

RESUMPTION OF JUDICIAL HANGINGS

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The Government's stated intention to revert, after a lapse of 23 years, to the practice of judicial hangings, is a matter of deep concern and dismay to the Civil Rights Movement.

The Civil Rights Movement (CRM) is certainly mindful of the horrific crimes that have taken place in recent times—the Rita John rape and murder case, the Hokandara murders, and—preceding these—the rape of Krishanthi Kumaraswamy and the killing of her and her family. These gruesome and dramatic events have hit the media headlines; other equally grave crimes of violence against individuals take place with less or no publicity. CRM is also mindful of the change in the nature of crime in recent times, the alarming growth of underworld and organised crime including large scale drug trafficking and contract killings. Our organisation by no means underestimates the serious law and order problem facing the authorities. CRM also notes that it is not the government's stated intention to resume executions on a large scale but only in certain special cases, and certain safeguards have been spelt out.

Resumption of Hangings no Solution

The return of the hangman as part of our public life is, however, in CRM's view, unacceptable in any circumstances. The state should not assume the role of executioner. Defence of life and defence of the state may sometimes justify the taking of life by law enforcement officials, but even in such cases the use of lethal force is constrained by legal safeguards to prevent abuse. Judicial execution, on the other hand, is not an act of defence against an immediate threat to life. It is the premeditated killing of an identified prisoner for the purpose of punishment, a punishment which could take another form. Moreover the safeguards envisaged are woefully inadequate. In any event, executions are no answer to the problem of law and order and will only serve to make the national scene more brutal than it already is.

Nowhere has the death penalty (as opposed to other punishments such as long term imprisonment) been shown to have any special power to deter crime. The most recent international survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations and revised in 1996, has concluded that this research "has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis". On the contrary, reliance on the death penalty diverts

attention from the real solution, which is prompt and efficient investigation of crime followed by effective prosecution and conviction. "The greatest deterrence to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system". (South African judgement of 6 June 1995 in which all eleven members of the Constitutional Court held the death penalty unconstitutional).

Retribution

The death penalty is, furthermore, based on outmoded concepts of vengeance and retribution, as opposed to modern penal policy which aims at rehabilitation of offenders. Admittedly, there is sometimes a demand from some elements of the public for retribution. This may be understandable, but that does not mean it should be allowed to prevail over other considerations. Over the centuries, there has been a steady progression away from this type of punishment—away from public executions, public mutilations, and other torture, inflicted sometimes for comparatively trivial crimes. Society today looks back with abhorrence at such practices. It is the responsibility of an enlightened government to give the lead to this movement towards the adoption of more rational and humane approaches to the ills of society, and to resist a reversion to earlier attitudes. The resumption of hangings in Sri Lanka today would be a retrograde step in the progress of our country.

The absolutely cruel nature of the murders, and the appalling suffering of the relatives, that has obtained publicity in recent times, cannot be gainsaid. This does not detract from the fact that the ending of a particular individual's life at a particular place, date and time, as a deliberate and predetermined act of the state, is in turn an act of extreme cruelty. Persons who have had personal contact with condemned prisoners and their family members, in the days when hangings did take place, have experienced at close quarters the particular horror of this punishment, and feel it is one the state has no right to inflict on any human being. As the Constitutional Court of South Africa recently pointed out, punishment should be commensurate with the offence *but it does not have to be equivalent or identical*. "The state does not have to engage in the cold and calculated killing of murderers in order to express its moral outrage at their conduct"

On the issue of vengeance and retribution, CRM would also point out that much of the problem is not only that many crimes go unprotected or unpunished, but also that when a death sentence is

commuted a uniform sentencing system applies. Rather than hanging some offenders, the alternative is a system of categorising murders into various degrees, with different minimum prison sentences applicable, coupled with appropriate review mechanisms which take into account the circumstances of the crime. This would go a long way to satisfy the public outcry raised when persons convicted of particularly grave crimes are released after what appears to be an unduly short period.

