

# SUSPENSION OF CAPITAL PUNISHMENT

Extracts from the speech of Dr. Colvin R. de Silva in parliament, 1956.

**W**e welcome this Bill. If we have anything to say with regard to it, we are only sorry that it is not 100 per cent complete. not in the sense that it is only a suspension of the death penalty for a number of years but that there is to be left in the statute book the right to inflict the death penalty if a person breaks Section 114 of the Ceylon Penal Code. That section should be read in this House in order to remind ourselves that it exists:

Whoever wages war against the King, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment of either description, which may be extended to twenty years, and shall forfeit all his property.

If, as the hon. Parliamentary Secretary has rightly argued, the frequency with which murders are committed is relevant to the question of the maintenance of the death penalty, then there would seem to be no rarer offence under our Code than that of waging war against the King. And since war is itself a form of legally inflicting death by each State upon the other why we should further supplement in our Code the private right to inflict death upon a particular individual who waged that war and who contrived to escape throughout that war without death is certainly beyond my understanding. In my belief there are several inescapable arguments, absolutely unanswerable arguments against maintaining the death penalty in any civilized country. The first and the simplest is this. Of all things that the State may take away from a man there is one thing which if you take away you can not only not return but you can never compensate him for, and that is his life. You may put a man in prison and deprive him of his liberty. You cannot, of course, return to him the days he was in prison but you may in some degree compensate him in other ways for the wrong that is recognized to have been done when you locked him away from the world without due cause.

In cases of fines you can compensate a man for the fine by the return of the fine that was imposed on him and if necessary offer him further compensation. All that you may do in respect of a person who has suffered. But if you take away his life you may compensate his dependants and his relatives but never, can you give him anything adequate, or inadequate, to replace that which was taken from him, for once you are dead you may never be brought to life again.

That argument in my submission is a sufficient argument for the removal of this penalty without any other consideration being brought in.

There is something more, however, with which I would seek to fortify this matter. There is much argument on the question that if you remove the death penalty the murder rate would rise. Those who put forward this argument appear to think of our fellow human beings in a very peculiar way—as if half this population are

wandering about this country contemplating the murder of their neighbours if only the death penalty were removed and that it is only the existence of the death penalty that is keeping them off from that grim desire. The truth of the matter is that a man in society, as he is constituted, may have the beast's desire to kill arising within him in various circumstances. But the truth must equally be recognized that man, as he is constituted, and in particular a civilized man, has a number of almost instinctive checks upon that desire which may arise in him at times. There is in truth not one amongst us, not even among those who in the perfection of their civilization think that this is a matter for laughter, who does not occasionally feel that he must kill another because he feels so deeply. But he does not. And that is the answer to the question. Why does he not? Because his education, his upbringing, the position he holds in society, the entire context of his life, stands in the way of his giving vent to what is, fundamentally, an anti-social desire.

And that leads me to two other incontrovertible arguments against having this death penalty. One practical point I have to make against the death penalty is that its existence has stood uniformly in the way of consistent and serious effort at prison reform in this country. The second point I have to make of the same kind is that it is precisely the existence of the death penalty that has in many ways operated against any systematic effort at fundamental social reform in this country. If we will not face up to the responsibility that society must take over every single member of that society, if we as members of that society are not ready to face up to the fact that, in every murder, we are also participants in the murder inasmuch as we have tolerated the existence of such a social background and context, upbringing, education, economic and psychological situation which produce such men; unless we understand that, we will never face up to this question of the death penalty squarely.

Much of the argument goes forth against the removal of the death penalty that, if you remove the death penalty, people will kill as they like. No; this Bill does not propose that. On the contrary, all those who have stood for the abolition of the death penalty, for good, sound progressive reasons, have done so because it also, amongst other things, provides a stimulus to the re-examination of the entire situation in which murder multiplies. It is irrelevant that there are men in society who plan murder. For, if there are men in society who plan murder, they plan murder already despite the death penalty and therefore deterrence is irrelevant to the question. Knowing of the death penalty they seek to perfect their plans only the better and the only answer to that is a more efficient Police Force.

But let us look at it the other way. Let us look at it also from the point of view of modern penology. We have long moved away from the old idea that the fundamental purpose of penal law is just mere punishment. That old theory of an eye for an eye and a tooth for a tooth, has long been forgotten in more civilized quarters in which the

death penalty is discussed. If a man kills he does on kill for one single reason alone any more than, if I may be permitted to say so in passing, if a Member is elected to this House he is elected for one reason and one reason alone. We are elected for many reasons. People kill for many reasons, and thus that multitude of reasons may include in a particular case a particular psychology of the given individual. But in modern times, when psychology, psychiatry and so many sciences have been invented and developed which enable us not only to probe the human mind but cure the human mind of its imbalances, it is meaningless to argue that all you can do with a man who kills another is to kill him yourself.

It is a different thing if it was argued that you must remove temporarily from society until the man is fit to be re-integrated into that society the person who has broken a fundamental aim of society, namely, the right of another to his own life. That would be an understandable argument. The question is how long you should attend to a man before he is fit to be returned to society after he has killed another... To say that he shall eternally be removed in order that we may wash our hands of him is also to wash ourselves, our hands, of the responsibility we have to our fellow men. Such are the fundamental reasons I think which should be placed before the House for supporting the suspension, and I trust the eventual removal of the death penalty from our law.

I also wish to deal with one or two other arguments that are constantly put forward. One is this very argument that when you remove the death penalty you are removing the restraint of a man. As one who has some little experience of those who have killed; as one who has had some opportunity to know the truth about those who have killed, as one who has had some opportunity to try to understand the nature of those who kill, I take leave and the liberty to say in this honourable House that the men who normally come as murderers before our courts never contemplated either killing or the death penalty and, of the two, what is important is that they did not contemplate the death penalty. If that were not sufficient, what could be sufficient?

This idea that the purpose of the criminal law is punishment, instead of being the creation for the State of an opportunity to heal a man who requires healing must be given up. It is an old, out-moded and utterly reactionary approach—if you will excuse my introducing political terms into this question—it is a grossly reactionary approach to the question for, as I say, it stands in the way of social reform.

We have to look at the question and see what is it in our society, in our social stream, in our modern temporary situation that is increasing the murder rate in this country. Is it that we have the death penalty? Can anybody argue that if the death penalty were not there, there would have been half a dozen murders more? One cannot. These are not demonstrable things, and that is why I say, to come to this question from another angle, whether there would be more killings or less, it is just futile to argue in the way it is sought to do. It is a matter of opinion and approach, and it is not a question of statistics, for if you abolish the death penalty today by this Bill there may be a crop of fresh murders tomorrow. But these murders will not have the slightest relationship to this Bill. They may be due to a hundred other causes. Per contra, when you pass this Bill, from today or from tomorrow the murder rate may begin to fall and have no relationship to this question. It may be that other causes may operate. It may be that Buddha Jayanthi, if in the next month everybody indeed seeks to observe the precepts of Buddha, would change the climate of things and introduce a permanent reduction of the murder rate. I do not know, and I do not profess to know. But what I am seeking to establish is that this Bill cannot have relationship to that.

Let us start with fundamentals and end with fundamentals, and that is the whole meaning of civilization. It is that we have to move away from the principle of an eye for an eye and a tooth for a tooth. The whole meaning of penology is that we look at a man not only as responsible, and that in all questions of punishment there must be brought to bear the bringing home to a man of his own responsibility for his actions and the operations in each situation of the responsibility of society for the actions of its members. ■

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