

Abolition of capital punishment in the country

SHRI D. RAJA (Tamil Nadu): Thank you, Sir. I rise to move the following Resolution:

Having regard to the fact that:—

- (i) snatching away somebody's life for crimes committed is not in consonance with evolving jurisprudence which embraces in its scope measures to reform the person and transform psychology in tune with the values of compassion and humanism;
- (ii) commission of the crime by somebody does not contract the scope to reform him or her, rather an approach to address the hidden faculties for realizing human worth is now accepted proposition in criminal jurisprudence and this is true for all human beings including those who have been convicted for heinous crimes;
- (iii) committing a crime is more a sociological than a legal problem;
- (iv) research demonstrates the disproportionate use of death penalty against disadvantaged groups, as a study by students of National Law University, Delhi has shown that there are caste and religious biases in the imposition of death penalty in India, indicating that 94% of the persons given death sentences for terror related cases belonged to *Dalit* caste or religious minorities;
- (v) the former President of India, late Dr. A.P.J. Abdul Kalam had supported abolition of death penalty saying that as President, he felt pain in deciding mercy petitions of death row convicts since most of them had social and economic bias;
- (vi) the Supreme Court of India itself has admitted to errors and miscarriage of justice due to the arbitrary application of death penalty;
- (vii) the Law Commission Chairman, Justice AP.Shah has also said that there is a serious need to re-examine the issue of death penalty since there are several inconsistencies in the system, which led to arbitrariness and discrimination in the imposition of death penalty; and
- (viii) the majority of the members of United Nations have voted in support of the U.N. General Assembly resolution calling for a moratorium on the death penalty and India is among the minority of the Member countries still voting against the resolution seeking to ban the death penalty,

This House urges upon the Government-

[Shri D. Raja]

5.00 P.M.

- (a) to reconsider its stand and make necessary amendments to various laws which have provisions for the death penalty so as to abolish capital punishment in the country; and
- (b) to declare a moratorium on all death sentence executions till the abolition of death penalty.

[THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE) *in the Chair*]

Sir, in fact, I gave this Resolution in July, 2015. For various reasons, the House could not take it up for discussion. Even today, there could have been better attendance. But there are elections in several States. The campaign is at peak. Even I should have been in a campaign in some States. But because of this Resolution, I had to step back. I hope, the House will take it up seriously.

If this Resolution is passed, it will be historic. It will be a significant one in the history of our country.

In fact, in 2004, a Private Member Bill was moved in the Lok Sabha. It was moved by my party colleague, who is no more, Comrade C.K. Chandrappan. He moved that Private Member Bill in the Lok Sabha in 2004.

This Resolution should not be linked to any particular case. The context is not related to any particular case. It is related to an issue that humanity is confronting, the human civilization is confronting. As a part of local community, what position India should have, the Indian society should have. That is the issue. In the contemporary history, we have been confronting many issues.

In 2011, I did move a Private Member's Bill in this House urging upon amendments in CrPC, Section 124, thereby deleting the sedition clause. I did move that Private Member's Bill. Now, it has become more relevant I think.

Now, I am moving another Resolution on capital punishment. Sir, we are part of the United Nations. It is the United Nations which made a strong appeal to the world community to abolish death sentence, capital punishment. In December, 2007, India voted against the United Nations General Assembly Resolution calling for a moratorium on death penalty. In November, 2012, India, again, upheld its stance on capital punishment by voting against the UN General Assembly draft Resolution seeking to ban the death penalty. Sir, on the basis of the appeal made by the United Nations, 120 countries have

abolished capital punishment, and a few of them stopped the practice of continuing the execution. But we are in the company of a minority. We claim, we are a great civilisation, we are a great nation. But on this issue, we are in the company of a minority. The situation has fast changed. The world is moving towards a new kind of jurisprudence, jurisprudence based on humanism, jurisprudence based on correction of individuals committing crimes, maybe, heinous crimes. But we still lag behind. We still stick on to certain colonial relics, we stick on to certain colonial laws, and it is time that we change our mindset. We should look at the issues not from just legal and technical position, we should look at issues from sociological, psychological and political angles too, because crimes are not just legal, they have socio-economic factors, several psychological factors. All these will have to be considered. In fact, many saner voices were there in the past, they are there today in our country, who are saying, India should say 'no', an emphatic 'no' to capital punishment, and India should agree for a moratorium on executions till that time. Sir, even our late former President spoke against it and he expressed the pains whenever he had to decide upon the capital punishments.

