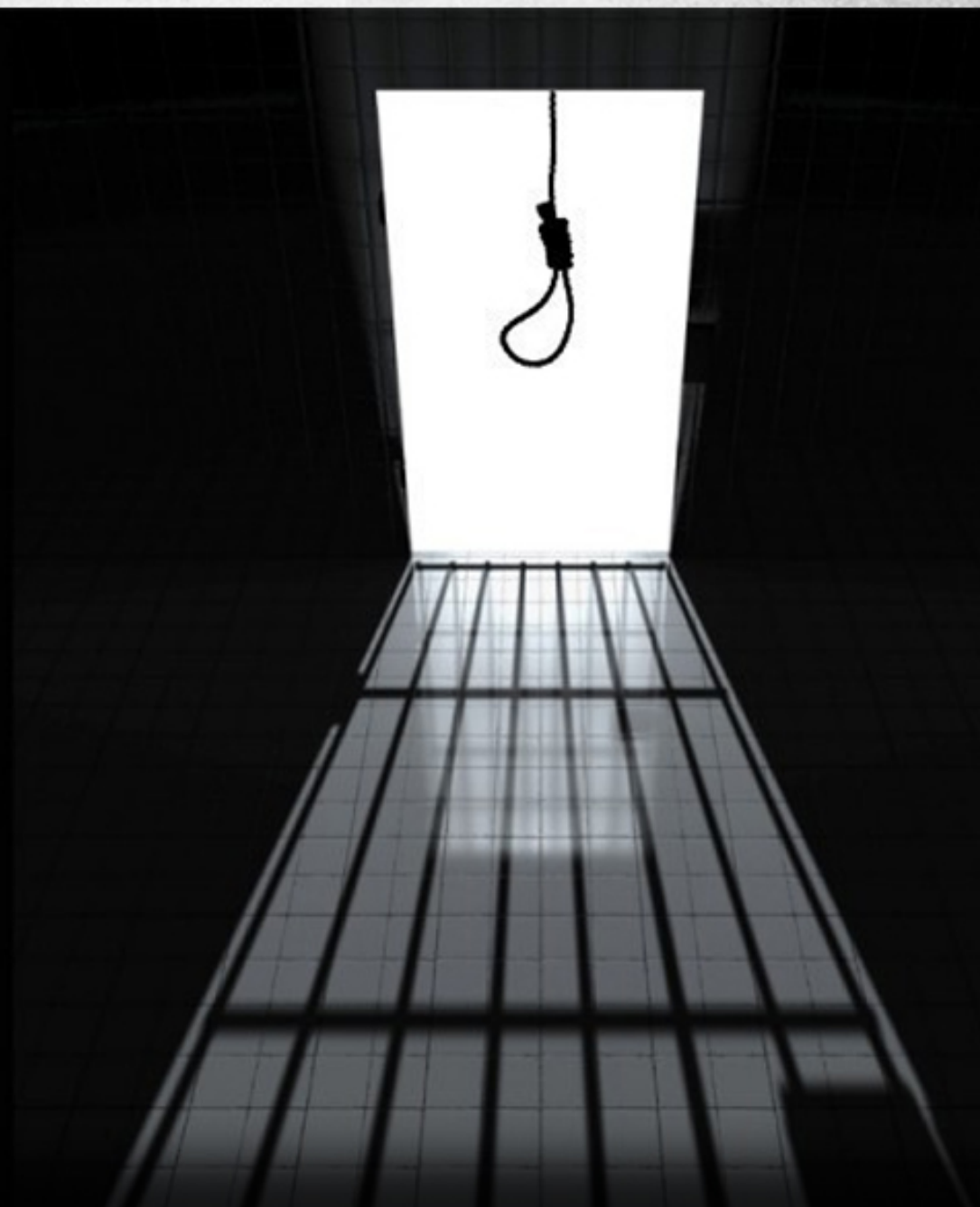


# Chop off the Head or Change the Heart?

Buddhism and Capital Punishment



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Essays on Buddhist Doctrines

