

Sociological Analysis on Death Penalty in Sri Lanka

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Summary

This research paper tried to analyses the ideas on death penalty and life imprisonment experiences of its offender's point of view. In the end, the paper discuss on the need of implementing capital punishment to reduce mechanism for crime. Within the framework of giving punishments and control criminals are essential for the society to its best functioning. There are organized crimes and instantaneous crimes against human and property. Findings revealed causes for engaging criminal behavior as well as feelings of them as offenders. Death penalty and life imprisonment are been punished especially for drug selling and murders in Sri Lanka. The end of life imprisonment decided by nature; but the date of death penalty will be decided by the president of Sri Lanka in Sri Lankan context. Still there is no decision on implementing the death penalty in Sri Lanka. These both categories of prisoners need if implementing death penalty or freedom. Some of them need to convert death sentence to life imprisonment. They are physically and mentally damaged after their imprisonment. Lack of hope and as well as lack of welfare and rehabilitation programs they suffered their lives in the prison. On the other hand the people need a better solution to grassroots crucial crimes.

Key words: death penalty, expectations, life imprisonment, rehabilitation

Introduction

Crimes are becoming a one of burning issues in Sri Lanka. Crime is mean by someone brakes the rules in a certain society. A person who violates a law is called to have committed a criminal offense. There are two main categories of crime as property crime and violent crime. A property crime is call as when someone damages, destroys or steals someone else's property. It means crime behavior against property. For example such as stealing, destroy buildings, burning permanent and mobile things such as vehicles, schools, houses etc. A violent crime means when someone harms, attempts to harm, threatens to harm or even conspires to harm someone else. Violent crimes are offenses which involve force or threat of force, such as rape, robbery or homicide. Crime is defined as "An action or an instance of negligence that is deemed injurious to the public welfare or morals or to the interests of the state and that is legally prohibited" (Dictionary.com). On the other hand crimes can be considered as offences in minor crimes and grave crimes including murder, rape, trafficking, robbery, excise, narcotic, kidnapping and so on. According to the literature "a crime is an offence against the public law. It is an act committed or omitted in violation of a law forbidding or commanding it and for which punishment is imposed upon conviction. Crimes violate the law and order of a society and it negatively affects the social structure and the society's fundamental values, morale and belief system" (Jayathunga, 2011). Crime is a big problem in rural as well as urban areas in Sri Lanka (Wasantha, 2015).

Reported crime rate are becoming high in Sri Lanka. When describing below mentioned table it can be proved.

Table 1: Grave Crime Abstract forthe Year 2014

Crime	Cases Recorded
Abduction/Kidnapping	1036
Arson	578
Mischief over Rs. 5000/=	1194
House Breaking & Theft	15050
Grievous Hurt	1402
Hurt by Knife etc	2635
Homicide/Abetment to commit suicide	548
Attempted Homicide	188
Rape/ Incest	2008
Riots	11
Robbery	4235
Unnatural Offense/Grave	560
sexual abuse	135
Extortions	
Cheating/ Misappropriation C.B. trust over Rs. 100,000/	8651
Theft of property including praedial produce over Rs. 5,000 & Cycle & Cattle thefts irrespective of their value.	10980
Counterfeiting Currency	52
Offence against the state	0
Cruelty to children & sexual exploitation of children	377

Source: Sri Lanka Police Data, 2014

Punishment is a reply which is given by the society to person who has done anty-social behavior. It occurs through law and customs. Costoms were ruled basically in traditional society for control social behavior. Now it is doing by the Law. “A penalty imposed on a defendant duly convicted of a crime by an authorized court. The punishment is declared in the sentence of the court. The two basic principles governing punishment are nullumcrimen sine lege (no crime without a law) and nullapoena sine lege(no punishment without a law.”(Talagala, 2012).The purpose of punishment is preventing crimes and giving a punishment to broken rules. According to scholars who wrote on punishment are four factors as retribution, deterrence, incapacitation and reformations (Thalagala, 2012). There are major classifications of civil codes as follows.