Now, I urge upon the entire House to look at this issue from a perspective that India is a nation which will be a model, which will become a source of guidance, inspiration to other nations, the entire humanity, as far as dealing with human beings, human lives is concerned. That is what we should try to understand. I am not taking it as a political issue. We may belong to different political parties. We do. We have differences on issues. We have differences in our approach. But this is an issue which we should look at from a greater perspective of India as a civilized nation, India as an emerging modern civilization. That is what I would like to appeal to every colleague, appeal to the entire House.

Sir, my Resolution is very clear. For the benefit of the House, for the benefit of the people across the country, I read out the Resolution:-

"Having regard to the fact that:-

- (i) snatching away somebody's life for crimes committed is not in consonance with evolving jurisprudence which embraces in its scope measures to reform the person and transform psychology in tune with the values of compassion and humanism;
- (ii) commission of the crime by somebody does not contract the scope to reform him or her, rather an approach to address the hidden faculties for realizing human worth is now accepted proposition in criminal jurisprudence and this is true for all human beings including those who have been convicted for heinous crimes.

[Shri D. Raja]

- (iii) committing a crime is more a sociological than a legal one.
- (iv) research demonstrates the disproportionate use of death penalty against disadvantaged groups — I will come to this later on — as a study by students of National Law University, Delhi has shown that there are caste and religious biases in the imposition of death penalty in India, indicating that 94 per cent of the persons given death sentences for terror-related cases belong to *Dalit* caste or religious minorities.
- "(v) the former President of India, Shri A.P.J. Abdul Kalam, had supported the abolition of death penalty saying that as President he felt pained in deciding the mercy petitions of death of convicts since most of them had social or economic bias;
- (vi) the Supreme Court of India itself has admitted to errors and miscarriage of justice due to the arbitrary application of death penalty;
- (vii) the (then) Law Commission Chairman, Justice A. P. Shah, has also said that there is a serious need to re-examine the issue of death penalty since there are several inconsistencies in the system, which led to arbitrariness and discrimination in the imposition of death penalty;
- (viii) the majority of the members of the United Nations have voted in support of the UN General Assembly resolution calling for a moratorium on the death penalty and India is among the minority of member-countries still voting against the resolution seeking to ban the death penalty.

this House urges upon the Government —

- (a) to reconsider its stand and make necessary amendments to various laws, which have provisions for the death penalty so as to abolish capital punishment in the country; and
- (b) to declare a moratorium on all death sentence executions till the abolition of death penalty."

Sir, this is my Resolution.

As I said initially, this Resolution should not be linked to any particular case. It is an issue which India, as a nation, has to take a position on, whether India can continue to have capital punishment on its statutes, whether India should remain be one of the nations which have death sentences. We will have to decide on that. I am not going to refer to

