

## **Punishment in The Kandyan Polity in The Early Nineteenth Century**

**K. M. P. Kulasekera**

Punishment has broadly been defined as the infliction of some pain, suffering, loss, or social disability as a direct consequence of some action or omission on the part of the person punished. In its long history, punishment has involved the death, physical maiming, loss of a limb, physical assault, detention, loss of civil and political rights, or banishment. In a punishment situation, 'there must be a perceived relationship of legitimacy between the punisher and the punished: the agent of punishment must be in a position of legitimate authority over the punished, and the action or omission must be seen to merit the punishment by reference to a set of pre-existing criteria by which such acts or omissions may be judged.<sup>1</sup> Thus a full-fledged punishment situation is a complex social relationship in which the perceptions, motives, and intentions of both parties are essential features.

Punishment could basically be divided into two categories: formal and informal. Formal punishment is regarded as that which is meted out through the courts of law while all other kinds of punishment are considered to be informal.<sup>2</sup> Informal punishment is extensively inflicted in a wide variety of interpersonal, institutional and social contexts, for example, in the family and in all types of associations and establishments, such as educational and military institutions, political, occupational, and other types of corporate bodies. In the broad perspective of this essay, however, our concern here will be with formal punishment for crime.

A variety of theories have been proposed regarding the origins of formal punishment. Some of them are (a), that it evolves from private vengeance; (b), that it grows out of conquest and the

attempts of ruling elites to control subject peoples; (c), that it originates when the state takes over the disciplinary powers of the *paterfamilias*; (d), that it arises from the attempt of the society to guard itself against supernatural dangers or as a religious duty imposed by the divine will and (e), lastly, that it is an outgrowth of an aesthetic sense which conceives of it as the logical counterpart of a misdeed. All these theories contain some element of truth, but none of them seems to present a total view of the problem. A somewhat more plausible theory would perhaps be that formal punishment originates as a reaction of the society to actions which, in accordance with its value system, are viewed as being dangerous or injurious to the society as a whole.<sup>3</sup>

Several purposes and functions have also been ascribed to formal punishment. They are deterrence, reformation, revenge, retribution and protection of society by incapacitation of the offender. However, it has been pointed out that formal punishment for crime is not explained by any or all of these purposes and functions ascribed to it, but that 'it is essentially a ceremonial reaffirmation of the societal values that are violated and challenged by the crime'.<sup>4</sup> Alternatively, it is held to demonstrate the power of the political authority and the price to be paid for disobedience. In this theoretical context, formal punishment and by extension, the harshness of punishments in premodern societies could be interpreted as a reasonably successful medium of social control by which the political power structure is preserved and social and political stability ensured. Punishments in the Kandyan society dealt with in this essay are largely viewed from the last mentioned perspective.

A remarkable feature of the judicial system of the Kandyan Kingdom was the harshness of the punishments which were inflicted by the King and superior administrative officers like *adigars* and *disavas*. Crimes such as treason, conspiracy and rebellion had always been considered punishable with death and the conviction was usually followed by confiscation of property

sometimes involving the relations of the accused as well. During the reign of Sri Vikrama Rajasinha, the last king of the Kandyan Kingdom, the wife and children of an *adigar*, considered to be a traitor were also executed. Wilful and deliberate homicide was also punished with death. In several instances, robberies has been sometimes punished with death but usually with corporal punishment, imprisonment and fine.<sup>5</sup> Capital punishment was carried out in several ways. Convicted *radala* nobles were decapitated with a sword; headmen and other persons of middling or low rank were whipped while being carried along the streets and finally impaled; offenders belonging to low castes were hanged by the neck on a tree after being impaled. Besides this, earlier there had been a method of putting criminals to death by means of elephants but it was not practised after the reign of Kirti Sri Rajasinha. Robbing the treasury and killing cattle were punished with amputation of the hand or lower part of the arm. Assaulting a *radala* noble or a monk was punished with the amputation of a finger.<sup>6</sup> The punishment next in severity to death and amputation was whipping while being carried through the streets of Kandy. This punishment was inflicted for crimes against the state, homicides, atrocious robberies, acts of sacrilege and slaughter of elephants.<sup>7</sup> All these punishments could be awarded by the King alone, allowing him a great latitude in meting out public justice. Corporal punishments with the cane could be inflicted by order of the King or the *adigars* for robberies and other offences such as maliciously burning sheaves of paddy, forgeries, minting counterfeit coins, adultery, rape and the use of spirituous liquors.<sup>8</sup> In some instances, the offenders were subject to imprisonment and fine in addition to corporal punishment. For most of the other inferior offences also, it was customary to punish with lesser corporal punishments, imprisonment or fine. It is thus clear that the power to inflict punishment for the most serious offences was concentrated almost exclusively in the hands of the King.