- i. The Civil Code.
- ii. The Code of Civil Procedure: Civil Procedure Code. Act 79 of 1988.Amended by Acts 9 of 1991 and 34 of 2000.
- iii. Commercial Code.
- iv. Criminal Code: Penal Code. Chapter 25.Amended by Penal Code (amendment) Act of 1995.
- v. Code of Criminal Procedure: Code of Criminal Procedure Act. Chapter 26, Law 15 of 1979. Amended by no. 39 of 1982 (The 1979 Act repealed earlier codifications.)Tambimuttu, 2009).

Hamurabi law is one of famous traditional punishment systems in the world. In Sri Lankan context, there was a traditional punishment system called “Dethiswadaya” (32 punishment). It was decided by the king or an authorized person. It included with different kinds of punishments to relevant crimes. As an overall idea on traditional punishment is, there were physical punishments, mental punishments, verbal punishments and financial punishments also. For an example; some of physical punishments were flaying, boiled alive, locking by the wood, handing, boiling by oil, burning etc. After the independence, the government rules have been changed. Instead of traditional punishment systems new court system was introduced. In the present situation punishments for crimes are totally decided by the courts. There are various forms of punishment such as bailing, fining, and prisoning for several years, life imprisonment and death penalty.

Death penalty or capital punishment means that punishment by death. There were different kinds of methods for implementing death penalty as historically. Some of them were done using animals such as crushing by elephant, burning, buried alive, boiling to death, falling, shooting, keeping starvation and dehydration and so on. Most common methods for execution are hanging and using electronic chair in the present.

According to the history of criminal justice system in Sri Lanka, it has benchmark time periods as period before the European powers occupied the island (before 1505 AD), period during the Portuguese occupation (1505-1656), period during the Dutch occupation (1656-1796), period during the British occupation (1796-1947), and post-independence period (1948 to date) (Niriella, 2013). Death penalty has a long history from traditional feudal kingdoms or kings’ ruling time in Sri Lanka. It was practiced as a king’s order. It was stopped in the British colonial period. Currently death penalty is governed by the penal code getting from the British jurisprudence. But after independence, Prime Minister S. W. R. D. Bandaranaike abolished capital punishment in 1956. But that decision was suddenly changed due to his assassination. Death penalty was reintroduced in 1959. Death penalty is legal in Sri Lanka. It is mainly doing by hanging. But there have been no implementations since 23 June 1976. The government decided to reinstate capital punishment in 2004 for cases of rape, drug trafficking and murder. Over the last decades, several presidents as Mrs.Chandrika Kumaratunga tried to implements or re-introduce the death penalty again. But still it is in only a court order. According to the constitution, after the court order on death penalty, the president must give a date for the death penalty.

According to the Commissioner of the Human Rights Commission of Sri Lanka (HRC SL) mentioned that HRC SL will propose to the government that death sentences imposed on convicts be converted to life imprisonment, according to a report in The Nation 2014.

There are three types of way which death penalty is appearing today worldwide. These are,

1. Legally banded countries
2. No longer execute but have no legal ban
3. Legally accepted and implementing

The discourse of death penalty is endless. According to the Buddhism all living being has a same right to live, No one can’t violate it. It is directly influence to Sri Lankan context to take a decision to implementing

death penalty. On the other hand there should be a study on understanding the relationship between death penalty and crime deterrence.

