

Putting into legal perspective, considering the human rights obligations of the State, the issue has to be looked into from that angle as well.

Method

This research is basically based on both library and fields research. The library research is based on reviewing of materials such as books ,journals and other publications on the topic by experts in the fields of law and sociology. Reports on the same area is also critically evaluated under litreture review. Further, the information gathered from the internet is used to complete this article.

Field research includes interviews/discussions with police and prison officials, judges, academics and experts in field of law and scholars in other disciplines such as sociology. It would be supplemented by the author's personal observations in the field and their analysis.

Results

The findings of the study are that the capital punishment is not a fair and proportional punishment, it is unconstitutional and it is not a legitimate method of protecting the society, Instead, life imprisonment without parole would be more effective than death penalty. Further, capital punishment does not offer any opportunity to the offender to reform him/herself and therefore, there is no room for the concept of rehabilitation. The irreversible nature of this punishment reveals the horror of the death penalty. Moreover, as a matter of policy, the act of taking one's life should never be justified on flimsy grounds.

Conclusion

The research arrives at the conclusion that there is no practical utility of re-implementing of death penalty or retaining it in the penal law in any country, including Sri Lanka. The deterrence effect is so minimal that no tangible benefit can be achieved by imposing this sentence. The high risk of innocent being punished because of the lack of proper means to defend him/herself also cannot be ruled out.

A CRITICAL ASSESSMENT OF PUBLIC INTEREST LITIGATION IN SRI LANKA

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Background

Public Interest Litigation (PIL) has been recognized and developed by the Sri Lankan Supreme Court under the 1978 Constitution. There was an explosion of PIL cases particularly in the last two years of the Sarath Silva Court. The latest cases in that line are the *SLIC* case, the *Water's Edge* case and the *LMSL* case. Those cases were entertained by the Court as cases brought "in the public interest." They were significant in terms of the orders made by Court on the basis of public interest and the Public Trust Doctrine. In the *SLIC* case, the Court held that that the privatization of Sri Lanka Insurance Corporation was null and void. In the *LMSL* case the transfer of land by the State to a private party was declared illegal and in the *Water's Edge* case the lease of land was held to be null and void. Each of those cases involved significant and high profile contracts that had been entered into between the State and private actors, the reversal of which was generally

perceived as being significant in terms of upholding rule of law, transparency and accountability regarding the exercise of Executive power by the State.

The Constitution does not provide for PIL. However, starting from the case of *Wijesiri v. Siriwardena* (1982) to the recent cases discussed above, the Sri Lankan Courts, have, time to time, expanded the rules of standing. It seems that the Sri Lankan Courts have been influenced largely by the contemporary developments in the Indian jurisdiction in the recognition and development of PIL particularly in the late 1990s.

Methods

The article seeks to review the PIL cases up to 2009 in an attempt to explore the concept of PIL and its impact on the relationship between the citizen and the State. An attempt will be made to compare the Sri Lankan experience with that of the Indian in order to assess the form of PIL that has been employed in Sri Lanka.

Existing legal scholarship in this area has largely been in favour of PIL and has mostly argued for the continued use of PIL by the Supreme Court and for the continued expansion of the mechanism. This article would take the position that PIL can continue to be used only within a framework that is both identifiable and consistent.

Several general questions arise in reflecting on the phenomena of PIL. What is the jurisprudential basis whereby the Judiciary could recognize and develop PIL, in a context where the Court is not mandated by the Constitution to entertain such applications? What is the rationale whereby the traditional rules of standing have been departed from by the Court? How does one understand the relationship that is established between the “public spirited Individual”/ “public spirited organization” and the Court? One possible argument is that it is based on “Sovereignty of the People” that is recognized under the Sri Lankan Constitution. The article will attempt to seek possible explanations for the aforementioned questions, through a reference to political philosophy.

Results

One common outcome of the PIL cases in Sri Lanka has been that the Court has made policy recommendations as part of its final order and/or judgement. In analysing such outcomes the question that arises is whether the Court is equipped to make such interventions. The article intends to reflect on that aspect of PIL through a careful analysis of the different types of orders given by the Court over time.

The article also intends to engage with the difficult question of “judicial activism” and its impact on the doctrine of separation of powers and the rule of law. While that issue cannot be exhaustively dealt with within the confines of a short research paper, the limited objective of that analysis will be to engage in that debate in relation to the idea of “justice.”

Conclusions

Through a rigorous analysis, the paper will seek to conclude that PIL should be considered as a unique judicial creation; that is an attempt by the judiciary to introduce a measure of equality to grossly unequal relationship between different stakeholders, one such relationship being that of State actors and citizens. The paper will also conclude that Sri Lankan PIL is home grown; it can only be understood in relation to the closely linked developments with regard to the public trust doctrine. The paper will seek to establish that, contrary to the view held by some, PIL in Sri Lanka, is in fact, mandated by the Constitution.