

# **DEATH PENALTY versus LIFE IMPRISONMENT**

## **—A POINT OF VIEW—**

**Dr. L.B. L. De Alwis**

*Retired Chief Consultant Judicial Medical Officer, Colombo  
Founder President, College of Forensic Pathologists of Sri Lanka*

Death penalty and life imprisonment are closely related to one another. Life imprisonment is an alternative punishment given by a court of Law for offences which otherwise are punishable by death. Further the executive can commute a death sentence to one of life imprisonment. Cicero<sup>1</sup> in the Roman Senate stated that Caesar advocated 'life imprisonment' because death has been appointed by the Gods not as a punishment but as an inevitable natural happening or a relief from toil and trouble whereas imprisonment and imprisonment for life was devised (by man) as a special penalty for atrocious crimes.

Codes of Hammurabi of Babylonia (c-2125 to 2085 BC) is one of the earliest legal codes that prescribed the death penalty<sup>2</sup>. Over the years almost all countries of the world have included the 'death penalty' in their legal statutes for specified types of offences. Some of them are listed below.

1. Murder and conspiracy to murder
2. Abetment of suicide<sup>3</sup>
3. Treason – Espionage – Conspiracy against the state<sup>4</sup>
4. Drug offences (anti-narcotic legislation) – These are punishable with death in Sri Lanka today<sup>5</sup>
5. Sex offences such as rape, extra-marital sex, prostitution, homosexual offences etc. These are practiced mainly in the Islamic states in the Middle-east and Northern Africa
6. Robbery, bribery, financial frauds involving public money, counterfeiting in currency, other frauds etc. There are practiced mainly in 'communist' countries and countries ruled by dictators, military juntas and other anarchic states.
7. Highjacking of aircrafts.
8. Possession of firearms and explosives under special Laws (Emergency regulations).
9. Genocide – Mass murder of innocent civilians (ethnic / religious cleansing etc.)
10. Killing of political dissidents referred to as "counter-revolutionaries" by Anarchist regimes. In China, Jiang Qing the 69 year old widow of Chinese Strongman Mao Tse Tung was executed in 1981.

Death penalty has been carried out by several methods over the years.

### **1. Hanging**

This is referred to as "Gallows" or Judicial hanging practiced in most countries including Sri Lanka. Pakistan is said to have the highest rate of death by hanging in the world followed by Malaysia, Singapore, South Africa, Italy etc. A death by hanging refers to being hanged by your neck until you are dead.

### **2. Electric Chair**

It is a death by electrocution. The initial 'Jolt' is 2250 volts followed by a second and third 'Jolts'. It is carried out in 24 states of the USA (AI report 1980).

### **3. Guillotine**

It is a form of beheading using a 'Guillotine' practiced mainly in France in the 18<sup>th</sup> Century. It was first used in 1791 to kill King Louis XVI and Queen Marie Antoinette. The last to be guillotined was a Tunisian man in 1977 for killing a woman. This practice was abolished in 1981 by the French president Francois Mitterrand. In ancient Lanka (Ceylon) such beheadings were carried out at the 'dangediya' where the condemned person's head was severed at the level of the neck by the royal executioner and using a 'lethal sword' who did the honours for the king. In the Middle East and other Islamic sates, beheading is a common form of death sentence under the 'Sharia Law', often carried out in public.

### **4. Lethal injection**

Refers to intravenous injection of sodium pentothal (first carried out in 1978) or a combination of barbiturates and paralytic drugs to bring about a 'quick' death. It is practiced in about four (04) states of the USA. The World Medical Association (WMA) prohibited medical officers in giving such injections as it violates the Hippocratic Oath which states 'Physicians are

dedicated to preserving life' and therefore a Physician can never be an "executioner".

## 5. Gas chambers

These chambers contain "cyanide pellets". It is a form of capital punishment in eleven (11) states in the USA. Hitler, the worlds most cruel 'mass murderer' killed nearly a million Jews in his cyanide gas chambers.