what the holy scriptures talk about, whether it is the Bible, the Quran, the Geeta or any other scripture. I am straightaway addressing the issue from the position of an ordinary human being. Yes, crimes do take place, but there are reasons, root causes, as to why crimes take place in a certain way. How to contain the crimes? How can we move towards a society where we would not have crimes? How can we reform, transform or change our society, where human beings have compassion and love for fellow human beings, where human beings share the joy and sufferings of fellow human beings, where human beings live with equality and concern for each other? That should be our perspective. This Resolution should really be looked from that position. That is why I am not making it a political and ideological issue. At this point of time, it is more than that. Somebody said that we should move from philosophy to ideology. One can argue that there is a need that we should move from ideology to philosophy, and we should be clear about what is our philosophy, what is our ideology. We may have different ideologies. But what should be our philosophy? It must be liberating human being, liberating human society. We should strive for ultimate liberation of our society, human beings. When I say liberation, it means liberation from hatred to each other, liberation from hostility that we have today to each other, liberation from discrimination which we have against others. How to move towards such liberation? It is an issue and we need to address this issue. Sir, India is one country. I don't say there is increase in the crimes. In fact, the crimes are coming down. That is also a positive thing. We cannot be termed as a country which has a large number of crimes as we witness in some countries in Latin America or in some countries in Africa. We can take some satisfaction that we do not have such a high rate of crimes. Even then, we have crimes and the Supreme Court, on its own wisdom, had to comment upon. Even if there is death sentence, Supreme Court had to intervene at one point. That was exactly in 1983 that Supreme Court ruled that death penalty should be imposed only in the 'rarest of the rare cases'. Now, that is also an issue as to which case can be called 'rarest of the rare cases'. There will be differences. How to determine and how to decide 'rarest of the rare cases'? I know the Supreme Court has extended the death penalty to those found guilty of committing 'honour killing'. What is this 'honour killing'? Again, that is a contentious issue. Why should we call it 'honour killing'?

SHRIMATI RENUKA CHOWDHURY (Andhra Pradesh): Nothing is honourable about it.

SHRI D. RAJA: Exactly. How has it come to popular terminology? But in Tamil they use a different word, that is, aanava kolai. Aanava kolai means not 'honour' but 'arrogance', 'the hatred'.

श्रीमती रेणुका चौधरी: "अहंकार"।

SHRI D. RAJA: That is how Tamil media nowadays uses this term. I cannot translate it properly, but we dismiss the way of calling it 'honour killings'. Killings are killings. They are gruesome and what is honour in that? The Supreme Court did consider this issue. Even when the Supreme Court agreed, for the time being — I use the phrase 'for the time being' it said, 'rarest of the rare' cases. But now, the time has come when we will have to re-interpret that also. That is what I say, whether it is 'rare' or 'rarest of the rare' cases, this death penalty should not be there. That is what I am trying to say.

Sir, definitely, we are a society with diversities and human beings are human beings. They hail from different socio-political backgrounds. In the morning, there was a point raised during the Question Hour. The question was whether there should be reservation in Judiciary. Why does that demand come? Even the Parliamentary Standing Committee on Law and Justice recommended that. My good friend, Dr. Sudarsana Natchiappan, is sitting here. Perhaps, he is also speaking on this issue.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI KIREN RIJU): If hon. Member can make it precise, we can finish it today.

SHRI D. RAJA: That Committee recommended that there should be adequate social representation in the Judiciary. Sir, I quoted Justice Sadashivam in the very same august House. Before he took over the Governorship in Kerala, Justice Sadashivam made a point and he said that there was need for an adequate social representation in the Judiciary. I am saying this because when verdicts are announced, as far as death sentences are concerned, we find...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Excuse me; did you say that honour killing and death penalty are the same? Is this what you are saying?

SHRI D. RAJA: No, Sir. I said that for honour killings, the Supreme Court said in 1983 that death sentence can be there. Those were the rarest of the rare cases when they were talking about that thing.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): How much more time will you take?

SHRI D. RAJA: I will just finish. We have a diverse society. In a diverse society, there can be bias. I am not making any insinuation; I am not attributing anything; I am

