

1st Asia Pacific Dialogue
On Human Rights and Respect for the Dignity of Life

Religions and the Value of Life

Organised by the Community of Sant'Egidio

Manila – October 27-28, 2014

Talk by

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Why India should join the group of nations that say
'No to the Death Penalty'

Ms. Valérie Régner, Secretary General of the International Meeting of Minister of Justice "No Justice Without Life", Prof. Alberto Quattrucci, distinguished participants in this meeting, fellow peacemakers, ladies and gentlemen,

It is an honour to be invited to participate in this international meeting on a subject of perennial importance, but one whose importance has greatly increased in our times.

At the outset, I thank the Community of Sant'Egidio and, in particular, to Ms. Valérie Régner and Prof. Alberto Quattrucci, for giving me an opportunity to contribute to the deliberations of this meeting.

I come from India, which retains capital punishment for a number of heinous crimes. I am here to argue that India should join the large group of nations that have abolished death penalty.

The debate on the desirability of death penalty is as old as the State itself. In other words, it is as old as human civilisation itself since the birth of the State has coincided with the birth of human civilisation.

The need for the State arose as an institution, with the authority vested by Society, to maintain order and to do justice. No society can survive nor progress without order, which is based on justice. Without justice, there can be no order. Indeed, there will be disorder and conflict. But it is equally true that good social order is conducive, indeed indispensable, to the promotion of justice.

Thus, the State is an institution created and empowered by Society to deal with disorder and injustice. For this purpose, Society empowers the State to enact and enforce law. The power or the authority of the State includes the authority to penalise wrong doers and law breakers. The coercion involved in enforcing the law, and in punishing the perpetrators of crime, is justified on the ground that the State thereby protects the wellbeing of law-abiding citizens and maintains peace in the land.

Even though the nature of the State has been different in different parts of the world, and in different eras of human history, the coercive powers of the State to punish those committing the crime have been a common and continuing feature.

This feature will remain integral to the State in the future, too.

The question is – and this is a moral question of the highest importance, and the subject of this conference – whether the power of the State to punish should extend to taking away the life of the criminal.

The answer is straight and simple: No. The State cannot arrogate to itself the power to kill any human being, not even a convicted criminal, in the conduct of its functions to dispense justice.

The rejection of this power is based on sound moral and theological considerations.

Human life is the highest creation of God. Our life is a gift from God. It has been given to us so that, in the process of living, we come to know the purpose of life, the purpose for which God created us, and live our lives according to that purpose.

Since man has not created – and man cannot create – human life, he has no right to take it, neither another's life, nor even his/her own life. By the same logic and moral code, even the State has no right to take the life of any individual – the only exception to his injunction being the violence that the army, which is a

component of the State, is permitted to inflict on an aggressive rival army *purely in self-defense* of the Society and State.

Nevertheless, even the army of a peaceful State that has been attacked is duty bound to follow the Dharma of War; it is barred from doing anything that is unjust and unethical. Every enlightened religious culture and every noble theory of statecraft in the world has imposed strict do's and don'ts on soldiers to minimise deaths and destruction even when they fight a self-defensive war.

Since human beings are fallible and imperfect, they commit mistakes. They even commit crimes. These crimes must be punished, and it is normally the responsibility of the State to punish after a due process of law. However, if the punishment meted out is death, then the State itself commits the crime of killing. The crime is that of snatching away an irreplaceable and irretrievable gift that God had given to that unique individual – indeed, every individual is unique and also sovereign in some ways.

Of all the arguments adduced in defense of capital punishment, the two that are most dubious are retributive justice and deterrent justice. Some victims of the crime, or the near and dear ones of the victims, may want the crime to be avenged. However, vengeance on the criminal, on behalf of the victim of the crime, cannot be the legitimate role of the State. The purpose punishment cannot be retribution. It can only be reformation of the criminal. Death sentence prevents the State from performing its duty to reform the criminal to the extent that such reformation is possible. And it of course robs the person executed of the opportunity to reform himself/herself.

Secondly, there is considerable research conducted by organisations like Amnesty International, which refutes the argument that death sentence has “a greater deterrent effect than life imprisonment”. Amnesty International goes further to say: “Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis. The key to real and true deterrence is to increase the likelihood of detection, arrest and conviction. The death penalty is a harsh punishment, but it is not harsh on crime”.

Capital Punishment viewed through the prism of religious ideals

The religions of the world do not have any specific injunction against capital punishment by the State as such. Some of them have even been interpreted to justify death sentence. However, since all of them put the highest value on human life, it can be deduced that the argument for abolition of capital punishment is in line with the fundamental religious ideals.

