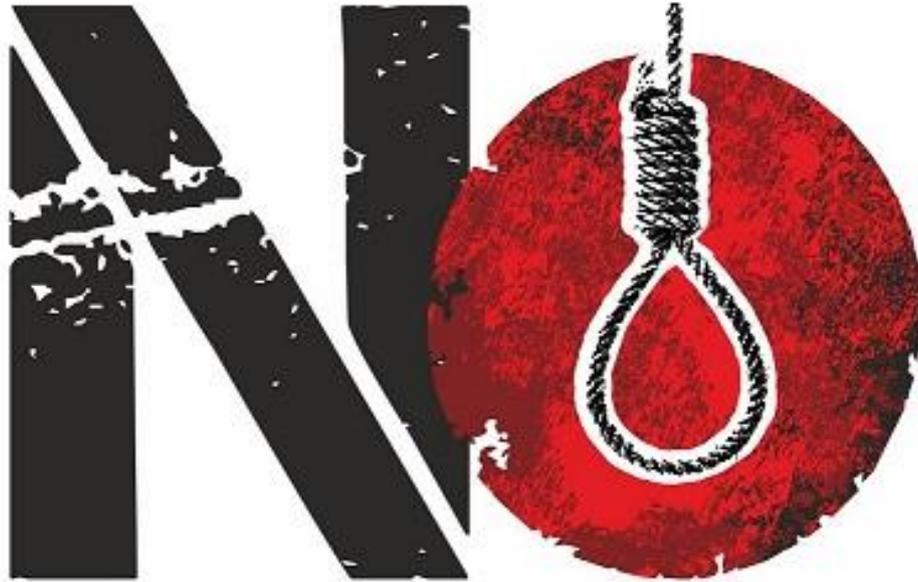


People's Union for Democratic Rights (PUDR)



YES TO JUSTICE | NO TO DEATH

Position Paper

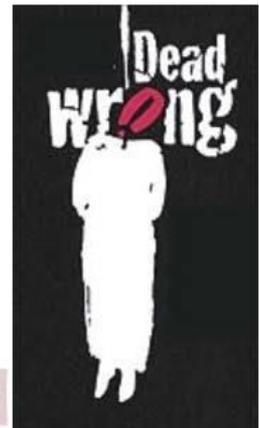
July, 2014

Execution Day

.....Gary Drinkard

*Cries and Screams all through the night
People all around going mad with fear and fright
Hustle and bustle with paintbrushes and brooms
Making things all pretty
So the public can view your doom*

*Death is alive and strong in the air
When it rubs you close it prickles your hair
Life is sweet and no one can know
What awaits them wherever they go
Will you feel your brain and blood boil?
Will the people watching clap or recoil?*



ALL INDIA CONVENTION
AGAINST CAPITAL PUNISHMENT

PUDR's opposition to the penalty of death is three decades old. Like everything else our opposition on capital punishment is evolving and is a 'work in progress'. Starting with serious objections to the arbitrariness inbuilt in awarding Death Penalty, the fact that almost all death row convicts have come from lower echelons of society convinced us of its unjustness and that in an unequal society even dispensation of justice is stacked against the poor. Secret hanging of Ajmal Kasab and particularly the cold blooded political execution of Afzal Guru, bowing to orchestrated demand for his execution in the name of "collective conscience" made it evident that India's criminal justice system allows free play for social biases based on class, caste and community.

The major intervention in the initial discourse on death penalty made by the Civil Liberties-Democratic Rights groups was the argument about the punishment of death as a violation of Article 14, right to equality before law in India. This point had been affirmed by Former Supreme Court Chief Justice P.N Bhagwati in as early as 1982 when he said that death penalty was unconstitutional because the overwhelming numbers of persons on death row are poor. We argued then that the courts must treat the underprivileged background of the accused as well as lack of access to competent legal assistance as mitigating factors.

Opposition to death penalty mounted with the execution of Kehar Singh in January 1989 for his alleged involvement in the conspiracy to assassinate Prime Minister Indira Gandhi. The capital punishment to Kehar Singh evoked strong reaction from the civil liberties and democratic rights groups as he was hanged on the basis of circumstantial evidence. Through the Kehar Singh case, the point about death penalty being a punishment resting on subjective disposition of the judges, hence arbitrary, as well as prone to errors while being an irreversible punishment, became palpably clear.