## 6. Firing Squad

A person is shot dead by a volley of gunfire from several gunmen. Practiced in countries where there are military juntas, dictatorships, anarchy and in states where there is absolute disrespect for human rights. Such states included Mauritius, Vietnam, Angola, Central African Republic, Liberia and many countries in the middle-east. Sadly it was practiced by the British during their rule in Ceylon (now Sri Lanka) on those 'convicted' of treason. The British executed young William Henry Pedris by a firing squad when in Ceylon at that time 'hanging' was the only form of death penalty

## 7. Garrotte

It was a method of strangulation by constricting the neck using a wire, cord or sticks (tied at the distal end). This method is not practiced in the civilized world today.

## 8. Stoning to death

A person is buried in a pit up to his neck and stones thrown at the head causing gross injuries to the head (brain) sufficient to cause death. This was practiced in ancient times in Ceylon (now Sri Lanka) and even today in the Arab world. Such stoning to death is also mentioned in the holy Bible as a form of punishment for women caught in adultery.

In ancient times such most inhuman methods of killing persons were carried out in public with much pomp and pageantry by rulers of states who can be best described as mentally deranged tyrants who carry out such acts to satisfy their egos reminiscent of the Greco-Roman times when innocent men, women and even children were thrown into the dens of hungry lions and tigers to be attacked, killed, torn apart and devoured by such animals to the pleasure and delight of such 'human tyrants'.

In Lanka (ancient Ceylon / now Sri Lanka), the Kandyan kings carried out several methods of death sentences which were most barbaric and inhuman. These included beheading (dangediya), trampled to death by an elephant, pierced to death by the tusks of an elephant, body torn apart by tying each side to two tall trees and the trees felled outwards, stabbed to death using a spear (Hella)<sup>6</sup> with the victim stretched on the ground face downwards, impalement on a stake (ula thiyana), burnt alive, thrown into a cauldron of burning oil, hurling down mountains, pounding the head in a mortar using a pestle, whipped to death (practiced in Islamic states even today) etc. In 1977 Tutsi's killed Hutu children by banging their heads against walls; such practice was also used by Nazis to kill Jewish children. (The Times August 2 - 1977).

The last Kandyan king of Ceylon was noted for such cruel forms of death. It is stated that from barbarism to civilization requires a century: from civilization to barbarism needs but a day.<sup>7</sup>

After the British established full control of the Kandyan Kingdom of Ceylon in 1815, all these barbaric forms of death penalties practiced by the Kandyan kings came to an end. The British introduced death by hanging as the form of death penalty referred to as 'Gallows' during the term of first Governor Sir Fredrick North. A man called 'Saradiel' the 19<sup>th</sup> century Robinhood of Ceylon of 'Utuwankande' fame was hanged by the British in 1863 for the murder of a police officer in the 'Gallows Hill' in Kandy watched by a large crowd which included mainly European men and women<sup>8</sup>. However the British sadly used other methods of death penalty as well. British military personnel who were court martialled to death were shot on the Galle face green. Young William Henry Pedris was killed by a firing squad for 'treason'. In 1818 Madugalle was beheaded for treason. This was British justice in ancient Ceylon.

In 1928, a woman and another were sentenced to death for the killing of the woman's husband by poisoning (introducing cyanide to his bottle of Gin). This is referred to as the 'Talpe poisoning case'. Sir William Manning the Governor, commuted the death sentence on the woman to one of 'life imprisonment'.

Since independence in 1948, Ceylon (now Sri Lanka), the only form of death sentence has been by 'hanging' within the walls of a prison referred to as 'Gallows' usually at 8.00 am by the 'hangman' and his assistant. Such death sentences pronounced by a judge reads 'you will

be hanged by, your neck until you are dead'. The first execution to take place inside a prison in Ceylon (Sri Lanka) was at Welikada (Colombo) in February 1884. Up to 1976 execution by hanging took place in Sri Lanka only at Welikada (Colombo) and Bogambara (Kandy). Public hangings took place in Ceylon under British rule in Kandy, Kegalle, Ratnapura, Badulla, Colombo (at Sirimalwatte and Kayman's gate) and Moratuwa watched mostly by Europeans. (Public hangings were carried out where the murder had taken place).