The harshness of punishments meted out by the judiciary had a certain political significance in the Kandyan society. The fact that the punishments varied according to the caste and rank of

the convicts, taken together with their relative harshness helped the monarch to preserve the *status quo* and thereby to protect his political power and authority over his subjects and also to ensure political stability in the kingdom. On the other hand, the nobles who held superior administrative positions too made use of harsh punishments to maintain their authority and influence over the rest of the people.

After the cession of the Kandyan kingdom to the British in 1815,<sup>9</sup> an important change that took place under their rule was the reduction of the harshness in the Kandyan system of punishments. The British tended towards a subtle policy of maintaining most of the social institutions and thereby gaining the confidence of the nobles and common people as a means of sustaining their political domination.<sup>10</sup> In this process, the already existing system of traditional harsh punishments served a useful purpose for the British.

On humanitarian grounds, however, they could not approve of certain punishments. In some instances, the British altered the relevant Kandyan law when they found it 'repugnant to British principles'.<sup>11</sup> Accordingly, the harshness of the Kandyan system of punishments underwent certain changes under the British. The Kandyan Convention itself prohibited every species of bodily torture and all mutilation of limb, member or organ.<sup>12</sup> The method of inflicting capital punishment also underwent a change under the British. Except for the decapitation of *radala* nobles with a sword, other modes of capital punishment, such as whipping while being carried through the streets of Kandy and being hanged or impaled, which were inflicted on the rest of the Kandyans according to their rank, were replaced by hanging alone.<sup>13</sup> However, it should be noted that even so the British were careful enough to maintain the hierarchical and social distinctions adhered to meting out punishments as between the *radala* nobles and the rest of the people. Women who were convicted for capital offences were usually drowned by being bound hand and foot and weighted with stones.

(14) The British saw this as a 'mode of execution so contrary to that established and observed in England' and abolished it in 1826, replacing it with hanging.<sup>15</sup> Banishment too took a different character under the British. Under the monarchy, it was usual to banish the offenders to distant, unhealthy provinces such as Vellassa and Bintanna, but after the British accession many of the offenders were exiled from this island.<sup>16</sup> In addition, cutting off the hair of offenders, which was considered a disgrace in the minds of the Kandyans, was also abolished by the British in order to 'encourage as much as possible the assimilation of the native inhabitants to European habits and to destroy their prejudices.'<sup>17</sup> The British also took steps to repeal all punishments which inflicted according to Kandyan usage on persons who were accused of having caused others to commit suicide.<sup>18</sup> Corporal punishment too, although it continued, became milder under the British. Whipping while being carried through the streets was completely abandoned. Whipping with cat-o-nine tails was not inflicted as much as it had been under the monarchy. Some time later, the government itself declared that whipping should not be frequently used as a mode of punishment.

In spite of these changes, the British retained certain harsh elements of traditional punishments as a means of deterrence in maintaining political and social stability. For example, criminals were executed in the presence of large crowds where the crime had been committed.<sup>19</sup> In certain instances of execution of notorious criminals, even under the British, as under the monarchy, their bodies were left hanging from trees after being executed.<sup>20</sup> Persons who were found guilty of rebellion against the government were also executed in the place where they had made their attempt. Their property was also confiscated. Especially during the rebellion 1817-18 the families and property of some of the rebel chiefs were sequestered to enforce their submission. Besides, whipping was executed in public.<sup>21</sup> Thus, the British too, on certain occasions, manipulated the harsh elements of Kandyan punishments to create a sense of fear in the minds of the Kandyans in order to prevent them from committing political and other criminal offences.

In conclusion, it is thus seen that formal punishment was a political weapon that could be employed to ensure social and political stability both by a pre-modern monarchy like the Kandyan Kingdom and by an European colonial power like the British. However, the latter had to make some modifications in the system of punishments on certain ideological grounds.