Hinduism, Buddhism and Jainism laud human life in the following words in Sanskrit: “*Ahimsa Paramo Dharmah*” – Nonviolence is the highest form of Dharma.

Christianity teaches us that God’s love for man is infinite, and His mercy is also infinite.

Islam forbids the killing of Muslims or non-Muslims. The great Prophet of Islam has said: “*Any Muslim who unjustly kills a non-Muslim, God will make Paradise forbidden for him.*”

Mahatma Gandhi, an apostle of nonviolence and universal harmony among the followers of all religions in the world, conveyed the same message when he exhorted: “*An eye for an eye makes the whole world blind.*”

As Fyodor Dostoyevsky, the great Russian novelist who was profoundly inspired by spiritual ideals, writes in his novel *The Idiot*, “*To kill for murder is a punishment incomparably worse than the crime itself. Murder by legal sentence is immeasurably more terrible than murder by brigands.*”

It's time to quicken humankind's collective conscience on Capital Punishment

A notable feature of the modern history of the world, especially after the end of World War II, is the steady march of democracy. The collective voice, concerns, aspirations and demands of the peoples of the world cannot be completely ignored in the thinking and actions of governments and multilateral institutions. Thus, even though governments continue to follow many wrong priorities and policies that are detrimental to world peace and the wellbeing of the global community, it is also true that they often have to defer to the democratic call of the peace-loving and justice-loving people around the globe.

The champions of peace and justice have achieved some remarkable successes in recent decades. For example, the birth and subsequent evolution of the United Nations, with all its obvious weaknesses, is itself a supreme manifestation of the global community’s desire for peace, justice and cooperative development. The principles proclaimed in the Charter of the United Nations recognise the equal and inalienable rights of all members of the human family. This recognition is the foundation of freedom, justice and peace in the world. The human rights and fundamental freedoms of all human beings derive from the inherent dignity of, and respect for, the human person.

Here we see a remarkable convergence between the outlooks of religious as well as non-religious humanistic ideologies. Both place the highest value on human life – its dignity, its integrality, its inviolability.

The United Nations has several proud achievements to its credit. The ending of the apartheid regime in South Africa, through the inspiring nonviolent leadership of Nelson Mandela inside the country and with a global campaign against racism spearheaded by the United Nations, provides an inspiring example of the moral march of humankind.

Then we have the United Nations’ “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, which was adopted in 1984.

Similarly, the Chemical Weapons Convention (CWC) outlaws the production, stockpiling, and use of chemical weapons. The treaty, which entered into force in 1997, is administered by the Organisation for the Prohibition of Chemical Weapons (OPCW), which is the fastest growing international disarmament organisation in history. As of September 2013, around 82% of the declared stockpile of chemical weapons has been destroyed – not an insignificant achievement.

The forward march of the United Nations presents several such examples that have advanced the cause of peace, justice and civilised conduct by nations. Therefore, we can indeed hope that the ongoing global movement, under the aegis of the UN, for an end to capital punishment will also succeed someday.

Capital punishment in India: the debate and the road ahead

It is unfortunate that India, whose rich spiritual traditions place the highest value on human life and which advocates nonviolence as God’s commandment, still retains death penalty on its statute. India’s stance on this issue is partly a legacy of colonial rule. During the British rule, death was prescribed as one of the punishments for certain heinous crimes in the Indian Penal Code (IPC), 1860. This has been retained after India won independence in 1947.

From time to time, the demand for abolition of capital punishment has been made in and outside Indian Parliament. In 1962, the matter was referred to the Law Commission, which in its exhaustive report recommended that capital punishment should be retained as a deterrent to occurrence of serious crimes.

Even though the debate on capital punishment has gained significant ground in other parts of the world, especially in Europe where the European Union has made “abolition of death penalty” a precondition for membership, India has remained at

standstill on this issue. In 2007, India voted against a United Nations General Assembly resolution calling for a moratorium on capital punishment. India did so again in 2012 by voting against the UNGA draft resolution seeking an end to death penalty.

This does not mean that the debate itself is at standstill in India. Civil society organisations, often joined by legal luminaries, have never stopped raising the demand for abolition of death sentence. Partly influenced by this activism, the Supreme Court of India ruled in 1983 that the death penalty should be imposed only in "the rarest of rare cases." The apex court has allowed the death penalty to be carried out in only four instances since 1995. Official statistics show that 48 persons were executed in independent India from 1947 till 1995. (This figure is however disputed by non-governmental organisations such as the People's Union for Civil Liberties.)

One of the potent arguments against capital punishment in India is the mental torture involved in the enormous delay between the pronouncement of the sentence and its execution. As of February 2013, there were 477 convicts on death row in India. Many of them were sentenced ten to twenty years ago. Most of them will not be sent to the gallows. However, the uncertainty associated with their fate is punishment in itself.

