

---

# HANG THE DEATH PENALTY !

Yet again, the death penalty has become a hot issue. This debate has reared its head many times in Sri Lanka's legislative and legal history. It was first raised in the Legislative Council in 1928, and was the topic of debate in the State Council in 1936, 1937, 1942 and 1956. In 1936 there was an unsuccessful attempt at abolishing the death penalty supported by reformist state councillors who viewed capital punishment as a legacy of a barbaric, feudal age that had no place in modern society.

These councillors argued, instead, for a focus on the poverty, exploitation and unemployment that led to the crimes committed by those on death row. During the debates in 1937, when their earlier arguments had proved unsuccessful, the anti-death penalty councillors compromised and asked that at least, a person should go to the gallows only if the jury was unanimous in returning a guilty verdict. Even this appeal fell on deaf ears.

In that watershed year for Sri Lanka, 1956, S.W.R.D. Bandaranaike, who swept to victory on a massive popular vote, suspended the implementation of the death penalty. Ironically, his assassination in 1959 gave way again to the demand for the death penalty to be brought back. It was then operative until June 1976 after which no executions have taken place in Sri Lanka, for which the country has earned international accolades.

## A Necessary Evil?

Those who want to see the death penalty implemented present several arguments. The most common is that the death penalty is a deterrent which sends out a message of zero tolerance to those engaged in criminal activity. Many commentators have expressed the belief that, given the current culture of crime and impunity in Sri Lanka, the implementation of the death penalty would be a strong signal sent out by policy makers that they are serious about stopping underworld crime and violence. This, many believe, would lead to a decrease in murders and stop the impunity the underworld mafia, who are also aligned with certain politicians, currently enjoy. The death penalty, according to

such opinion, is a necessary evil, a first and important step towards cleaning up the Augean stables.

Cat's Eye wrote, exactly ten years ago, on the death penalty when another round of the debate took place. It quoted several reports including one by the Royal Commission on Capital Punishment in Britain. This report, published in 1953, stated that it found no evidence to support the view that the abolition of the death penalty would lead to more homicides, or that its restoration would lead to a fall in numbers. Cat's Eye warned then against blindly supporting the death penalty which, in effect, confers on the state the right to execute. In a prescient move, Cat's Eye quoted George Bernard Shaw who stated that 'murder and capital punishment are not opposites that cancel one another out but similars that breed their own kind.'

## Perpetuating Violence

Some people, while supporting the implementation of capital punishment, also appear to mistakenly believe that adherence to legal processes and human rights standards would only impede the successful eradication of elements deemed to be anti-social, i.e., the LTTE, organized crime, etc.

In this context, how is the concept of justice understood by the state and citizen? Public statements by officials at the highest levels of government disturbingly illustrate a disdain, even contempt, for the rule of law and judicial processes, which are viewed as cumbersome. This reminds us of the line by a character from Moliere's 17th century play *Monsieur Pourceaugnac* who said, "Here [in Paris] they hang a man first, and try him afterwards." Hence, in lieu of systems and processes which are meant to afford protection to citizens and act as checks and balances on the excesses and arbitrary nature of decisions of individuals, in Sri Lanka, decisions are made by individuals based on their personal beliefs, ideologies and prejudices instead of objective and impartial standards. This also results in the erosion of the independence and effectiveness of institutions such as the judiciary and the Human Rights Commission.

---

## Vigilantes

Then denied of systems and institutions to which they can turn for remedies, persons resort to a vigilante form of justice where they, like the state, bypass established processes and dispense justice themselves. For instance, in Amparai villagers beat to death a man who had allegedly raped a young girl. This type of 'honour killing' not only perpetuates vigilantism, but also confers on male family members, friends and neighbours the right to defend the family honour. In almost all cases this becomes test of their masculinity rather than about the woman victim herself.

In other cases the police act as the face of justice. The announcement by the government of its war against the underworld by all possible means, even extra judicial ones, and the consequent killing of several gangsters and thugs is a case in point. The belief that only certain persons are deserving of the application of legal standards and processes, coupled with disregard for the rule of law in other instances, has resulted in mixed signals, if not a view that summary violence is acceptable.

## Rule of Law

In such an environment the mere imposition of harsh penalties such as capital punishment is unlikely to curb crime, as a sustained maintenance of law and order is not possible through repression and fear. This in turn will create lawless environments that are conducive to and support the growth of crime. Instead, long-term change is only possible if the value systems within which we operate foster respect for the rule of law and judicial processes. This change should begin at the highest levels of government, with the state taking the lead by respecting the rule of law and legal processes, subjecting itself to scrutiny and holding perpetrators of human rights violations accountable for their crimes.

## Enlightened Views

Many have emphasized over the years that since the death penalty is irreversible, there have been many injustices that cannot be corrected. In several countries persons serving long-term sentences have been released, based on new evidence, but innocent persons have gone to the gallows. The need today is also to focus on rehabilitation in line with new reforms in this area. The feminist movement in Britain has also highlighted the fact that many women on death row were victims of domestic violence for long periods and killed in self defence. This was not argued at the trial, and on retrial these women have been released.

Enlightened opinion the world over is against capital punishment and many countries have abolished it. Even in the US the trend is against the death penalty. One is surprised that in Sri Lanka - a country with a strong Buddhist tradition, the death penalty still remains on the statute book although not implemented for 33 years. Many Buddhist countries, however, have abolished capital punishment. Over a hundred years ago, leading Buddhists - Anagarika Dharmapala, Peter de Abrew, Museaus Higgins and Martinus Perera, who belonged to the Ceylon Social Reform Society of which Ananda Coomaraswamy was president, - opposed capital punishment. In 1928 the colonial government, reflecting British laws of the time, rejected the motion by D.S. Senanayake which passed by 19 votes to 7 in the Legislative Council to abolish the death penalty. In 1955 Dr. G.P. Malalasekera, president of the All Ceylon Buddhist Congress, called for the abolition of the death penalty to coincide with Buddha Jayanthi celebrations. Surely, it is high time Sri Lanka wakes up, rejects its colonial laws and abides by what it says about Buddhism. After all, Angulimala the killer became Ahimsa, an arahat in the days of the Buddha. ■

Courtesy, *Sunday Island*