Danger of Executing Innocent Persons

We said earlier that the death penalty has no proven special deterrent effect. At the very highest, its effect is uncertain. Two things about the death penalty are, however, certain beyond dispute. One is that it is irreversible. The other is that sometimes innocent people have been executed. These certainties are another compelling reason why this particular punishment should have no place in our criminal justice system. The most prominent miscarriages of justice in the UK in recent years have been for crimes that produce the greatest outrage and the loudest calls for vengeance.

Can we say that our investigative, law enforcement and legal system is such that there is no real possibility of innocent people being convicted and scapegoats being hanged? It is crucial in this whole debate to keep in mind that the process which may end at the gallows begins, not at the trial stage, but at the initial stage of investigation of the crime. The integrity and reliability of the police investigation is absolutely crucial, for it is from this that the evidence emerges on which a man may be eventually executed. The poor and the disadvantaged, who do not have the capacity to search for evidence that would indicate their innocence, and who have less access to competent and experienced lawyers, are the most likely victims of miscarriages of justice. Of course the danger of wrongful conviction applies equally to crimes punished by imprisonment. But the unique nature and awesome finality of the death sentence places it in a category apart. There have been several instances in other countries of persons executed on evidence that later proved to be unreliable. Notably, there have been cases where the police or the prosecution have suppressed evidence favourable to the defence. It is here that the inadequacy of the safeguards listed by the government—the recommendation of the trial judge, the Attorney General, and the Minister of Justice, become apparent, for their role arise at very much later stage. There are other obvious reasons too why this is not an ideal mechanism for arriving at a life and death decision, in which political considerations and the pressures—and countervailing pressures—of outcry from various elements of the public, are bound to sometimes be a factor.

Moves Towards Abolition

South Africa and Russia, both of which have serious problems of violent crime, are among the countries that in recent times have come out against the death penalty. The Human

Rights Commission of the United Nations in April 1999 has reiterated its call on all states to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty, and has meanwhile called for a world wide moratorium on executions.

In Sri Lanka, attempts to abolish the death penalty commenced before independence, when as early as in 1928 the Legislative Council adopted a resolution moved by D.S. Senanayake that capital punishment should be abolished. Resolutions to this effect were thereafter at various times proposed by Susantha de Fonseka, Dr. A.P. de Zoysa, and MP for Kandy Fred E. de Silva. The most serious attempt to abolish the death penalty, however, was made when as the result of a decision of the very first cabinet meeting of the new government of S.W.R.D. Bandaranaike in 1956 the Suspension of Capital Punishment Act suspended the death penalty for a trial three year period, and the famous Norval Morris Commission was set up to examine the issue. However in the aftermath of the assassination of Prime Minister Bandaranaike the Act was repealed by the caretaker government headed by W. Dahanayake. Executions resumed, but fell into disuse again after 1976. History shows that in our country over a long period of time repugnance at the death penalty has been felt and expressed by individuals of varying political colorations, and is a matter that should and can be taken out of party politics.

CRM is disturbed that this momentous decision appears to have been taken without the deep study that one would have expected, and on certain untested assumptions of a public opinion which in any event is liable to change on such issues. Public calls for the death penalty tend to fall away when its special deterrent effect is shown to be unproved, when alternative punishments of long prison sentences are suggested and when the danger of conviction of the innocent is remembered. It should be recalled that the Sri Lankan government itself, at the public hearing of its report to the Human Rights Committee of the United Nations at Geneva in 1995, gave categorical assurance that it would not resume executions. Sri Lanka's representative on that occasion said that although there had been a proposal that the death penalty should be implemented when a murder had been committed under particularly odious circumstances, public opinion was aroused and some governmental organisations appealed to the President and the Minister of justice. "The Government then made it clearly known that even in cases of particularly cruel acts, it would not take a decision to execute the condemned person". (Unofficial translation from the French summary record, UN doc. CCPR/C/SR. 1437 of 28 July 1995). This assurance was formally welcomed by the UN Human Rights Committee in its final comments at the end of the hearing.

CRM urges that executions not be resumed under any circumstances, and that real solutions to violent crime, both short and long term, be identified and meticulously pursued. ■

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