In June 2012, the then President of India, Mrs. Pratibha Patil, commuted the death sentence of as many as 35 convicts to life imprisonment. She was succeeded by Mr. Pranab Mukherjee, who, within a few weeks of assuming office in July 2012, received an unprecedented appeal from 14 eminent former judges seeking his intervention to commute the death sentences of 13 convicts. The judges based their appeal on the Supreme Court's own admission of error in the capital punishment pronounced on the 13 convicts since 1996. Shockingly, they pointed out that the sentences were erroneous also in the case of two other convicts who were hanged. The judges called this "the gravest known miscarriage of justice in the history of crime and punishment in independent India."

A new silver lining in the debate on death sentence in India is that the Law Commission, which had opined nearly five decades ago that the time was not right to abolish the death penalty, has begun a fresh exercise to reexamine the matter. In May this year, it issued a public consultation paper on capital punishment with a detailed questionnaire seeking people's views on the issue. This follows the Supreme Court commuting the death sentence of 19 persons after their mercy pleas were rejected.

The apex court has observed that "perhaps the Law Commission of India can resolve the issue by examining whether death penalty is a deterrent punishment or is retributive justice or serves an incapacitative goal".

In its consultation paper, the Law Commission states: "At this juncture, an exhaustive study on the subject would be a useful and salutary contribution to the cause of public debate on this issue. Such a study will also provide a definitive research backed orientation to the law makers and judges on this very contentious issue."

The Law Commission also observes: "People have begun to speculate about the end goal of keeping a penalty such as death sentence on the statute book. In recent years, the Supreme Court has admitted that the question of death penalty is not free from the subjective element and is sometimes unduly influenced by public opinion. In this context it is imperative that a deeper study be conducted to highlight whether the process of awarding capital sentence is fraught with subjectivity and caprice."

One hopes that the Law Commission of India makes a bold recommendation that is different from the one it did fifty years ago. India is a nation with a population of 1.25 billion. Within the next 15-20 years, India will be the most populous nation in the world, overtaking China. If a large country like India decides to end death penalty, and joins the nearly 140 countries that have already done so, it will be a big victory for the global movement against capital punishment.

A critical weakness in the movement against capital punishment in India is that it has not yet sufficiently reached out religious institutions and their leaders. It has remained largely limited to small civil liberties organisations and members of the legal and judicial fraternity. India is a multi-faith nation, where religions play a strong role in social life and, sometimes, also in the country's political life. All religions propound nonviolence and respect for life. Therefore, if respected religious institutions and leaders with large following raise the demand for an end to death penalty, it can have a salutary effect on the thinking of the government and parliamentarians.

'No justice without life' and 'No life without justice'

In the context of the debate on the need to secure an end to capital punishment, this conference has formulated its stand in the following words: **"No justice without life"**. This formulation is right and it frames the issue in a persuasive way. Nevertheless, the obverse of this formulation **"No life without justice"** must also engage our attention.

A lot of crimes in this world are committed because of the absence and denial of justice. While there can be no justification for anyone committing heinous crimes because justice has been denied to them, the social context in which such crimes take place cannot be ignored.

Similarly, we cannot ignore the unspeakable levels of injustice even in the criminal justice system in many countries, including in a democratic country like India. Undertrials comprise more than half the prison population in our country. Many of these undertrial prisoners have been languishing behind bars for several years, even as the rickety judicial process takes its own sweet time to pronounce its verdict. Result: undertrials are punished even before they are convicted and often the eventual acquittal of many of them makes a mockery of the punishment they are meted out. This is a clear case of disrespect for life on the part of the justice system.

Therefore, all those who rightly campaign for an end to capital punishment, by advancing the slogan **“No justice without life”** must also equally strongly demand an end to the unjust social conditions, and the flawed functioning of the criminal justice system, that brutalise life in many ways.

This calls for an international campaign for reforms in the criminal justice system, with particular emphasis on prison reforms. Both the justice system and prison life must be made humane. At the same time, on a broader plane, the entire socio-economic and political system should be reformed on the basis of justice.

In other words, reform of Society and reform of the State on the foundations of justice forms the larger agenda within which the campaign against capital punishment should be conducted. After all, we should remember that religions, which place the highest value on Human Life, also place the highest value on Justice.

Postscript: Our conference is taking place in the backdrop of a terrible news. Ms. Reyhaneh Jabbari, 26, an Iranian woman convicted of murder for killing a doctor she said had tried to rape her was executed on Saturday morning. The government of Iran disregarded human rights organizations’ plea to commute her death sentence. This is as unfortunate as it is condemnable.