Until 1939 if a sentence of death was passed on a pregnant woman, its execution was merely postponed until the delivery of the child. There has been no hangings of women in Ceylon (Sri Lanka). In the 1950's, a Pasyala cadju woman was convicted of double murder (killing her husband and his paramour) and sentenced to death. She escaped death by hanging as she was pardoned by the Governor General. In 1964, Kohilakambal, the young attractive wife of the ageing chief priest of the Uruthirapuram Hindu Kovil in Kilinochchi (Northern Province) was sentenced to death along with her lover a temple labourer for killing the chief priest by slashing the neck. She, too, was given a pardon by the Governor General and escaped death. In 1968, a 21 year old unmarried woman (Pauline de Croos) was sentenced to death for the murder of a 10 year old boy, who was the only son of her paramour. She, too, escaped death by hanging as she was pardoned by the Governor General.

Now, in Sri Lanka (Ceylon) death sentence is not pronounced on pregnant females (Section 305 B of Code of Criminal procedure and Section 54 of the Penal Code of Ceylon (Sri Lanka)<sup>9</sup>. Likewise a person below 16 year of age is also not sentenced to death<sup>10</sup>. In such instances the punishment is 'life imprisonment'.

Under 'Kandyan' Kings of Lanka, women were sentenced to death only for multiple murders, and that too was, by 'drowning' them. In 1826 drowning was replaced by hanging. In the same year a woman Dingiri Menike was sentenced to death, but Governor Sir Edward Barnes, commuted the death sentence to life imprisonment<sup>11</sup>.

Perhaps the earliest recorded cases of hanging of women was the hanging of twelve (12) slave girls in the carnage that followed the return of Odysseus.<sup>12</sup> It was a Roman tradition that virgin girls could not be executed. In the reign of Tiberius when some virgin girls were condemned to death, the executioner first 'sexually abused'

(raped) them and thereafter carried out the executions. This is reminiscent of that in times of Kandyan Kings of Lanka, virgin girls were 'offered to a devil' called the Bahiravaya by tying them on to a tree in a lonely hill in the jungle which is called 'Bahirava Kanda' even today. Up to this day no one knows as to how they died or as to whether they were 'raped' by the men who took these girls to be 'sacrificed to this so called devil Bahiravaya'. Today in Ceylon and modern Sri Lanka no such 'devil' exists giving much food for thought for the 'sacrifice' of virgin girls in the times of Kandyan kings in Sri Lanka. Were they raped and killed? Your guess is as good as mine.

In capital punishment, the state takes upon itself the right to the most terrible and irreversible act of deprivation of life.<sup>13</sup>

The earliest acts for the abolition of capital punishment owed their inspiration to the work of Cesare Beccaria (1738-1794) who urged the abolition of capital punishment in a treatise on crime.<sup>14</sup>

In Sri Lanka, the first attempt to abolish the death penalty was made by Hon. D.S. Senananyake in 1928<sup>14</sup> (later the first Prime Minister of Independent Ceylon in 1947). Again in 1936, Mr. Susantha Fonseka suggested to the state council that the death penalty should be abolished as a punishment for murder but sentenced to life imprisonment<sup>14</sup>. In 1942, a motion by Dr. A.P. de Zoysa in the state council suggested that the death sentence should be imposed only in cases of murder when a person is found guilty of murder by an unanimous verdict of the Jury. The Morris commission appointed to study the 'death penalty' strongly argued for the abolition of the capital punishment in accordance with the Buddhist tradition of tolerance and compassion<sup>14</sup>.