An important intervention for us was in 1996 when we fought for the commutation of death sentence awarded to two Dalit landless labourers, Vijay Vardhan Rao and Chalapathi Rao, who had caused the death of 23 people accidentally by setting a bus on fire. A petition was sent to the President with signatures of rights activist and a plea was made at the Supreme Court to impede the hanging as a petition was pending with the President. In the wake of the rushed midnight efforts of the CL-DR groups, all night protest at Jantar Mantar and untimely knock at the Chief Justice's house with the logic of a pending petition, stayed the hanging. As a consequence, both Vijay Vardhan and Chalapathi are still in prison now and one of them went on to obtain an M.Phil while in jail.

In 2004 when the All India Committee Against Capital Punishment was formed it furthered our movement along the same lines in two cases particularly, the Bara massacre case and Dhananjay Chaterjee case. In the Bara massacre case, four Dalit landless and semi-bonded labour who cultivated the land of Bara landowners, namely, Nanhe Mochi, Veer

Kunwar Paswan, Krishna Mochi and Dharmendra Singh were condemned to death by the Supreme Court for killing 35 upper caste men in 1992.

Our effort in this case was not to condone the massacre but to argue that the crime needs to be looked at in context of a series of killings by the upper caste landlord armies, whose crimes did not invite harsh punishment, let alone death penalty. The opposition to death penalty hence also stems from our argument that crimes can't be viewed in abstraction from the socio-economic context in which these occurred. For instance the Bara massacre was preceded by massacre in Sawan Bigha (Jehanabad) on 21st September, 1991 in which 7 landless labourers were killed. On 23rd September 1991, in Karkat Bigha (Patna) 7 Dalits were killed by Kisan Sangh; in October 1991, the Sunlight Sena slayed 7 members of a Dalit family in Teendiha (Gaya); and on 23rd December 1991, members of Sawarna Liberation Front attacked dalit Tola in Men Barsimha (Gaya) killing 10 landless labourers.

On a similar note, PUDR, through a petition, tried to avert the hanging of Dhananjay Chatterjee accused of raping and brutally murdering a young girl in Kolkata in 1990. He was arrested in 1991 and sentenced to death that very year. Dhananjay had lived in the shadow of death for 13 years and when the Supreme Court rejected the final petition on 12th August 2004, we pleaded that no person can be punished for the same crime twice. However, our efforts failed. And the argument of avenging a gruesome crime by purging the criminal met with popular sentiments, of course with the help of the popular media, just as it did in the 16 December 2012 Delhi Rape case where the Court worked to satisfy the 'collective conscience of the nation', an euphemism for blood revenge.

If the assumption behind death penalty is that of justice through punishment, then hanging is a form of punishment that punishes the body for avenging the crime committed. That brings us to the entire debate on the rationale of punishment. What is the purpose behind punishment? Does it mean only avenging the crime or does it have a purpose beyond also? If we accept that criminal behaviour can never be explained through individual attributions and is dependent upon larger societal forces, then the idea of forcible incarceration of a criminal demanding atonement and reform is likely to fail as the roots of the crime remain unaddressed.

The secretive hanging of Ajmal Kasab and in particular Mohammed Afzal Guru in 2012 and 2013 compelled us to note how "collective conscience" allows majoritarian prejudices to dominate public discourse, judicial proceedings and administrative decision-making. It raised for us the disturbing question about how political dissidence can first be criminalised by invoking anti-terror laws and/or offences against the State. Invoking such draconian laws then provides and becomes, so to say, the extenuating factors which make it easier for prosecutors and Courts to award capital punishment on the basis of the so-called 'terrorist' crimes. Through the whole process of investigation, prosecution and appeals in

Afzal Guru's case, demand for blood revenge resounded. In the case of Ajmal Kasab, whose guilt unlike Afzal Guru was never in doubt, posed a challenge for abolitionists. A Pakistani mass murderer, from a poor Punjabi agricultural workers family, was a foot soldier who carried out mass slayings lured and motivated by his faceless 'handlers'. PUDR believed then as now that he deserved life sentence because incarceration for natural life is a severe form of punishment in seclusion which could have allowed him the possibility to reform and recant. Even more important is the fact that while his hanging was celebrated, the search and pursuit of real culprits has slackened.

The hanging of Ajmal Kasab and Afzal Guru in quick succession after an interval of nine years and rejection of mercy petitions of 20 other death row convicts brought home to us the need for urgency for demanding abolition for death penalty.

The 21st January 2014 Supreme Court judgment which commuted the death sentence of 15 convicts more or less resonated the arguments that we had been building for opposing death penalty. The judgment arose in a matter brought up by PUDR and others before the Chief Justice's Court. On April 6, 2013 PUDR had filed a PIL [as had Commonwealth Human Rights Initiative (CHRI)] for stay on death execution. In its petition, PUDR had challenged the rejection of the mercy pleas of the eight convicts contending that there had been delay in carrying out their execution even after they were confirmed by the apex court. There were seven other appeals asking for commutation which too were accepted. A bench headed by Chief Justice Sathasivam stayed the execution of fifteen death row prisoners, convicted in different cases, whose clemency pleas were rejected by President Pranab Mukherjee.

