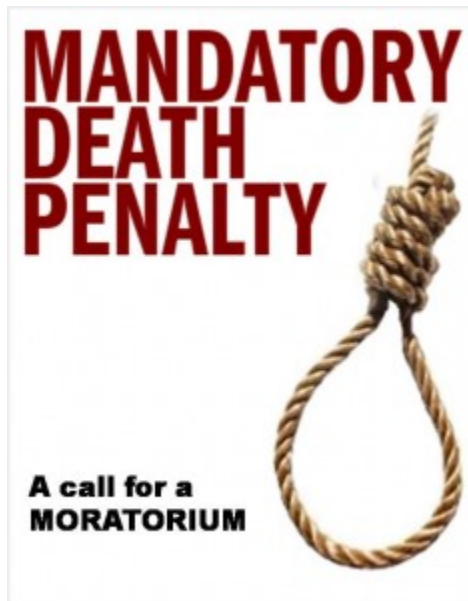


M Ravi: Death penalty should not be dispensed ‘in an automated, robotic, spasmodic approach’

by Chua Yini, March 16th, 2010



At the appeal hearing for Yong Vui Kong today, the Court of Appeal, consisting of Chief Justice Chan Sek Long, Justices of Appeal Andrew Phang Boon Leong and VK Raja, chose to reserve its judgment instead of delivering a verdict.

Yong is facing the mandatory death penalty for drug trafficking.

He has been through 2 stays of execution. Escorted into the courtroom by four uniformed guards, the 21 year-old Malaysian hardly moved in his seat throughout the hearing, with his shoulders hunched and head bent as he followed the proceedings intently via the court translator.

Representing Yong was Mr M Ravi of LF Violet Netto. His core argument was centered on the principle of one's right to life, as echoed by Article 9(1) of the Singapore Constitution, which states that no person shall be deprived of his life or personal liberty save in accordance of the law.

Mr. Ravi challenged the constitutionality of the mandatory death penalty, stressing that it failed to deal with Article 9(1) adequately and adapt to changing standards of international law.

He also argued that Article 9(1) prohibits the arbitrary imposition of the death penalty, an act which is also against customary international law. According to Mr. Ravi, there is growing universal consensus that the mandatory death penalty is a cruel and unusual punishment and involves deprivation to life.

'Customary international law evolves with the changing standards of human rights around the world,' he posited.

Attorney General Walter Woon agreed that the issue is the constitutionality of the mandatory death

penalty, not its desirability. As such, he argued that its implementation is constitutional because it is in line with laws passed by the legislature.

Mr. Woon also argued that 'it is state practices that determines international law, not the other way round'.

However, he disagreed with Mr. Ravi with regards to the trend in international law, emphasizing that the international law has accepted the mandatory death penalty.

'It is fallacious to assume that the law has changed,' he said, reinforcing his argument that the issue of the abolition of the mandatory death penalty is simply a matter of controversy.

Another core argument that Mr. Ravi laid out was that the mandatory death penalty was contrary to the 'equal protection' clause as enshrined in Article 12(1) of the Constitution. He argued that it does not leave room for judicial discretion and specific circumstances, and the exclusion of such an integral process has resulted in a one-size-fits-all standardized sentencing process that is inherently wrong. With such rigid application, the law ceases to serve justice.

To illustrate this fact, Mr. Ravi pointed out the rationale behind Singapore law, which makes probation more available for minors (persons aged below 21).

Said Mr. Ravi, '(Probation for minors) assumes the potential vulnerability of youths, and therefore the shows that the law does indeed look at individual circumstances.'

Along the same vein, the mandatory death penalty infringes upon equal protection because the court is obliged to condemn a drug mule in possession of 15 grams of heroin to the highest penalty of death, but inflicts a lesser punishment upon a professional dealer caught selling for distribution to many addicts a total of 14.99 grams.

Mr Ravi relied heavily on the example of the India for an alternate interpretation. Article 12 of the Indian Constitution, in stating that 'no person shall be deprived of his life or personal liberty except according to procedure established by law' is identical with Article 9(1) of the Singapore Constitution. The Indian Supreme Court has interpreted it in a different way: the process by which someone is subject to death must be a fair, just and reasonable procedure.

As such, the Indian Supreme Court prohibits the mandatory death penalty even for the most severe of crimes. The death penalty sentence is only meted with judicial discretion.

In his counterargument, Mr. Ravi criticized the simplistic logic that underpins Attorney General Walter Woon's argument, who asserted that the mandatory death penalty acts as a deterrent against drug trafficking. He argued that there have been no substantial studies based on the deterrent value of MDP.

'Even the state is silent when it comes to this issue,' he pointed out.

He also cited a number of Asian countries which have abolished the mandatory death penalty, including China, Taiwan, Korea and India.

Justice of Appeal Andrew Phang tried to clarify the debate further by enquiring whether 'decisions in other

countries (are) a product of domestic consensus or result of international customary law’.

Mr. Ravi ended his argument on a passionate note, beseeching the judges to read the constitution in accordance to the spirit of the law, and ‘not in an automated, robotic, spasmodic approach’ that does not fulfill the need for justice.

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