

There are indeed several strong counter arguments to this stance. In my interview with Colonel Erat Hari Shankar (Retd), he said

“One of the main aims of terrorism is to psychologically subjugate the civil society by creating a strong negative impact and fear in the minds of people. To achieve this they select targets with care. Since the opponent is strong and motivated, the civil society’s response also has to be equally strong. You are in a boxing bout against a vicious opponent, whether you like it or not. So you better train, strengthen yourself and come at the opponent with all your might, else you will be knocked out.”

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Shankar talked about the natural phenomenon of fear of death. While some with their training and motivation are perhaps able to control this fear, it certainly is not non-existential. He believes that punishment should have a twin effect: for the individual concerned and to act as a deterrent to others. To stop this menace of terrorism, all wings of the society, that is, the legislature, executive and judiciary need to pull their weight together. He also emphasised on the importance of capital punishment for terrorists as it is needed to strengthen those, who are not as bold in the society and for closure to many who suffered. It is important they feel a sense of solace and strength and start believing in the strength of the civil society. Another strong counter argument presented is the risk that citizens face when a high profile terrorist is kept in custody like the hijacking incident of IC-814 in 2001.

Admittedly, the death penalty is perhaps the most controversial issue in the administration of criminal justice and hence is bound to have varied standpoints. Through the course of this essay, I will be presenting you with arguments to solidify my stance on the need to abolish capital punishment.

Most countries have retained the death penalty on the grounds that it would be imposed only on the “most serious crimes”. My first argument deals with the fundamental flaw in this claim. Though there have been a number of United Nations ‘terrorism-related’ conventions, none of them provide a definition for what “terrorism” actually is. This on-going lack of international agreement causes each state to use different definitions while prosecuting ‘terrorism-related offences’ (Panel Reform International, 2004). It is left to the discretion of the judge to decide what is to be categorised as an act of terrorism. This shall inevitably be dictated by his consciousness and political beliefs and the same case could lead to different results. According to Panel Reform International (2004), “some of the definitions presented are vague, overly broad and may give rise to adverse consequences of human rights.” This heightens the risk of arbitrary and discriminatory use of the death penalty. A review by the United Nations Special Rapporteur led to the conclusion that death penalty must be limited to the “most serious crimes”, which can be shown by an “intention to kill, which resulted in the loss of life.” “...Death penalty for acts of terrorism, which most of the time have no clear definition and [sic] may lead to serious human rights violations,” the UN Special Rapporteurs on summary execution, torture, and human rights and counter terrorism said (United Nations Human Rights, 2014) as some of them may not meet the threshold of “most serious crimes”.

For instance, Article 79 of Vietnam's constitution, which carries the death penalty, "makes no distinction between violent acts such as terrorism, and the peaceful exercise of rights to freedom of expression." (Panel Reform International, 2004). Also, as per the definition of the most serious crimes, do we categorise acts of struggle and resistance carried out by national liberal movements that are aimed at innocent civilians as acts of terrorism? This takes me to my next question on the hypocrisy involved in the hero worship of Nelson Mandela - the political revolutionary, philanthropist, and former president of South Africa. As stated by McCarthy (2013), the MK, or the military wing of the Marxist African National Congress (ANC) was established by its commander, Nelson Mandela, "to prosecute a terrorist war against South Africa's racist apartheid regime". The MK in fact bombed public spaces and killed a very large number of civilians, much greater than the approximately 7,000 black South Africans who, according to the post-apartheid Truth and Reconciliation Commission (1998), were killed by the regime during the 46 years of apartheid.