not casting aspersion on any individual Judge or any individual court, but all said and done, all are human beings and we have been talking about corruption. Corruption does not mean only involvement of money. Corruption can mean involvement of caste bias. Corruption can mean involvement of religious bias. So, corruption can mean those things also. In such a situation, we have a problem. I cannot understand one small thing. Mr. Vice-Chairman, Sir, I am asking this. We have seen a number of cases where *dalits* were killed and murdered. Finally, all the victims died but the accused were acquitted. All the accused were acquitted. I can quote several cases from Andhra Pradesh to Bihar. There are a number of cases. But the fact is that they were killed; they are no more. But who killed them? How did our justice system work in delivering justice to those people? It applies to *Adivasis*. In many States, they are killed; women are killed, children are killed. What I am saying is that the accused go scot-free and get away from the hands of law. So, something is wrong with our legal system, something is wrong with our jurisprudence. The mighty and the powerful accused get away, and, the weaker and the vulnerable sections become victims; they die just like that. What do you find in such a situation? If you analyze it, you will find that those who are caught, those who are punished, those who have been given death sentences, mostly belong to very vulnerable sections. That is where, I think, the issue needs larger consideration and the House has to apply its mind, and, through our collective wisdom, we should take a position, the Government of India should take a position, India as a nation should take a position. We are part of the United Nations, and, it is a moral, philosophical, psychological, sociological question, and, I think, the death sentence of the capital punishment should not be seen just as a simple legal question. It is a moral question. It is a larger sociological question. There, I think, as a civilized nation, as a civilized society, a time has come for India to say an emphatic 'no' to capital punishment. We will have to move towards amending our different laws, wherever it is necessary. Till that time, the Government of India should take a position in support of a moratorium on death sentence executions. We should move towards, 'no capital punishment'. India should say an emphatic 'no'. India will join a larger global community saying no to capital punishment. Till that time, no executions, no death sentences, and, a moratorium should be accepted. This must be our approach. I think, this issue should be discussed keeping in view the larger perspective and larger vision. So, Sir, I move the Resolution.

The question was proposed.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Thank you. The next speaker is, Dr. E.M. Sudarsana Natchiappan.

DR. E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Thank you, Mr. Vice-Chairman, Sir. This particular Resolution is very important in all contexts because our penal system is having a very long, ancient position of showing the sovereignty and also the superior authority on the human beings. Even, during the tribal period, ancient period, people used to show their authority by killing others as a part of the punishment. In some parts of the world, it is happening even today. But, as Mr. Raja has enunciated, there is a need for review of the system. But before that, we have to go into the actual penal system, how we are following it. We have borrowed the Indian Penal Code, which was enacted, from the British Parliament. For the sake of Indian system, even though Lord Macaulay had brought it, it may not have a pure colonial way of thinking. It had a mixed way of thinking on how the society can be rectified and prevented from committing the crimes against the human beings and also against the State. More or less, our thinking is now on the basis of homicide, killing of human beings and also the group of people or children or ladies. In that way, we are looking at the issue. The other way of looking at the issue is non-homicide. Other than the homicide, the States are having certain type of offences being classified, which end in the punishment of death. For example, we can take the robbery and murder clubbed with rape, and honour killing. As Mr. Raja was explaining, for performing inter-caste marriage, people were killed as a part of protecting the caste honour. And girl child is being killed because there is no protection for them. These are all very conservative views and many parts of the country are affected by them. And also, there are offences against the state, that is, treason, espionage, terrorism, kingpin activities and such other cases. Therefore, gradually the working of the death penalty as capital punishment is widening nowadays in one way and in another way, it is shrinking. We have to take the western example because we have borrowed the law from them even though our kingdoms, our ancient systems of living were giving sovereignty and authority to a person to be a ruler. He should have the right to give the death penalty as a part of punishment. But, more or less, we have inherited the statutory laws from the British system. When the British colony had extended in the United States, many of the States followed the same system of death penalty. Out of 55 States, 32 States are now following it; rest of the States are not following it. Even during President Obama's election campaign, one of the issues which were raised was whether the death penalty should be taken away from the statute book. But on the American side also, many of the judgements were having contradictory views. There were some sort of judgements which say that the US Supreme Court, in 1972, in *Furman versus Georgia* case, struck down

the death sentence which was made statutory in certain parts of the States of America. Subsequently, changes were also made and in 1976 in Greg *versus* Georgia case, they made it that death sentence should continue. There were 1,400 people caused to death according to capital punishment. Even in 2015 itself, 28 people out of these 1,400 people were there. All these things are happening in Western countries. But, in India, we can very well say that the Supreme Court has seized of the matter. They have said that death punishment should be in rarest of the rare cases. But, at the same time, I would like to go somewhat deeper into the issue by requesting the Home Ministry to look into the legal reforms. The entire society in which we are living now is totally different from the society where we were living fifty years ago or even thirty years ago. Now, there are many things coming up. In the television serials and many of the modern technologies, what is shown is the bravery of a particular person or a hero whose film comes up in the realm of the people by killing others. Therefore, violence is one of the parts of the bravery, which is inculcated even for the small children. Small children games are also showing killing of one animal to another animal or killing them *en bloc*. In that way, the children are brought up to kill others. They are never brought up in a way to have the human tendency, to respect the rights of others and respect them in a proper way. We are not bringing them up in that way.