Table 2: Countries which are legally banded the death penalty

Country	Year of banned	Country	Year of banned
Andorra	1990	Marshall Islands	1986
Angola	1992	Mauritius	1995
Armenia	2003	Mexico	2005
Australia	1984	Micronesia	1986
Austria	1950	Moldova	1995
Azerbaijan	1998	Monaco	1962
Belgium	1996	Mozambique	1990
Bermuda	1999	Namibia	1990
Bhutan	2004	Nepal	1990
Bosnia-Herzegovina	1997	Netherlands	1870
Bulgaria	1998	New Zealand	1961
Cambodia	1989	Nicaragua	1979
Canada	1976	Niue	(n.a.)
Cape Verde	1981	Norway	1905
Colombia	1910	Palau	(n.a.)
Costa Rica	1877	Panama	1903
Côte d'Ivoire	2000	Paraguay	1992
Croatia	1990	Poland	1997
Cyprus	1983	Portugal	1867
Czech Republic	1990	Romania	1989
Denmark	1933	Samoa	2004
Djibouti	1995	San Marino	1848
Dominican Republic	1966	São Tomé and Príncipe	1990
East Timor	1999	Senegal	2004
Ecuador	1906	Serbia and Montenegro	2002
Estonia	1998	Seychelles	1993
Finland	1949	Slovak Republic	1990
France	1981	Slovenia	1989
Georgia	1997	Solomon Islands	1966
Germany	1987	South Africa	1995
Greece	1993	Spain	1978
Guinea-Bissau	1993	Sweden	1921
Haiti	1987	Switzerland	1942
Honduras	1956	Turkey	2002
Hungary	1990	Turkmenistan	1999
Iceland	1928	Tuvalu	1978
Ireland	1990	Ukraine	1999
Italy	1947	United Kingdom	1973
Kiribati	1979	Uruguay	1907
Liberia	2005	Vanuatu	1980
Liechtenstein	1987	Vatican City	1969
Lithuania	1998	Venezuela	1863
Luxembourg	1979	Malta	1971
Macedonia	1991		

Source(s): Amnesty International

Table 3: Countries no longer execute people, but have no legal ban

Country	Stopping year	Country	Stopping year
Albania	2000	Gambia	1981
Argentina	1984	Grenada	1978
Bolivia	1997	Kenya	(n.a.)
Brazil	1979	Madagascar	1958
Chile	2001	Maldives	1952
Cook Islands	(n.a.)	Mali	1980
El Salvador	1983	Mauritania	1987
Fiji	1979	Morocco	1993
Israel	1954	Myanmar	1993
Latvia	1999	Nauru	1968
Peru	1979	Niger	1976
Algeria	1993	Papua New Guinea	1950
Benin	1987	Russia	1999
Brunei Darussalam	1957	Sri Lanka	1976
Burkina Faso	1988	Suriname	1982
Central African Republic	1981	Togo	(n.a.)
Congo (Republic)	1982	Tonga	1982
		Tunisia	1990

Source(s): Amnesty International

Table 4: Countries where capital punishment is still legal:

Country name			
Afghanistan	Egypt	Kyrgyzstan	Somalia
Antigua and Barbuda	Equatorial Guinea	Laos	Sudan
Bahamas	Eritrea	Libya	Swaziland
Bahrain	Ethiopia	Malawi	Syria
Bangladesh	Gabon	Malaysia	Taiwan
Barbados	Ghana	Mongolia	Tajikistan
Belarus	Guatemala	Nigeria	Tanzania
Belize	Guinea	Oman	Thailand
Botswana	Guyana	Pakistan	Trinidad and Tobago
Burundi	India	Palestinian Authority	Uganda
Cameroon	Indonesia	Philippines	United Arab Emirates
Chad	Iran	Qatar	United States
China (People's Republic)	Iraq	Rwanda	Uzbekistan
Comoros	Jamaica	St. Kitts and Nevis	Vietnam
Congo (Democratic Republic)	Japan	St. Lucia	Yemen
Cuba	Jordan	St. Vincent and the Grenadines	Zambia
Dominica	Kazakhstan	Saudi Arabia	Zimbabwe
	Korea, North	Sierra Leone	
	Korea, South	Singapore	
	Lebanon		
	Lesotho		
	Kuwait		

Source(s): Amnesty International

The prison department is the legally authorized for keeping prisoners and implementing punishments and conduct rehabilitation programs for offenders in Sri Lanka. There are 23 prison institutions in Sri Lanka including 03 closed prisoners and 20 remand prisons. There are 10 work camps, 02 open prison camps, 01 training school for youth offenders and 02 correctional centers for youth offenders.

As earlier mentioned, capital punishment is legal in Sri Lanka as many other countries as India, Japan, Bangladesh, Iran and Iraq so on. When compared unconvicted prisoners from 2006-2010 there is an increase. It was 89190 in 2006 and it was 100191 in 2010. There were 28732 of convicted prisoners and it was 32128 in 2010. There were 165 Death sentences in 2006 and it was 96 in 2010. There are 540 individuals had been sentenced to death (Prison Statistics).

