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India

Why we oppose all death penalties and the hanging of Yakub Memon

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Radical Socialist has consistently opposed death penalty as a form of punishment. This stems from a number of considerations. In the first place, long before the emergence of modern socialism, during the Enlightenment, it was pointed out, by Cesare Beccaria above all, that if the aim of punishment is to go beyond taking revenge, then the death penalty is unacceptable. According to liberal theory, the state represents everyone. It is to ensure peace. But if the state is a rational entity, then revenge cannot be a principal motivating factor. During the hanging of Afzal Guru, it was argued that the collective conscience of society will only be satisfied if capital punishment is awarded to the offender. In other words, what motivated the Court was at least as much a perceived desire to pacify the alleged collective conscience of society, as any desire for justice. This shows the gap between Liberal claims and Liberal reality.

Two parallel events have again brought hanging back into the news. The first is the imminent hanging of Yakub Memon [1] Memon was a participant in the 1993 terror bombing in Mumbai. He was however a secondary figure, the leading figures being Dawood Ibrahim, Yakub's elder brother Mushtaq (Tiger) Memon, and others. A year and a half after the event, Yakub returned to India and was arrested by the police, in an incident which remains murky (Yakub said he wanted to surrender, police said he had been arrested).

Yakub played an important role in the Indian police proving that Pakistan had been concealing the truth. In other words, he played a kind of approver's role. An approver is of course one who was originally part of the criminals. But it is standard for approvers to get lesser punishments. But the Indian police and the political establishment wanted a Memon to hang. So he must be hanged, even though he has already spent 21 years in prison. This seems to be the principal reason for the rejection of his mercy petitions, and the death penalty in the first place, with all mitigating circumstances being ignored.

Very different is the other case. In 2002, after the Godhra train burning, there were planned pogroms all over Gujarat. One of the persons finally convicted for many of those crimes was Maya Kodnani. Kodnani was found guilty for the murder of 97 Muslims in Naroda Patiya, along with Babu Bajrangi and others. The Special Court that tried her gave her a 28 year prison term. The Gujarat Government refused to give the Special Investigation Team (SIT) the permission to seek the Death Penalty in a higher court.

This needs to be generalised and certain other facts understood. It is only when major issues, like the hanging or not hanging of Memon or Kodnani come up, that the death penalty is discussed. But according to Prashant Bhushan, who is a senior lawyer, certain basic data can be found in the patterns of people hanged – namely, a class bias. The figures from a recent study bear him out. Nearly 94 per cent of people in the Death Row in contemporary India, according to a recent study, are Dalits or minorities. Over 75 per cent are economically vulnerable. The most important reason this happens is, these people, poor, often poorly educated, usually do not even manage to get a decent lawyer at the trial stage.

The recent revelations about the hanging of Dhananjay Chatterjee reinforce this. He was an impoverished guard in a building where an 18-year-old named Hetal Parekh was found dead in March 1990. He was convicted of having raped and killed her and was hanged on his 39th birthday, August 14, 2004, protesting his innocence until the end.

An analysis by Debashish Sengupta and Prabal Chaudhury of the case showed that a police witness in court denied having seen Chatterjee at the victim's flat. The police seizure list was signed by someone who supplied tea to the

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police and did not turn up in court. The antecedents of some items presented as incriminating evidence, such as a necklace and a watch, were never checked.

The trial court failed to question why no murder weapon was recovered and why there was no blood on Chatterjee's clothes even though there were 21 stab wounds on the victim's body. There are good possibilities that there might have been a so-called "honour killing" involved, since Parekh was supposedly raped and killed in a short window between 5:20 pm and 5:50 pm, (her mother had come back at 5:50), but the police were called only three hours later giving ample time to doctor evidence). The Parekh family members' evidences were inconsistent, and they soon ended their business in Kolkata and left.

The standard legal procedure is that guilt must be established beyond doubt. But in the cases where the accused are poor or from socially weaker strata, like Chatterjee, courts have often routinely ignored gaps and inconsistencies, simply because they did not have hotshot lawyers. By the time senior lawyers took up the case, they could only argue about procedural flaws, since the basic hearing had been in a trial court.

Yet, in 2004, when Chatterjee was hanged, his guilt was taken for granted, and those who campaigned that as he had already served 14 years in prison the penalty should at least be commuted to imprisonment were aggressively attacked.

His case, the cases of Memon versus that of Kodnani, all go to show that the death penalty in our society will only serve the economically and the politically powerful.

The mercy petition of Memon should therefore be supported, not because he is innocent, but because he does not deserve hanging.

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[Radical Socialist](#)

[1] He was in fact hanged on July 30.