Recently, after the Internet and other facilities have come up, children are now succumbed to a lot of crime-based films, which are coming up. Even our Censor Board is also allowing them to come up in the 'universal' category. Heroes are worshipped now as if they have really killed many of the enemies. They have a stunt master as tutor and that way, they praise their people. Children feel that it is one of the actions of bravery which they have to do in their lives.

Similarly, if we see the American system of using the pistol and killing the children, killing them *en masse*, even small children, juveniles are killing many of the children. Though India is not coming to that stage, at the same time, regarding rape and not obliging the women's rights, we feel that these are all things which are coming up because, even in the family, the television is showing such pictures which cannot be tolerated by the normal family. Therefore, the environment is also enhancing part of the crime being committed by the civilised society. In a very civilised way of living also, there is a part of psychological or psychiatric way of looking at issues to solve the problems.

I used to say that prohibition is one of the issues, which is raised by Tamil Nadu during the elections also. Even the topmost heroes are drinking in the TASMACHOP shop. They are showing their bravery. They are showing that a person is not loved; therefore, he

[Dr. E.M. Sudarsana Natchiappan]

is going to an arrack shop. This is the way we are cultivating the children to come to this level of committing the crime!

White-collar crimes are also increasing. Many rich people are coming very quickly in the films because of committing white-collar crimes. Finally, the end-up is, how a burglar or how a smuggler or how a kingpin is getting the highest way of living; therefore, I should also become like that. This is the way we are pushing the society to commit the crime!

But, at the same time, we want to see that the punishment should be lesser. One thing we have to see. Are we having the best judicial system? Are we having the best investigating system? Can we rely upon our investigation? Are we having a foolproof investigation system? Many of the rural people are unnecessarily involved in murder cases because the real murderer has escaped. Even in many cases, a person who is in prison for death penalty or for any heinous crime, comes out in the night, commits the murder and go back to that prison itself! This is the way many of the things are happening. Even cinema is also showing it. Stories are written like that. We are also seeing it happening in reality. Therefore, the whole system of reform in the penal system has to come forward. The very beginning of filing of FIR, investigating system, how are these interconnected, bringing the innocent people into the trap and real culprit going out of the trap, is the way it is going about.

More so, Sir, judicial system is also very much delayed. Civil cases can be delayed because they have got the luxury to do it. But the arbitration system is now coming up to look after that if there is a need for arbitration, they are going and paying a huge amount for the arbitrator and also the lawyers. But the criminal justice system is one of the parts of the work of the sovereign countries. Sovereign power has to be there so that the criminal justice system is properly done. Therefore, we have to have more concentration on the criminal system of justice. How is it going about? We can see; as a Committee on Law and Justice, we had visited Nagpur Jail and other jails also. We are working on that issue. How many people are in the custody even beyond their actual sentence, which was imposed by the court? Many people could not come out in the absence of surety. The court has directed that if a person cannot give surety because of poverty, then you allow him to go out. Even then they are in the prison. They are groomed to remain in the prison. They are groomed to become uncivilised. They are groomed to become criminals. The system is working in this way. Therefore, the system of judicial custody should be looked into. The prison system should also be looked into.

We have the Probation Act. The Probation Act is very rarely applied by the judiciary. We have to find out if that particular citizen has reformed his character and conduct to be a part of the civil society. If he does not cultivate his conduct and behaviour in the prison, then he should be sent back to the prison. If he has reformed his conduct and behaviour, then he should be admitted in the civil society. In this way, we should try to bring them out of the prison.

