

RETHINKING OF THE DEATH PENALTY AND RIGHT TO LIFE IN SRI LANKA; AN ASSESSMENT IN THE LIGHT OF BUDDHISM

P. M. A. S. Pathiraja¹

Introduction

In the era of right based approach, the protection of human rights plays an important role in the current legal context. Human rights are a universal set of values or entitlements which are inherent to human beings and enjoy irrespective of their sex, nationality, religion, culture or other status. Among them, right to life and its limitations, mainly the death penalty has been subjected to vigorous scholarly debates across the world throughout the last decades. Broadly speaking elements and principles of human rights are incorporated in the teachings of the most religions of the world including Buddhism. The elements incorporated in social message of Buddha are a part of modern day principles of human rights, which are incorporated in many international declarations, conventions, protocols and the constitutions of most of countries today.

Even though the death penalty has not been implemented in decades, the issue is still controversial in Sri Lanka. In the 21st century, death penalty has been considered as a cruel and inhuman punishment by many nations. Same time many states have abolished the death penalty by law. Therefore, this study investigates the adequacy of the current legal framework in Sri Lanka for the protection of right to life as a fundamental human right of the mankind. It also makes suggestions to enhance the domestic legal regime in the light of Buddhism and other selected jurisdictions in relation to the death penalty.

Methodology

This is a qualitative research based on literature review and mainly carried out by the reference of primary and secondary sources such as

¹ Department of Legal Studies, The Open University of Sri Lanka,
anushapathiraja13@gmail.com

statutes, International treaties, academic writings, journal articles and e-sources. The comparative analysis of successful legal position in selected jurisdictions has been followed in reaching the conclusion.

Results and Discussion

The origin of death penalty traced back to ancient civilizations such as Greece, Rome and even in Sri Lanka. Those who were against the state were sentenced to Death by King Sri WickramaRajasingheduring the Kandyan era. Capital punishment has not been abolished in Sri Lanka yet. Although death sentences were handed down continuously in serious crimes such as murder, by the High Courts and the Supreme Court of Sri Lanka, it has not been implemented in Sri Lanka since 1976.

Death penalty violates the basic or fundamental rights of the people because the enjoyment of the right to life is a necessary condition of the enjoyment of all other human rights. Therefore, it ranks highest among all other human rights. The rights of the individuals are basically protected by the constitution of Sri Lanka and there are various international conventions, standards and action plans charring out by the various international bodies in order to promote and protect the rights of the people in the world. Universal Declaration of Human Rights (UDHR) is such international convention which emphasizes the protection of human life and made direct reference to everyone's right to life and liberty. As per International Convention on Civil and Political Rights (ICCPR), the right to life is to be protected by law and prohibits states from arbitrarily depriving persons of their lives. Furthermore, United Nations introduced the Optional Protocol to ICCPR convention, directly targeting the abolition of the death penalty and prohibits executions, which was entered into force in 1991. The United Nations Economic and Social Council (ECOSOC) has adopted safeguards guaranteeing protection of the rights of those facing the death penalty. Also Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms contains similar provisions on the right to life.

Buddhist morality is mainly based on the universal law of cause and effect (*Kamma*), which mainly distinguishes between a "good" or "bad" action according to intent, and the way by which the action may affect others. The Buddha said, "an action, even if it brings benefit to oneself, cannot be considered a good action if it causes physical and mental pain to another being". In this context, The Five Precepts (*pañcasīla*) are the starting point for the spiritual journey towards the liberation. Unlike the Commandments that are divinely imposed, the Precepts suggest that believers must understand and accept the principles. The Five Precepts emphasize that all individuals must abstain from taking or killing a life, taking what is not given, sexual misconduct, false speech, and intoxicants. Individuals who practice the first precept, to abstain from killing all living creatures, must learn to control their hatred and to cultivate compassion and kindness for all creatures. The first precept extends beyond humans to all living creatures, including, birds, fishes, or insects. In Buddhism, all creatures are sacred beings. The difference between humans and animals is that humans have memory and imagination, as well as the ability to develop reasoning. Buddhists believe that animals do not have these powers. Thus, the First Precept restrains Buddhists from killing any living beings, and the death penalty would be inconsistent with this belief. Buddhists believe rehabilitation as the path to enlightenment, which would enable even the most dangerous convicted killer to find his or her spiritual world.

Therefore, the death penalty or killing is a discriminatory practice of law, which is against the fundamental teachings of Buddhism as well as the human rights perspective. The Philippines was the first country in Asia that abolished death penalty for all crimes in 1987 by a constitutional provision, which allowed the death penalty to be reinstated by congress for "compelling reasons involving heinous crimes." The death penalty was reintroduced in 1993 and the Philippines resumed executions in 1999, but they were stopped the following year. Also South Africa abolished the death penalty for ordinary crimes in 1995 and all crimes in 1977, after the

constitutional court found the death penalty to be unconstitutional in 1995. Such successful lessons from other jurisdictions directly show the path to Sri Lanka to enhance the existing situation regarding the death penalty.

Conclusion

Even though the law relating to the protection of right to life as a fundamental freedom of the humans has been proliferated in Buddhism and human rights perspective, Sri Lankan situation regarding the death penalty is still deprived the right to life due to the implementation of capital punishment. Therefore, it is suggested that Sri Lanka should be a stakeholder of the Second Optional Protocol of the International Convention on Civil and Political Rights and abolishing capital punishment accordingly and introduce a new penalty system. Furthermore, obtaining knowledge by studying the lessons learnt by Asian and African countries that have abolished capital punishment from the courses of action taken by them during the interim periods are some recommendations for Sri Lanka to establish the fair penalty system.

Keywords : Death penalty, right to life, Buddhism

References

Damien P. Horigan, of compassion and capital punishment: a Buddhist perspective on the death penalty. online available

at: <https://www.google.lk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwi2haPI6bWAhUKvY8KHQBcAmgQFggzMAI&url=https%3A%2F%2Facademic.oup.com%2Fajj%2Farticlepdf%2F41%2F1%2F271%2F6654041%2Fajj41271.pdf&usg=AFQjCNEq9acf2x0RS7UMI6mIJuRijjfxqg>

International Covenant on Civil and Political Rights. (ICCPR)

Penal Code of Sri Lanka