

Crime and Punishment: An analysis of the death penalty

Bikram Jeet Batra

Notions of crime, the administration of justice and the nature and purpose of punishment provide valuable insight into the very nature of a State, reflecting its compulsions, challenges and concerns at the time while pointing towards the particular interests that the State seeks to serve. In present day India, reform of the criminal justice system has been a long standing demand of many to effectively address the growing incidence of crime in Indian society. Unfortunately the call for reform has essentially meant the demand for ‘hardening’ of the system, which also includes increasing the severity of punishment. This is epitomised by the report of the Malimath committee set up to suggest reform of the criminal justice system (CJS) in India.

The proposed paper is an attempt to reflect on the political economy of crime and punishment in the post- Malimath era. The essay will begin with an attempt to examine any changes in trends in the criminal justice system possibly brought about as a result of a change in the character of the of the Indian state from a colony to a democratic republic. The changing role and nature of punishment will be particularly important in India’s redefinition of itself as a ‘welfare state’. How was independent India’s understanding of punishment and crime different from that of the former colonial state, was colonial emphasis on retribution and deterrence effectively done away with in favour of a more reformatory view of punishment will be some of the questions raised in this section.

Such a trend is visible with particular reference to the death sentence in India. The original Criminal Procedure Code of 1898 provided that 'death' would be the usual punishment for capital offences and only under extenuating circumstances could life imprisonment be awarded. In 1955, an amendment ensured that the extent of punishment was left to the discretion of the court. In 1973 upholding the constitutionality of the death penalty, the Supreme Court nonetheless noted that capital punishment should be a narrow exception and not the rule. This stand was affirmed in 1980, when the Supreme Court held that the death penalty should be awarded only in "the rarest of rare cases". This remains the current position of the law.

However despite the enunciation of 'rarest of rare', there has been no decrease in the number of death sentences awarded by various courts. The 'hardening' of the Criminal Justice System is reflected in a plethora of special legislation, call for reducing safeguards provided to the accused in criminal law, speedier trials in fast track courts and harsher punishments on conviction. The increase in legislations in the 1980s (TADA, Sati Act, SC/ST Atrocities Act, NDPS Act etc) that allowed award of the death sentence is a telling example. This hard-line approach to tackling crime, of course, is not blind to issues of class, caste and other privileges that affect and influence the functioning of the criminal justice system. This essay shall attempt to chart the 'hardening' of the criminal justice system and increased punishment, and particularly focus on the award and use of the death penalty.