We need to abolish the colonial system of imprisonment. We need to have a new system of custody. For that, we already have got the laws. We have got the Criminal Procedure Code. Even during the trial, bail can be given. If their conduct is not proper, they can be sent back. As far as the Probation Act is concerned, the officers are not applying its provisions properly. The judges are not applying its provisions properly. A murderer, who is going to face capital punishment, can also think of reforming his conduct. And that has to be considered by the judge while awarding capital punishment. The procedure is given in the law. Certain judgements to this effect are also there. But none of them is applied by the judiciary. Nor does the prosecutor emphasise on the prisoner's reformed behaviour. We have to allow the probation system to find its way.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Dr. E.M. Sudarsana Natchiappan, how much more time will you take?

DR. E.M. SUDARSANA NATCHIAPPAN: Ten minutes.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): It is okay. There are two more speakers. See if you can give them time.

DR. E.M. SUDARSANA NATCHIAPPAN: I will try to conclude it as quickly as possible.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I think he wants a reply from the Minister.

DR. E.M. SUDARSANA NATCHIAPPAN: This is a very important topic. Some people wanted to have a wider discussion on this. Then we need to have another day for discussion.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I am not objecting to it. I am only requesting you to consider it.

DR. E.M. SUDARSANA NATCHIAPPAN: The discussion needs to be wider. It is very rare that we get a chance to discuss like this. The Home Minister will also have inputs from us. He would come to know about our thinking on these issues.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I am not stopping you.

DR. E.M. SUDARSANA NATCHIAPPAN: It is only for that purpose that I am elongating it. When we look at such an issue, we have to look at it in a comprehensive way. It should not be just about whether we should continue with capital punishment or not. That is not the issue. The issue is to see how our judicial system is working, how our system of prosecutors is working and how our investigation system is working. All these need to be rectified.

Two days ago, the Supreme Court commented that many cases end in acquittal because investigation is not done properly. It was reported in newspapers. Many cases end in acquittal because the judgements of lower courts do not consider the material points. Even the Division Bench of High Courts sometimes does not consider the material points. That is why when the Supreme Court takes up the matter, it reviews the judgement and says that there is no need for this kind of punishment. Why I am stressing on this point is because if there is a foolproof system of investigation, prosecution and judiciary, then only can we abolish capital punishment. When we find that all these systems are functioning properly, then we can say that capital punishment should go away from our system. The judges have to do their job properly. The investigators have to do their job properly. And the prosecutor has to consider his job as a duty to the nation, and not as another case for a public prosecutor. We have to think of all these things. We are enacting laws. We are amending the laws. But, at the same time, we have to see as to how we are enforcing these laws. That has to be looked into.

I request the Home Ministry that when it will take up the issue of prison reforms, and I hope jail manual is being prepared, it should consider the probationer's aspect. How to rectify the people and how to make the people fit into the system of civilised society and be the best citizens of this society? That has to be taken into consideration. I would like to complete my submission on this particular point by saying that India is one of the countries where we have very minimum death sentences. It is given only in the rarest of the rare cases and only when there are multiple murders or aggravated way of showing as to how the accused has used the knife for cutting or stabbing, how many stabs he has put, what are the materials to prove how he used it, how it was contemplated, how the conspiracy has come out, etc. These are the issues that are taken up before awarding punishment. But, I feel that the non-homicide aspect is also now dragging the death sentence as a part of the penal system. Is there a need for this or have we to rectify the

system? This is a larger issue which has to be debated. I feel that the social structure has to look into it. The society has to look in a proper way at our children who are going to be the future citizens and they should not be living in an environment like in America. America is now suffering. In America, even a child studying in a school is carrying a pistol and killing innocent children. Fortunately, this is not happening in our country. But, I am afraid, in this globalised economy, we also have access to so many television channels which American children have. We also may be tempted to go to that extent. That should not happen. Till then, we need capital punishment in the statute so that at least a threatening part is there. Otherwise, you remove everything and you remove capital punishment thinking that you should not kill the other people, but, at the same time, Mr. Raja will accept that honour-killing should have capital punishment. ...*(Interruptions)*... That may be his view. We may have different views for different issues. But, we have to see that. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Mr. Raja, don't start this argument please. ...*(Interruptions)*... You will have a say in the end again. ...*(Interruptions)*... But, don't start this.