Due to calls from the Amnesty International and other organizations, most of the western countries abolished the death penalty for all offences. Some countries retained the death penalty for a limited number of offences. Sri Lanka (Ceylon) retained the death penalty in its statutes but did not carry out as a government policy. Sadly nearly two thirds of the countries of the world including those in the middle east, Latin America, China, Russia, almost all countries in the far east, South-east, Southern Asia (except Sri Lanka) and very many states of the USA still carry out the death penalty. Amnesty International in a report published in 1979 stated that 134 countries was yet carrying out the death penalty.

In Sri Lanka (then Ceylon), capital punishment by hanging was suspended for 3 years by the newly

elected Prime-Minister in 1956. But after his assassination (shot by a Buddhist monk) in 1959, the government led by his widow as prime minister re-introduced the death penalty in 1960 to punish the assassins of the late Prime-Minister. As a result of this, between 1961 and 1976 eighty nine (89) men died at the Gallows (hanged) including the assassin of the late Prime-Minister. Similarly in Nepal which had abolished the death penalty in 1945, two men were executed for an alleged attempt on the life of King Birendra in 1979. This is the danger of 'having' the death penalty in the statutes.

Since 23<sup>rd</sup> June 1976 no death sentence by hanging has been carried out in Sri Lanka. 25 year old J.M. Chandradasa convicted of murder was the last to be hanged. Since then all death sentences have been commuted to life imprisonment. This is however limited to 20 years. However the executive (President) has the power to 'pardon' and release them after a "few years" of imprisonment.

To find a person guilty of committing murder by a criminal court, the prosecution must prove such charges beyond reasonable doubt. In jury trials in the years gone by, verdicts were unanimous or divided 6 to 1 or 5 to 2 as to the guilt of the accused. Yet jury verdicts of 5 to 2 as to the guilt of an accused was sufficient to sentence a man to death. In my opinion 5 to 2 guilty verdicts means that the charge of murder has not been proved beyond reasonable doubt and a death sentence should never be carried out. They should instead be sentenced to 'life imprisonment'. In fact in 1942 a motion by senator A.P. de Zoysa in the State Council suggested that death sentence should be imposed only in cases where a man (person) is found guilty of murder by a unanimous verdict of the Jury.<sup>14</sup>

History records several instances where 'innocent persons' have been convicted of the capital offence, affirmed by a court of appeal, sentenced to death, and later executed.

In the past the death penalty has been carried out even on murder convicts who cannot be held fully responsible for their actions: the concept of 'diminished responsibility' due to abnormal states of mind at the time of committing the offence.

Dutch Governor Ryckloff Van Goens (1660-1675) deplored the fact that death sentences were imposed without sufficient precautions against miscarriages of justice.

The British Governor Sir Joseph West Ridgeway commuting the death sentence to life imprisonment stated 'it compels me to remit the extreme death penalty which would close the door to further inquiry and to reparation should the doubt be confirmed by future revelations. In fact the British sent those who were sentenced to life imprisonment to 'Andaman Island's.

Therefore, there must necessarily be an alternative to the death penalty. This alternative must be 'life imprisonment'. In my opinion such 'life imprisonment' must be 'imprisonment for life' and not for 20 years or a lesser number of years, as determined by the Executive. Imprisonment for life must be, mandatory for 'premeditated murders, rape and murder, 'lust murders', murder in the course of robbery / extortion etc. Further such convicts must be deprived of all 'civic rights'. Pardoning such convicts in a few years and releasing them from the prison amounts to condoning such dastardly acts by the chief executive who is in fact the 'head' of the political party in power.

Such 'imprisonment for life' or 'life imprisonment' will help those wrongfully convicted for murder and other capital offences to be set free later when they are found to be innocent and return to their families with compensation for wrongful arrest, detention, conviction and imprisonment to start a 'new life' in a dignified manner. Furthermore, during the period of 'life imprisonment', the convicts can undergo 'counselling' (psychiatric treatment) if necessary, given a suitable education, placed in a religious background of his choice, vocational training and thereafter 'rehabilitated' in an open prison environment beneficial to the convict, his family and the society.