Second of all, most of those who are involved in the acts of terrorism believe that if they die for their cause, they will become martyrs, thus emboldening their supporters for receiving great rewards in the afterlife (EJUSA, 2008). So once they are executed, they become heroes and legends in the minds of their followers. In fact, according to McDonnell (2004), making martyrs out of individuals, by killing or executing them, has throughout history, often advanced the cause of repressed political parties. For example, Great Britain's execution in 1916 of all fifteen leaders and others involved with the Easter rebellion led to the formation of the Republic of Ireland five years later. In 1966, Sayyid Qutb, a religious leader who espoused Salafiyya and is believed to have greatly influenced Osama Bin Laden, refused the opportunity to flee Egypt and chose to be executed by its president, Jamal Abd al- Nasser. He believed that those who risk their lives to go out to fight and are prepared to lay down their lives for the cause of God are in fact honourable people, pure of heart and blessed of soul. Countries like Great Britain, Israel, and Germany have refused to re-establish capital punishment despite being under threat of terrorism. James Prior, United Kingdom's former Secretary to Northern Ireland, believed that the execution of terrorists in Northern Ireland would act as a new inspiration for the IRA and other extremists. Another instance presented by McDonnell (2004, p.403), is of the Bali bomber's reaction to his conviction and death sentence in Indonesia in August. "Amrozi," as he is known, was gleaming with his thumbs up with no sign of remorse or sorrow.

To back up the futility of death penalty, various scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other

punishments. In Canada, the homicide rate per 1,00,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980, and since then, has declined further. In 2002, 26 years after abolition, the homicide rate was 1.85 per 1,00,000 population, 40 per cent lower than in 1975 (Sakhrani & Adenwalla, 2005, p.3).

One of the efficient ways of fighting terrorism is the criminal prosecution of individuals. And according to Borelli (2004), in order to ensure the effective punishment of crimes of a transnational character, domestic courts must be able to exercise physical jurisdiction over suspected offenders. This brings me to my third argument of the problems with capital punishment. Now, fugitives may be secured into the territory of the prosecuting state with either the co-operation of the asylum state or without such co-operation - through forcible abduction abroad. The latter method, however, can no longer be considered a feasible and legitimate option for international co-operation, which is greatly essential in fighting a menace like terrorism. The practice of forcible transnational abduction represents a “blatant violation of the customary principle of territorial sovereignty” (Borelli, 2003, p.4). While it is not distinctly prohibited by any human rights treaty, kidnapping an individual nonetheless violates several fundamental rights such as the right to liberty and security of the person, as protected by the International Covenant on Civil and Political Rights (ICCPR). The European Court of Human Rights too adopts a similar approach in its case laws. In the present day, domestic courts keep in consideration the “compatibility of abduction with internationally accepted human rights standards and the consistency of such a conduct with the human rights obligation of their own state”. In fact in 1993, the House of Lords held that when an accused has been forcibly brought with disregard to extradition procedures, the courts should refuse to exercise jurisdiction over him/her (Borelli, 2003).

Borelli (2003) then focuses on the other alternative, extradition, as something that states are increasingly working together on. Many of these states are parties to international conventions requiring mutual cooperation for the suppression of terrorism. Therefore, respect for “states [sic] sovereignty and for the inherent fundamental rights of all individuals may be reconciled with the necessity of prosecuting and punishing fugitive terrorists by obtaining custody of international terrorists through already existing extradition procedures”. However, if a state is willing to extradite the militant, it is also essential to note that it’s also responsible for any foreseeable violation of rights of the individual by the state in which he is extradited to. These “foreseeable violations” include subjection to torture, depriving a fair trial etc. Also, the possibility of the individual being condemned to death in the requesting state will pose a

hindrance for extradition from many abolitionist countries like European states. Emphasising on the case of Europe, it adopted Protocol No.13 to the European convention in February 2002, on the abolition of capital punishment in all circumstances. The European Court went on to state that ‘capital punishment in peace time has come to be regarded as an unacceptable, if not inhuman, form of punishment which is no longer permissible under Article 2, and that it constitutes per se inhuman and degrading treatment contrary to Article3 of the Convention.’ (Borelli, 2003, p.12). There have been various instances of friction between the U.S.A and European states in the matter of extradition. As a matter of fact, Spanish authorities have already made it clear that extradition would not be granted if suspects are at risk of facing capital punishment. Death penalty thus, only proves to be an obstacle and sabotages the international effort and co-operation against terrorism (Borelli, 2003).