DR. E.M. SUDARSANA NATCHIAPPAN: If you want to say it, kindly say that in honour-killing, there should not be any capital punishment. You say it like that. ...*(Interruptions)*... I want to have capital punishment if there is honour-killing. That is my stand because the society has to change. There should be a caste-less society. That is the way I think about it. Till then, we need capital punishment which has to threaten but it should not be used. It should be *brahmashtra*, the final way of threatening the society, but it should not be used because it can very easily trap innocent people for capital punishment. That is the way I look at the issue. The innocent people should be taken away from capital punishment, but the capital punishment is the way of showing the superiority of authority, overseeing and sovereignty where non-homicidal issues are there or where there is treason. These are all things which we have to take into consideration. We cannot do it in one stroke. Simply having it in the rule book and the penal code does not mean that it has to be applied. It can be applied in the rarest of the rare cases. I look at the issue in this way. We can have a broad discussion, but I again request the Home Ministry to look into jail reforms, penal reforms and the methodology of reforming the people when they are alive, when they have the honour of reforming themselves and come into the social system in an honourable way. Thank you very much, Sir.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Now, Dr. Subramanian Swamy. ...*(Interruptions)*... He has all the right like any Member. ...*(Interruptions)*...

DR. SUBRAMANIAN SWAMY (Nominated): Mr. Vice-Chairman, Sir, first of all, I congratulate my friend and senior Member of this House, Shri D. Raja, for bringing forward this matter for debate. Of course, I don't agree with him at all. Many of the things he has said are not true. For instance, he has said that we are in minority amongst the member countries still voting against the resolution in the U.N. The fact of the matter is that the United States is a large country, with a population of almost 350 million people. They are, in fact, having capital punishment, having largest number of executions per population. Russia is also having capital punishment. All Arab countries are having capital punishment. Iran is having capital punishment. The country with which Mr. D. Raja's party has fraternal relations, that is, China, they have capital punishment. He is not able to persuade China but he wants to persuade India. *..(Interruptions)..* I do and I support their capital punishment. I think, it should be applied to you also. The question is you are not being able to find out a single important country which has abolished capital punishment except some crazy liberal countries in Europe. The fact of the matter is that we have known that the criminal system is either retributive, that is, you take retribution or it is defamatory, you reserve it for juveniles. Even on that we have now made an amendment that if it is a heinous crime like murder, then, the age will be reduced to 16.

The second thing is that the Supreme Court has considered this several times and they have said that the capital punishment is constitutional. Therefore, the question of its abolition, because it is unconstitutional, doesn't arise at all.

The third thing is the Indian Supreme Court has a number of times said that only in the rarest of the rare cases will there be capital punishment. The number of executions is minimal. Consequently I would say that in view of the fact that the safeguard is there and the Supreme Court will only give in the rarest of the rare cases, and the fact that democratic countries like the United States and India, Communist countries, dictatorial countries, countries which do not have democracy are all unanimous in saying that we need capital punishment.

Now, the issue, therefore, is that why should we consider this at all? It is a part of a fashionable international movement of NGOs that it should be abolished. Sometimes the Congress Party itself gets confused on this. They hanged Afzal Guru, but the killers of Rajiv Gandhi, they want to set free. They do not want to subject them to capital punishment. Even though the Supreme Court has said that it is the rarest of the rare cases that four people of LTTE should be given capital punishment. The Congress leadership has written to the Governor and the hon. President that they should be given mercy. Therefore, I think, this is a futile debate. In my opinion, India is not going to change. We are going

to have capital punishment, but the safeguards are necessary. The Supreme Court has already laid down those safeguards. There is no need for this Bill. While appreciating the effort of the Mover of Resolution, I say, it should be rejected.