One argument repeated 'ad nauseum' by those who advocate the death penalty is that it is a deterrent to crime. In states of Northern America where the death penalty is carried out shows a much higher murder rate than states where the death penalty has been abolished.<sup>15</sup> Albert Pierrepoint, the official hangman in the UK (1931-1956) in his autobiography stated 'I do not believe that any of the hundreds of executions I carried out in any way acted as a deterrent against murder'. Capital punishment in my view achieved nothing except revenge.<sup>16</sup>

The British Commission on capital punishment noted that capital punishment obviously failed as a deterrent for grave crimes such as murder.<sup>17</sup>

In my opinion it is not the 'Non-implementation' of the death penalty that has contributed to the rise of grave crime, especially murder, in Sri Lanka, but the release of murderers, rapists, drug barons, extortionists, highway robbers etc sentenced to death or to long term rigorous imprisonment by the Judiciary, but later released by the executive in the shortest possible time for petty political advantage. There are several examples of such unfortunate happenings in Sri Lanka in the recent past. The latest of such acts by the Executive which will lead to a further escalation of grave crime is the arbitrary withdrawal of indictments by the Attorney General, the chief 'State Prosecutor' against those undergoing trials for murder, rape, kidnapping etc, half-way during the trial in a High Court 'forgetting/ignoring' the fact that such accused were indicted by "Him" on these charges a few months back as there was 'sufficient' evidence to indict them and convict them.

Crime is as old as man. The Holy Bible<sup>18</sup> records that Adam and Eve's elder son Cain was a tiller of the earth, who offered to God rotten vegetables which displeased God, while the younger son Abel who was a keeper of sheep, offered the best sheep he possessed which pleased God<sup>18</sup>. Such Biblical practices of offering produce of the soil and animals to God are practiced in Sri Lanka even to date. The 'aluth sahal mangallya' (offering of the first 'harvest' of paddy to 'Sun-God' is practiced every year and killing of animals by the "Halal" method by Muslims and sacrificing of animals (Goats/fowls) in some Hindhu Kovils are such offerings to God/Gods.

Cain became very jealous of Abel (as God accepted the sacrifice of Abel) and one day while walking in the field, picked up an ox-bone (first murder weapon) and killed Abel. Cain thus became the first murderer on earth. Yet, God who questioned Cain about the murder of his brother Abel, never punished him with death. As a punishment God told Cain "you are cursed from the earth, when thou tilleth the earth it shall not yield into thee her strength; a fugitive and a vagabond shall thou be on the earth". In today's legal contexts this punishment of God is 'imprisonment for life' with hard labor and not "life imprisonment" for 20 years or a "few" years, at times with 'prison comforts' depending on the political background of the person convicted.

The Bible story further states, whoever who kills (slayeth) Cain the murderer; vengeance shall be taken seven fold on such persons killing the murderer.

This Bible story of vengeance against the murder of a murderer is applicable today in the following situations.

- a). Death penalty imposed on murderers by legal statute.
- b). Extra-Judicial killing of 'suspected' murderers in cold blood by investigating police officers in the name of 'self defence'.
- c). Retaliatory killing of suspected murderers by the next of kin of the victims (dead) exercising the laws of the Jungle.

Socrates regarded as the 'greatest' human ever born, when most unjustly sentenced to death stated "I tell my executioners that as soon as I am dead, vengeance shall fall upon you with a punishment far more painful than your killing of me". Socrates died following ingestion of a fatal drink of 'Hemlock' forced on him by a prison official.<sup>19</sup>

I will conclude this article with the Declaration of Stockholm on the abolition of the death penalty.<sup>20</sup>

- a). Death penalty is the ultimate, cruel, inhuman and degrading punishment as it violates the right to life.
- b). The Stockholm conference declares its total and unconditional opposition to the death penalty.
- c). Stockholm declaration calls upon all Governments to bring about immediate and total abolition of the death penalty.

#### **Note**

All historical references mentioned in this article has been obtained from the book titled "Hangman – spare that Noose" authored by Donovan Moldrich.<sup>14</sup>

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