## **Chop off the Head or Change the Heart? Buddhism and Capital Punishment**

If prostitution is the oldest profession, then that of the executioner is the second oldest. Some of the most ancient written documents and certainly the oldest legal documents, mention death as a punishment for various crimes, often very minor ones. The Code of Hammurabi (1754 BC) gives the death penalty for about 50 offences. The book of Deuteronomy in the Bible (circa 7<sup>th</sup> century BC) requires death for merely working on Sunday, for a woman falsely claiming to be a virgin before her marriage, and for children who disobey their parents. Today we think of the death penalty as a quick drop, an electric shock, or a sharp chop ending an offender's life, but that was not so in the past. Death often came at the end of a prolonged and agonising ordeal. In ancient Indian law, two forms of capital punishment were recognised; quick (*suddhavadha*), which usually meant beheading; and painful (*klesadanda*), which included torture before death. In the Majjhima Nikaya the Buddha listed some 13 hideous tortures inflicted on prisoners as a means of killing them. One of the ghastliest punishments ever contrived, being hanged, drawn and quartered, was only finally abolished in the UK in 1870, although it had not been used for some time before that.

A list of great men and women whose were lost to civilization by the executioner would be a long one – Socrates, Sir Walter Raleigh, Jesus of Nazareth, Antoine Lavoisier, Joan of Arc, Lucilio Vanini, Jan Hus, Sir Thomas More, St. Peter, Rabbi Akiva, Giordano Bruno, William Tyndale, Gangalegoda Banda and Federico Garcia Lorca to name but a few.

It seems that the rationale for the death penalty was originally vengeance, the removal of offenders from society and the discouragement of crime. The first move in modern times to abolish capital punishment came in 1764 with Cesare Beccaria's '*On Crime and Punishment*' in which he argued that it was both cruel and ineffective in discouraging crime. Influenced by this, Peter Leopold II of Tuscany in Italy abolished capital punishment in 1786, the first modern European state to do so. The Church and other bodies were appalled, claiming that Tuscany would descend into complete lawlessness. It didn't happen.

But interestingly, capital punishment had been abolished many times before, often by rulers attempting to apply Buddhist principles to the social domain. King Asoka abolished it in 243 BC as did several Indian Buddhist monarchs subsequently. The Chinese pilgrim Xuanzang who travelled through India during the 7<sup>th</sup> century wrote: "The kings of India believe deeply in the Buddha's teachings and do not use the death penalty in governing the people. Even persons guilty of serious offences are not executed." The Japanese Emperor Shomu, another devout Buddhist, abolished capital punishment during his reign (724-49) and it was again banned in 810, and not used for most of the next 350 years. Various Buddhist thinkers through the centuries argued for the abolition of the death penalty. In a letter to King Gotamiputra (1<sup>st</sup>/2<sup>nd</sup> century CE), Nagarjuna wrote: "Just as a son is punished out of the desire to make him worthy, so punishment should be inflicted with compassion and not through hatred or greed. Once you have judged murderers, you should banish them without killing them." We do not know whether Nagarjuna's words had its desired effect.

So should a state that claims to 'protect Buddhism', or which sees itself as 'a Buddhist country' have capital punishment? Although we think of the Five Precepts as mainly being about personal morality, they do, or should, be applied in the social and political dimension as well. Logically, if it is wrong for an individual to kill it must be wrong for an entity such as a state to kill also. When I read of countries such as Myanmar or Thailand punishing thoughtless foreign tourists for standing on Buddha statues in order to take photos, or offending traditional Buddhist etiquette in other ways, I always think how imbalanced this is, given that both countries regularly execute criminals. Surely killing a human being is, or should be, more offensive to Buddhist values than contravening manners and customs.