While we rejoice that 15 death sentences have been commuted, there are about 414 convicts on death row, and the Penalty of Death remains in our statute books. However, the judgment is a strong critique of the arbitrary nature of the punishment and carefully marks out the procedural lapses in carrying out executions which can result in substantive miscarriage of justice. But our stand goes further to argue for abolition of death penalty.

In 2005, PUDR, through a letter to the Prime Minister Dr Manmohan Singh, dated 2nd November 2005, welcomed the 'efforts of his Government at the highest level to seek the commutation of the death sentence awarded to an Indian citizen, Sarabjit Singh, in Pakistan.' We expressed the hope that this would be the first step of the UPA government towards '*questioning the relevance of the death penalty and eventually moving towards abolishing the death penalty in India*'. We had pointed out that death penalty is an 'archaic form of punishment which upholds the savage norm of an eye for an eye and violates the right to life, a principle on which humane civilisation rests. PUDR does not condone violent crimes and calls for punishment of the guilty after investigation, prosecution and conviction. However the death sentence rejects any possibility of reform – the very object of punishment.'

Article 21 of Indian Constitution states that ‘no person shall be deprived of his life or personal liberty except according to procedure established by law’. But we argue that any procedure followed to deprive a person of his/her life or liberty, is unjust and unfairly stacked against the poor, political dissidents, and mostly Dalits and Muslims. We instead believe in the notion of rights as indispensable for any idea of democracy to be realized. Certain rights are considered to be inalienable, foremost being the right to life, which also pre-empt all other rights while envisioning a democratic state and society.

Within the framework of a democratic state, the state is looked upon as the guarantor of rights. Thus, the right to life, which means that all individuals have the right to live with dignity, is a right that the state is obliged to protect. Once a person is taken into custody by institutions of State tasked with that authority, protection of his/her life becomes of utmost importance. Anything contrary, is a gross violation of rights by the same state that is obliged to protect them. *He/she cannot be bodily harmed, tortured, subjected to extra-judicial execution or awarded death penalty.* Under such circumstances the award of death to a person incarcerated is but a ‘legally mandated custodial killing’. This gets compounded because it is a demonstrated fact that form of punishment hits mostly those who come from marginalised sections of our society. Thus the award of death penalty becomes even more problematic because it subverts the Right to equality before law. We thus consider the license provided by the Constitution and law to award capital punishment as a flaw in our Constitution.

These arguments are reinforced by our belief that the death penalty being inherently an outcome of human agency can never transcend the subjective disposition of its arbiters. This is certainly true of judiciary because judges do differ in their interpretation of ‘rarest of the rare’ crimes. The executive too is prone to subjectivity because clemency or its denial is informed by political expediency under the fig leaf of “procedure established by law”. For a person on death row this is indeed a lethal lottery.

We, therefore assert that the purpose of any form of punishment in a society that seeks to cherish the values of justice and democracy, has to be an end to crime, and not criminals. For instance demand for death sentence for rape diverts from the need to expeditiously punish the rapist as well as need for fighting against patriarchy. Similarly, demanding death for terrorists obviates the need to look at the social and political origins of political violence. As a result, death penalty eliminates the scope for reform and diverts attention from systemic origins of crime. And it glosses over the fact that incarceration, loss of freedom and seclusion are themselves forms of punishment.

We are mindful of the fact that our Justice system is liable to errors. Although no form of punishment is reversible, if a person is incarcerated for ten years, there is no way how he/she can be repaid those years back. However, death penalty forecloses any possibility

of reversal. If it is later proved that the person sentenced to death was not guilty of the crime he was punished for, nothing can be done about it. A life lost can never be compensated. Over and above, death penalty legitimises the sense of vengeance in state and society, and reinforces the cycle of cruelty.

While demanding the abolition of death penalty, PUDR argues also for reform of jails as correctional institutions and for addressing the issue of proportionality between Crime and Punishment, among other issues that need to be taken up simultaneously.

*After the bars and the gates
and the degradation*

What is left?

*After the lock ins and the lock outs
and the lock ups*

What is left?

*I mean, after the chains that get entangled
in the grey of one's matter,*

*After the bars that get stuck
in the hearts of men and women,*

What is left?

After the tears and disappointments,

After the lonely isolation,

After the cut wrist and the heavy noose,

What is left?

..... From Assata Shakur's Assata/ An Autobiography

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