Literature Review:

Talagala (2012) has mentioned in his research on *“Implementing Capital Punishment in Sri Lanka: Some Views and Jurisprudential Thoughts”* on different stakeholders’ view on implementing capital punishment. The senior academic objecting to the implementation of capital punishment said, killing is an immoral and unethical act whether it is done by an individual or the State. Life is precious to all human beings and the capital punishment violates the right to life. According to Buddhist philosophy it is not accepted. Buddhism recognized physical punishment to balance to offence committed. Capital punishment aims to satisfy two basic objectives of punishment, i.e. retribution and deterrence. It is generally accepted that punishment should be proportionate to the crime committed.

Niriella (2013) revealed the justice system in Sri Lanka on his article on *“The emergence of restorative justice in Sri Lanka: a review essay”*. According to him Sri Lanka adopts methods in the justice system are victim offender mediation, restitution, probation, conditional discharge, suspended sentencing and community based correction. Although, the programs relating to ex-offender assistance are not institutionalized. In his conclusion, he mentioned that the attitude of the public toward punishment is still influenced by traditional retributive thoughts where the offender should be treated harshly with severe punishment through punitive approach.

Jones and Wiener (2011) exposed the relationship between mortality salience and death penalty. Their article on *“Effects of mortality salience on capital punishment sentencing decision”* has tested Terror Management Theory (TMT) and the possibility of escape mortality salience effects. TMT imagines that the awareness of one’s own death (mortality salience) influences cognitive functioning and behavioral reactions. It has cultural and psychological values. In the conclusion, participants relied on their attitudes to make sentencing decisions when focusing on the death of victim and possible death of the defendant compared to when they focused on their own mortality.

Auerbach ((2001) discussed the differences between USA and Britain way of thinking on death penalty through their article on *“The dividing line on capital punishment”*. These two countries share a common history, common language and political and economic associates. There are three major components on capital punishment. These are domestic in nature, public and political support and international pressure. The combination of public and political support, along with international pressure, had a direct impact on the decisions of its nations.

Lamperiti (1994) researched on the connection with murder deterrence and capital punishment. The research article on “Does capital punishment deter murder?” revealed overwhelming majority among America’s leading criminologist who believe that capital punishment does not contribute to lower rates of homicides.

Schweizer (2013) has shown the effects of capital punishment on their family on “Racial disparity in capital punishment and its impact on family members of capital defendants”. It’s focused on family members of African American defendants. The family members are unseen as they are shunned by the community due to their relationship to the defendant. They need information, assistance, and emotional support. The resources available to them are often limited or nonexistent. They need counseling and other external support.

Gupta (2014) has done a comparative study on death penalty. The article titled on “Capital punishment: a comparative study between India and China” focused on death penalty stands globally. China gives death penalty for 55 offences but Chinese law excluded from death penalty are minors, pregnant woman, elderly and mentally ill people.

Research Methodology

Research problem: What are the main causes for receiving capital punishment and life imprisonment in Sri Lanka?

Research questions: What are the feelings of prisoners as waiting for death?

Objective: Objectives of the study were identifying prisoners’ point of view on their punishment and root causes for their offence.

Data Collecting methods and techniques: This was a basic research. Case studies were conducted to identify the research problem and data were collected using formal interviews. Research area was Welikada prison. Stratified sampling method in probability samplings was used. Sample size was 20 cases from death penalty and life imprisonment prisoners and 20 from other convicted prisoners.

Discussion

Back ground of participants

Target group was 20 males who are punished for death penalty and life imprisonment as first sample. They were selected from “Welikada’ prison which the prison is allocated for prisoners who come for the first time as an offender. All the case studies were done by the correspondent researcher using by formal semi structured interviews. There were two stages of this basic research selecting the sample. The study has focused to getting surface understanding on prisoners according to their offence in the first stage. Therefore, the first sample was randomly selected. Thus, real sample was the purposively selected one which was with death penalty and life imprisonment prisoners. Survey has been done with 200 civilians selected as randomly as second sample. Main research group was prisoners.