It seems unarguable that a Buddhist state should not engage in judicial killing. The Buddha objected to capital punishment mainly because it involves cruelty and killing, thus contravening the first Precept. He said judges who hand down cruel punishments, as well as tormentors and executioners, all practise wrong, literally “a cruel” livelihood (*kurura kammanta*) and create much negative kamma for themselves (S.II,257-60). He was well aware of the severity of the legal system of his time and in one *sutta* quoted a judge at the conclusion of a trial speaking the dreaded words: “Tie his hands behind his back with strong rope, shave his head, parade him through the streets to the sound of a harsh drum, take him out by the south gate of the city and chop his head off!” The horrible and heart-rending scenes that could be witnessed at the places of execution must have been familiar to the Buddha too, as it was to his monks and nuns. The Vinaya tells of a monk pleading with an executioner to dispatch a criminal quickly so as “to put him out of his misery”.

The Janasandha Jataka tells of a righteous king (actually the Bodhisattva) who instituted many reforms, including “opening the prisons and breaking the executioner’s block”. In the Sumangala Jataka, another king (again the Bodhisattva) says: “I punish people according to justice but also with compassion.” Given the Buddha’s opposition to all forms of cruelty and killing, including the death penalty, it is something of an anomaly that all Buddhist countries except Cambodia and Mongolia have capital punishment today and there is almost no pressure from the Sangha, the judicial profession, or the general public to have it repealed. Elaborate *pujas* and glittering *viharas* attract a great deal of interest and approval, social issues in conformity with the Dhamma very little.

In much of the rest of the world, particularly in the developed countries, judicial killing has been abolished in the last 70 years, the US being the one big glaring exception to this. Even the undeveloped and, some might say, backward, Nepal, has abolished it. But sadly, despite advances in some countries there are also examples of retrograde steps. Tibet’s 13<sup>th</sup> Dalai Lama abolished the death penalty in 1913 but the Chinese re-introduced after taking over the country in 1959, mainly for political offences, and have used it very liberally since then. Sri Lanka abolished the death penalty in 1956 as part of a program to have more Buddhist principles in public policy. But after S.W.R.D Bandaranaike’s assassination it was re-introduced in 1959, then used sparingly after 1976, re-introduced again in 2004 and there has been a moratorium since then. As of today there have been no judicial executions since 1976 but the death penalty is still on the books. Is it not time that a country with such a deep and enduring Buddhist tradition finally abolish once and for all state sponsored killing?

There are some who might say that abolishing capital punishment in order to be in conformity with Buddhism would be hypocritical. They might point out that the Sri Lankan state promotes the fishing industry, it reaps a handsome revenue from alcohol sales and from gambling. More than that, it maintains an army specifically trained to use violence when necessary. “If you are going to be consistent”, critics might say, “the state should divest itself from all these things. Why make a big fuss over a few murderers and not focus on these much bigger infractions of Buddhist morality?” A response to such objections would be that killing fish is in a different category from killing humans, and that while many benefits for society are derived from the fishing industry none at all is derived from killing humans. Even the Buddha saw a fundamental difference between killing animals and humans. A monk or nun who commits murder is expelled from the Sangha and can never be re-admitted; killing an animal is a serious but far less serious offence which requires confession before the Sangha. As for alcohol and gambling, to ban them would only give rise to corruption and racketeering – it has been tried before in many countries and it does not work. The realistic thing is to accept that some people will always drink and gamble, and do nothing to promote either beyond their natural level. And an army? All that could be said here is that the state can do much to be in accordance with the Dhamma, but not everything. Having said this it is worth pointing out that there are 22 countries in the world that have abolished their armed forces, including Costa Rica, Mauritius, Dominica, Grenada, Iceland and Panama, most of them small islands, like Sri Lanka.

Abolishing capital punishment would let citizens know that their government is doing what can be done to create a more humane and kindly society. It would demonstrate that the country is, at least in this respect, joining the nations that are moving with the times, and it would free all those who would otherwise be involved in death-dealing – the judges who pass down capital sentences, the executioner and his assistants who actually do the killing, the merchants who provide the ropes, the doctors who attend executions, etc. – from their grisly duties, and it would give the criminal the opportunity to be reformed and hopefully returned to society. And of course, it would be more in keeping with the values we claim to live by.