Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

Book Review: Abolishing the Death Penalty

Vaishali. N[a]

[a]Tamil Nadu Dr. Ambedkar Law University, Chennai, India

Received 17 October 2022; *Accepted* 28 October 2022; *Published* 01 November 2022

INTRODUCTION

In India, capital punishment is the highest punishment to be awarded to a convict in the 'rarest of rare cases. The death penalty is primarily executed by hanging the convict by the neck until dead, as established under section 365(5) of the criminal procedure code, 1973. There has been a huge debate on the morality and effectiveness of awarding death sentences in India. The 'abolition' of death sentences is still quite an unpopular opinion in India as it's widely a retentionist country by the constitution. Moreover, with the increase of heinous and appalling crimes being reported in recent times, the position of retentionists is only becoming stronger and more people have begun to join in support of retaining the death penalty in the country. The author aims to break this retention mindset of people through his book. 'Abolishing The Death Penalty, as the name of the book suggests, sets out to justify why India should stand against awarding of capital punishment. The author questions the reasonability of death penalties and whether capital punishments actually serve the purpose of deterring crime or if it's just an act as inhumane as the crime that triggered it.

ABOUT THE BOOK

Abolishing the death penalty is an English non-fiction book written by Gopalkrishna Gandhi, a former diplomat, and administrator. The book was originally published in 2016 under the issue of Aleph Book Company. The author poses the most fundamental questions on the issuing of death penalties and the Indian judiciary's current position on capital punishment. He attempts to analyse the reasons why India has an inclination to the retentionist philosophy, on how heinous murder and rape crimes have affected the minds of the mass to give in to the retentionist perspective and how the strong emotional and psychological factors of the population plays a role in keeping India away from abolishing the death penalty. Mr Gandhi has analysed the history of capital punishment in India and other countries and has also compared their current status. Further, the book attempts to justify why the death penalty is inhumane by nature and futile concerning its objective and purpose and that therefore should be immediately abolished.

SUMMARY OF THE BOOK

Out of 195 countries, 140 countries have already abolished the death penalty and this trend continues forward as more countries are moving closer to executing the same. India has throughout history can be seen taking a step forward and two steps backwards when it comes to abolishing capital punishment. While there have been amendments made to statutes and landmark judgments given by the court, all in an attempt to narrow down the scope of issuing death penalties, it is also important to note that India has been reluctant to ratify international conventions such as the United Nation's Convention against Torture and has also voted against banning the death penalty in UNGA's resolution. Moreover, there are over 385 convicts on death row. On this note, the author views India to be 'abolition-minded' in theory but 'retentionist' in practice.

The author highlights that the death penalty has been also been called 'judicial murder' because it accomplishes the same goal as murder – by taking away someone's right to stay alive. Mr Gandhi further adds that the abolition of the death penalty has nothing to do with a country being materially developed or advanced as even so-called 'third world' countries like Latin

America have abolished the death penalty, but developed nation like the US is yet to do so. So, it is essentially about not being backwards civilizational and not otherwise.

Mr Gandhi remarks that the abolitionists and retentionists are on the same page when it comes to viewing murder as the foulest of crimes and that one cannot simply relate to the experience of the victim or the trauma of the victim's kith and kin. He agrees that the abolitionists have not yet found a "philosophically rigorous, analytically taut and emotionally credible answer" to answer the questions of those affected and mere reasoning of revenge being low desire and abolition of the death penalty being wise and for the higher good is simply not enough. But again, he believes that a tit-for-tat approach to punishing a convict is just as vile as the crime itself. Talking of the death penalty for treason, the author thinks that the power to punish by death is one of the greatest powers that the state holds and it uses this power to assert its authority over its subjects. He takes examples from the political history of India where many kings such as Sikander Lodhi of Delhi, Krishnadevarayar of the Vijayanagara empire, the Marathas, the Mughals, political thinkers like Kautilya, Thiruvalluvar, and even the most compassionate -minded Ashoka, have retained capital punishment in one form or the other. And this has continued to exist in the present scenario with the governmental and presidential inclination to being retentionist. The author feels that it is up to the people to think about the futility of the death penalty as it only starts a counter-cycle where retribution needs to be retributed.