The study concentrated to get basic background details on prisoners on ethnicity, religion, age and educational level. When considering the ethnicity Sri Lanka has four main ethnicities as Sinhala, Tamil, Muslims and Burgers as national level. Sinhalese are 74% and Muslims are 9% in its in national contribution. According to field data, it was 95% of Sinhalese and 5% was Muslims. There were no any other ethnics as Tamils and Burgers in the sample.

Graph 01: Population by Ethnic Group

Ethnic group	2012 ('000)
Sinhalese	15,173.8
Sri Lankan Tamil	2,270.9
Indian Tamil	842.3
Sri Lankan Moor	1,869.8
Burghers and Eurasians	37.1
Other	69.8
Total	20263.7

Source: Department of Census and Statistics, 2012



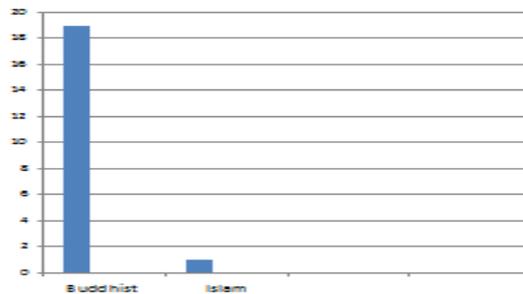
Source: Field data, 2015

The religious categories in Sri Lanka are Buddhists, Hindus, Islamic and Catholics. Buddhist representation is 70%, Islamic are 9.5%, Hindus are 12.5% and Catholics are 7% in national level population rates. There were no Hindus and Catholics in the sample. It can be summarized as bellows.

Graph 02: Population by Religion

Religion type	2012 ('000)
Buddhist	14228.8
Hindu	2554.6
Islam	1967.2
Catholic	1509.6
Other	9.4
Total	20267.7

Source: Department of Census and Statistics, 2012



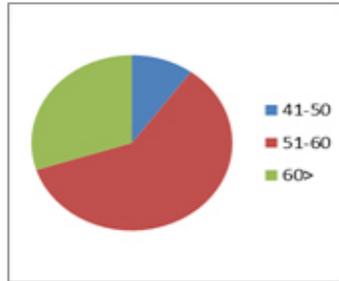
Source: Field data, 2015

Age between 51-60 years was representing 60%. There was 30% representation between age group of 60over. 25% of them are already spent more than 15 years in the prison. Generally mean of entry to the prison is in age of about 50.

Graph 03: Representation by Age group

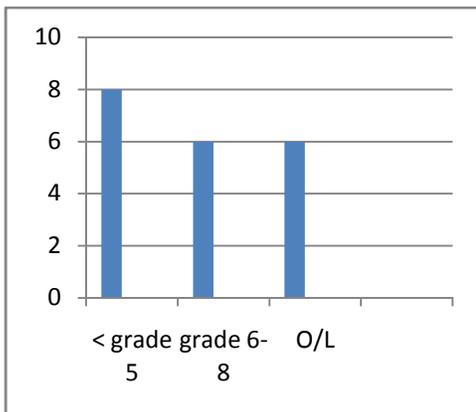
year	Age group 01-14 ('000)	Age group 15-59 ('000)	Age group 60 > ('000)
2012	5229	12566	2468

Source: Department of Census and Statistics, 2012



Source: Field data, 2015

Graph 04: Educational level of respondents



Source: Field data, 2015

Educational level of respondents was significant. There was no anyone who leant above grade ten. 40% representatives were leant to grade five. 30% for below grade eight and 30% below grade ten and its representation. All were come from rural areas. There is no one from Colombo district from the sample. Among them 45% were reported from Southern province and 20% reported from Sabaragamuwa province. There was a new trend that murder cases increase in Sabaragamuwa province last few years especially in Rathnapura district.

Past few decades gives evidence that Sri Lanka has a big history on war and violence. Physical war was finished in 2009. But violence against human being, property and nature is still occurring. Violence and aggression can be seen as different types as violence against personal, violence in institution and social violence.