श्री मेघराज जैन (मध्य प्रदेश) : माननीय उपसभाध्यक्ष महोदय, भारत में दण्ड प्रक्रिया प्रारम्भ से धीरे-धीरे विकसित हुई है। किसी जमाने में हा-हा करके अपराधी को दण्ड दिया जाता था, बाद में उसको धी-धी करके, धिक्कार करके दिया जाता था, फिर बहिष्कार के रूप में यह हुआ। आज जो स्थिति है, जिसके बारे में हमारे डी० राजा जी ने कहा है, मैं इस संबंध में दो बातें कहने के लिए खड़ा हुआ हूँ। एक तो यह है कि हिन्दुस्तान की न्याय-व्यवस्था आज भी इतनी अच्छी है, उस न्याय-व्यवस्था के ऊपर प्रश्न चिह्न लगाना, मैं सोचता हूँ कि ठीक नहीं है। यह हो सकता है कि कोर्ट के सामने जो केस जाते हैं, पुलिस द्वारा उनको किस तरह से प्रस्तुत किया गया है, उसके आधार पर फैसले होते हैं। इसके अलावा उसका वकील कैसा है, उसके आधार पर भी फैसले होते होंगे, परन्तु अपनी न्याय-व्यवस्था ठीक काम करती है। इसके अंदर यह जो कहा गया कि यहां पर जाति और धर्म के आधार पर दंड दिया जाता है, यह बिल्कुल गलत है। मैं इसके बिल्कुल विरोध में हूँ। देश में ऐसा नहीं होता है। अगर देखा जाए तो अपराध करने वालों के रेश्यों के आधार पर दंड-व्यवस्था होती है, यह जाति या धर्म के आधार पर नहीं होती है। नाच्चीयप्पन जी ने सही कहा कि सिनेमा में जो प्रदर्शित हो रहा है, लोग उसका अनुकरण कर रहे हैं। हमें अपने जीवन-शैली पर विचार करना चाहिए। आज सिनेमा लोगों को अपराध की तरफ धकेल रहा है। सिनेमा में जो दिखाया जा रहा है, वह मासूम, छोटे, नौजवान बच्चों के दिमाग पर काफी असर डालता है और वे उस दिशा में बढ़ते हैं। मैं उनकी बात से शत-प्रतिशत सहमत हूँ। इसके बारे में हमारे सारे सम्म्य समाजों को विचार करना चाहिए कि क्या देश में ऐसा सिनेमा दिखाया जाना चाहिए? वे हीरो बन जाते हैं, यह बात भी ठीक नहीं है।

दूसरी बात यह है कि हमारे यहां आज जो परिस्थिति है, देश में चारों ओर आतंक का माहौल है, देश में नक्सलवादी भरे हुए हैं। वे लोग जिस प्रकार से नृशंस हत्या करते हैं, जिस प्रकार महिलाओं के साथ व्यवहार करते हैं, छोटी-छोटी बच्चियों के साथ दुर्व्यवहार करके उनको मार डालते हैं, ऐसे राक्षस को क्या जिन्दा रहने का अधिकार है? राजा जी इस बात पर विचार करें। अगर वे इन सब बातों पर विचार करेंगे, तो मैं समझता हूँ कि उनके विचार बदल जाएंगे। जैसा डा. सुब्रमण्यम स्वामी जी ने कहा कि बहुत कम लोगों को फांसी की सजा दी जाती है। हिन्दुस्तान में फांसी की सजा या मृत्यु दंड बहुत कम होता है। ऐसे लोग, जो बहुत ज्यादा घृणित अपराध करते हैं, उनको यह सजा जरूर मिलनी चाहिए। यही कहते हुए मैं अपनी बात समाप्त करता हूँ, धन्यवाद।

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Now, the Minister.

REFERENCE BY MEMBERS

Re. Demand for authentication of papers - *Contd.*

SHRI JAIRAM RAMESH: Sir, before the Minister speaks, I want to say something. It is 6.00 p.m. The Deputy Chairman had announced that Dr. Swamy will authenticate all -- I underscroe 'all' -- the papers that he used in his speech day before yesterday, and that these papers would be available for scrutiny. I want to know whether it has been done or not. ...*(Interruptions)*...