#### Notes

1. 'Punishment', **The New Encyclopaedia Britannica**, Vol. 15, p. 281.
2. Alfred R. Lindemith., 'Punishment', **International Encyclopedia of the Social sciences**, Vol. 14, p. 281.
3. Lindersmith, p. 220.
4. **Ibid.**
5. Sir John D 'oyly., **A Sketch of the Constitution of the Kandyan Kingdom**, Colombo, 1929; later published as **The Ceylon Historical Journal**, XXIV, Dehiwala, 1975. Page references are form **The Ceylon Historical Journal**. A manuscript of this book is available in CO 416/19, G-1 at the Public Record Office, London, pp. 47-9.
6. D'Oyly, pp. 84-5.
7. D'Oyly, pp. 51, 53 and 86.
8. D'Oyly, pp. 50-2.
9. The cession of the Kandyan Kigdom to the British is discussed in some detail in K. M. P. Kulasekera, 'British Administration in the Kandyan Provinces of Sri Lanka, 1815-1833, with Special Reference to Social Change', Ph. D. Thesis (University of London, 1984), pp. 49-71. Also see Colvin R. de Silva, **Ceylon under the British Occupation 1795-1833, Vol. I**, (Colombo, 1953), pp. 129-67. and P. E. Pieris, **Tri Sinhala: The Last Phase, 1796-1815** (Colombo, 1939).
10. British policy towards social institutions such as caste, Buddhism and slavery have been examined in some detail in the following articles written by me: (a) 'The Caste System and the British Administration in the Kandyan Provinces of Sri Lanka, 1815-1832', **Social Science Review**, No. 4, January 1988, pp. 101-26. (c) 'British Social Policy in a Colonial Setting: The Case of Slavery in the Kandyan Provinces of Sri Lanka, 1815-1834.

11. Evidence of Turnour, 2 September 1829, CO 416/20, G-11.
12. Article 6 of the Kandyan Convention of 2 March 1815. The entire document is included in **Ceylon Government Gazette**, 6 March 1815 and G. C. Mendis (ed), **The Coleberooke-Cameron Papers**, Vol. II, (London, 1956), pp. 227-30. among various other manuscript and printed sources. A Sinhalese copy of the Kandyan Convention is printed in T. B. H. Abeyasinghe, L. S. Dewaraja and G. P. V. Somaratne, **Udarate Rajadhaniya 1470-1818**, (Colombo, 1977), pp. 160-3. An English translation of the Sinhalese text is printed in P. E. Pieris, **Sinhale and the Patriots, 1815-1818** (Colombo, 1950), pp. 591-3.
13. Evidence of Downing, answer to Q. 66, 12 September 1829, CO 416/19, G-4.
14. **The King vs. Gangapahalagedara Dingiri Menika**, 26<sup>th</sup> 27<sup>th</sup> 28<sup>th</sup> and 30<sup>th</sup> of January, 1826, CO54/92.
15. Proclamation of 23 March 1826, **A Collection of Legislative Acts of the Ceylon Government from 1796**, Vol. I: from 1796 to 1833, (Colombo, 1853), p. 331.
16. Evidence of Downing, 12 September 1829, CO 416/19, G-4.
17. Minute by Lt. Governor addressed to the Council, enclosed with Barnes to Bathurst, 8 April 1820, CO 54/77; Regulation of Government No. 4 of 6 March 1820. **A Collection of Proclamations and other Legislative Acts of His Majesty's Government of Ceylon affecting the Kandyan Provinces** (Colombo, 1822), G-9.
18. Proclamation of 28 August 1929, in 'Proclamations Affecting the Kandyan Provinces from 1822 to 1831' (A collection of printed proclamations, available in the library of the Department of National Archives, Colombo).
19. Evidence of Downing, 12 September 1829, CO 416/19, G-4; **The King vs. Kapugedara Menikrala**; Downing to Eden, 18 May 1829, CO 416/20, G-9.
20. Governor's warrant of 13 January 1823 on the case, **the King vs. Malmiwala Punchirala, et. al.**, CO 54/84.
21. Evidence of Agents of Government, answer to Q. 132, 1829, CO 416/19, G-6.