Graph 05: Category by offence

Categorize offences are in deferent point of view. According to the prison department there are five types of offences as criminal offences against persons, offences against property, offences against public tranquility state law and order, and other offence and child abuse. Criminal offences against persons are offences such as murder, drugs, culpable homicides, attempted murder, attempted culpable homicides, kidnapping, rape, grievous hurt, simple hurt, bigamy, unnatural offences, concealment of birth, criminal force, and criminal intimidation etc. Death penalty is sentenced for murder, drug selling and attempted murder according to penal code of Sri Lanka. Life imprisonment is sentenced for kidnapping, robbery, rape and smuggling on considering its weight.



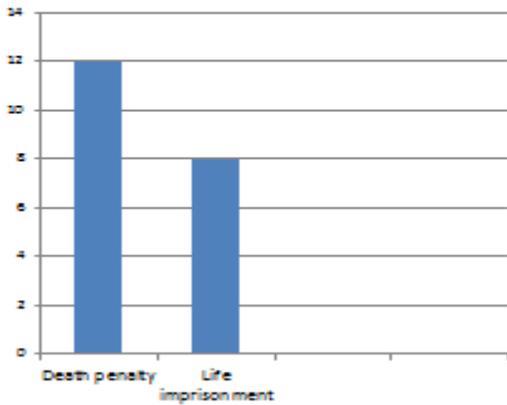
Source: Field data, 2015

Out of hundred 95% of offenders were convicted for murdering. The reasons for murdering were land matters, unlawful love affairs, fighting, and financial matters so on. Among them 2 of them murdered their wives. Most of them suffered. According to them it was manageable behavior but they could not do it. 60% of offenders were farmers on paddy and Chena cultivation. 60% of them were businessmen and some of them engaged with illegal drug selling and selling meat.

Graph 06: Attitude towards death penalty and life imprisonment

In their point of view; living with the decision of life imprisonment and death penalty is too difficult and tough. Out of hundred 60% of were expecting their death penalty. Others were living for life imprisonment. 55% of them already spent more than six years in the prison. If, they were real offenders or not, some of them appealed their cases. According to them (death penalty offenders) they are expecting replacement such as instead of death penalty they need life imprisonment. Offenders who were punished for life imprisonment need to less their prisonment. On the other hand 25% they have more than 15 years in prison. They are engaging with deferent kinds of activities as weaving works, bakery works, coir works, laundry works, tailoring and cleaning service for getting financial support. Some works are doing for their day to day existence such as cooking, cleaning, farming, office works, religious works etc. In addition, there are counseling programs, arms giving programs, health programs, and cultural activities.

Type of Punishment



Source: Field Data, 2015

Spent time in the prison

Type	Spent Years	
	amount	%
< 1 years	02	10
2-5 years	02	10
6-10 years	07	35
11-15 years	04	20
16-20 years	05	25
Total	20	100

Source: Field Data, 2015

Interviews with offenders have conducted to explore how the have been impacted by the death penalty.

Most of them satisfied with their day to day life. Some of them questioned about the rehabilitation programe. More than 75% offenders need their death penalty. They suffered their living because they are waiting for their death. The president should decide to implement the punishment according to Sri Lankan death penalty law. Presidents who became as a president in Sri Lanka after 1976, did not sign for the implementing the death penalty. There is a discourse on implementing death penalty since its stopping.

Conclusion

The study focused to understand prisoners’ point of view on their imprisonment. Prisoners who are expecting theirs’ death penalty; they have two demands as first one is that if there is a chance to convert their death penalty to life imprisonment is very appreciated. But if there is no chance to do it, necessary action they needed is implementing their death penalty. These two demands are under the authority of the president of Sri Lanka.

The prisoners who have life imprisonment need to convert it to the imprisonment for considerable certain years. This demand also happens under the recommended of the president of Sri Lanka.

The amount of 80% of the sample needs to implement death penalty for control crimes. Other concentrates on rehabilitation and awareness of preventing crimes.

In the conclusion, it is argued that there should be a big discourse on implementing death penalty in Sri Lanka. Experts of different fields as criminology, psychology, religious, law and order must make a round table discussion on it. There should be a public opinion on implementing or banned death penalty.

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