The author proceeds to talk about the president's power to pardon death sentences (under article 72), by which the president can accept or reject mercy petitions with the advice of the government. He compares it to the concept of divine will, which bestowed the king with the power to pardon a person convicted of a death sentence. Mr Gandhi is of the view that it's simply unfair that a person's life is left at the mercy of another man's discretion.

The author finds the issuing of the death penalty to non-homicidal offences such as waging war against the state, capital terrorism, and commission of repeated rape, an offence recently added to section 376E of IPC after the Nirbhaya case of 2012, deeply questionable. Speaking of the right to life, the author emphasizes that the abolition and prison reforms should both be given equal

attention and for an abolitionist neither is of secondary concern. He believes that Prison reform prepares the ground for the abolition of the death penalty.

Mr Gandhi in the final chapters elucidates the rationale behind his defence of the abolition death penalty by stressing that it is about the return to civility. It is about reform and not retribution. He underlines that the larger issue is about how society's legal system treats criminals and that it is disturbing to note that "we are punished individually, but we punish collectively". He contends that since the death penalty is issued by the state after much thought, it is nothing short of a cold-blooded murder committed after carefully thought-out planning. He concludes by saying that, even though some efforts have been made to inch closer to the abolition of the death penalty, there's a long way to go, and much like the 'third-degree' treatment in prisons, the death penalty is not likely to be abolished shortly.

REVIEW

Mr Gandhi tried to spiritedly defend the cause he advocated for in the book by supporting it with morally provocative arguments. He has attempted to clear the mental fog in people's mind that arise out of various emotional sentiments that arise from sympathizing with the victim's story. True, one should not let emotions cloud their judgment sense, be it for a judge that awards a punishment or the common crowd that demands to punish of a convict. The author has taken a very humanitarian stance in wanting to abolish capital punishment as he remarks that by taking away the life of a person we are essentially taking away his chance to reform himself through remorse and regret. But I do have certain reservations at this point. There is no guarantee as to if a man would change if given a second chance or not. Let's say a person convicted of a heinous crime, in absence of the death penalty, is given life imprisonment and he has no realization of the crime he committed and has shown no sense of moral growth in any way.

In this sense keeping him in jail for life would just be futile as under horrible prison conditions he'd be nothing more than living dead and what is left would be his insignificance of existence where'd experience the mental torture of lonely existence, with the realization that he is in no

position to do any good to society or live a purposeful life for himself and pinging sense of vengeance in the hearts of those that suffered due to him, will keep them reminded of the pain he caused and that would leave the people with the feeling of justice not being done. But let's pose a stronger argument. In case there was no death penalty, terrorists who would be kept alive under imprisonment would pose a serious threat to the security of the nation and its subjects. There have been real-life instances that we know of, where plane hijacks, and terror attacks had taken place demanding the release of imprisoned terrorists.

The author has eloquently presented his views on why the death penalty should be abolished, its going takes more than just this to change the minds of the retentionist mood of the country, something which even he conceded to in his book. Mr Gandhi has also been quite realistic about the future of the abolition of the death penalty in India, which is to be appreciated. While I do agree with the contentions and arguments in the book I do not believe that complete abolition of the death penalty would be fruitful. Stricter laws narrowing the scope of issuing the death penalty can be entertained instead.

CONCLUSION

Abolition of the death penalty though might be an unpopular opinion, is something that's beginning to gain wide recognition socially and politically. India is a retentionist by practice and the road to abolition is long and nowhere near the end. It will abolitionists to come up with stronger arguments to change people's minds. It is unlikely that the abolition of the death penalty would happen shortly but as time passes more abolitionists such as Mr Gandhi with their contribution to the abolitionist philosophy can hope to impact the mass for a higher cause.