A number of alternate approaches to fight terrorism have developed over the recent years that deal with de-radicalisation, re-radicalisation and re-integration of terrorists. These programmes offer a second chance for those who want to return to the mainstream society and have proved to be tremendously helpful in effectively countering terrorism. A pioneer in rehabilitation efforts, Saudi Arabia’s programmes since 2004 have integrated more than 4000 militants into mainstream society much more successfully than ordinary criminals (Stern, 2010). Remarkable progress has been witnessed in Pakistan’s programmes where it focuses its efforts on reintegrating child militants into the society (Horgan, 2014). Governments elsewhere in the Middle East and throughout Europe and Southeast Asia have launched similar programmes (Stern, 2010) with as many as 40 programmes worldwide (Horgan, 2014). Terrorist movements often arise in reaction to an injustice, real or imagined, that they feel must be corrected. However, many other factors apart from ideology influence a person’s decision to join the cause, such as market conditions, social networks, education, individual preferences (Stern, 2010). Deradicalisation programmes take these into account and use it as an advantage to motivate the militant to lead a better life. In fact, one of the main reasons for terrorism, as cited by Stern, is the ignorance about the true nature of Islam. Some of the former terrorists interviewed by Horgan (2014) said that they were deeply disillusioned and saw no way out. Interviews by Stern of the first and second generation Muslim children for a study of the sources of radicalization in the Netherlands, revealed that they felt talking about Jihad was “cool”. Though the chances of these children turning to violence is minimal, once they grow up they may join extremist groups and start identifying themselves with these groups. This

often ends up becoming their only community. To counter this, deradicalisation programmes such as in Saudi Arabia, help find new sources of support by reintegrating them with family and communities they were earlier a part of. Fear and humiliation could also play some role in creating martyr murderers such as in the lives of Palestinians living in Gaza. “If terrorism can be a source of validation, then surely helping adherents come to terms with the humiliation they have experienced could help bring them back into the fold.” Classes in self-esteem are included in Saudi Arabia’s programme to end this (Stern, 2010).

Prevention is better than cure. Several governments, alongside their deradicalisation programmes, are devising programmes to forestall radicalisation altogether. Taking the example of Netherlands, the Institute for Multicultural Development (also known as FORUM), “help adolescents and young adults in the country resist radicalization and recruitment into terrorist groups by encouraging them to “express their possible disappointments and (justified) feelings of exclusion in peaceful and democratic ways and turn their genuine concerns into positive social action.” FORUM focuses on “problem neighborhoods [sic]” namely, ethnic neighborhoods [sic] with high levels of unemployment” (Stern, 2010). The *Sakinah Campaign*, which is a non-governmental organisation supported by the Saudi Arabia government, helps Internet users who have visited extremist sites interact with legitimate Islamic scholars online. This is done to steer them away from radicalism and give them the right perspective. Projects like these can at least be a source of inspiration to many other countries (Stern, 2010). While these programmes are not a silver bullet solution and chances of recidivism still exist, deradicalisation programs can and have proven to be enormously beneficial. “After all, it is only by understanding the motivations and experiences of those who have gone to fight abroad that we can prevent the recruitment of another generation of militants” (Horgan, 2014).

It is true that terrorists prey on vulnerable populations - people who feel humiliated and victimised or “those who are not as bold in the society”. However, to strengthen the resilience of vulnerable populations, anti-gang programmes and public diplomacy are better solutions than war or death penalty. “Action against terrorist activities should not be reactive to increasing violence.”(United Nations Human Rights, 2014)

While I agree that the response to terrorist attacks has to be strong, let us do it the right way. The need of the day is to identify the reasons for individuals to take recourse to justice through terrorism and come up with long term solutions which will eradicate this menace forever. Death penalty not only fails to achieve its objective but also instead risks an increase of volunteers

joining these groups. It only proves to be a hindrance in our collective fight against terrorism. Capital punishment for terrorists is therefore, not the solution and should be abolished.



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