

JUDICIAL HANGING IN INDIA: A RATIONAL AND HUMANE MODE OF EXECUTION

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ABSTRACT

Capital punishment is a standard form of punishment practised globally. However, its meaning, uses, forms and functions have varied greatly across different geographical and historical contexts. This paper, while examining the different modes of capital punishment, argues that the method of hanging as currently used in India is the best alternative for such execution in every respect. Beginning with the historical background of hanging as a mode of execution, the procedure of hanging and the executions made so far in the country by means of the said method are discussed in detail. The authors have referred to the cases decided by the Hon'ble Supreme Court of India while upholding the validity of hanging as a mode of execution. The paper indicates that hanging is the most rational and least painful way to execute death sentence as the probability of mishap is very less and leads to quick unconsciousness.

Keywords: Hanging, Execution, Death Penalty, Capital Punishment,

- I. Introduction**
- II. Historical Account of Death Penalty in India**
- III. Constitutional Validity of Death Sentence**
- IV. Procedure of Executing Death Sentence in India**
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- IX. Conclusion**

I. Introduction

“The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time by any means.”

–Mark Twain¹

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CAPITAL PUNISHMENT is practised commonly all around the world since time immemorial and is awarded on account of conviction for a large number of wrongdoing, including frivolous offences involving property². During the British Era in the eighteenth century, death was a prevalent punishment for almost hundreds of offences. It was executed in different manners. Excruciation, burning, wheel breaking, stoning, crushing under elephant's feet, throwing from a cliff, drowning, drawing and quartering, crucifixion etc were some of the methods used in different parts of the world.³ With the blooming of different theories identifying the golden principle of just, fair and reasonableness enshrined in the Constitution of India and various enactments on human rights, these methods started to fade out as contrary to them and were lately considered as inhumane. Likewise, punishments including torture also vanished with the possibility that death should be quick and humane, regardless of the method used for execution.⁴

Capital punishment seems to have triggered the maximum amount of debate all over the world. It has been in a state of conflict in the judiciary, in India as well as in one of the most developed nations *i.e.*, the United States of America.⁵ India is among those fifty-nine nations that retained death penalty⁶, although it had restricted its use only to the 'rarest of rare cases'⁷. The Indian Penal Code⁸ (IPC) has provided for the classifications of punishment depending upon the nature and gravity of crime⁹. The state's power is both addressed and built up after the execution of death penalty. India has cleared its position on the issue in December 2007 by dismissing United Nation's (UN) supplication for global suppression of

¹ Mark Twain, an American Writer, humourist, publisher and lecturer was known for his famous work '*The Great American Novel*'. His other works include '*The Adventures of Tom Swayer*' (1876) and its sequel etc.

² Law Commission of India, "187th Report on Mode of Execution of Death Sentence and Incidental Matters" 10 (October, 2003).

³ *Ibid.*

⁴ The present description is based on the secondary source of data. The present information is based upon the various reports of the Law Commission of India. eg. 35th Report, 1967, 187th Report, 2003 and Royal Commission on Capital Punishment 1949 – 1953.

⁵ Sandra Babcock, "The Global Debate on the Death Penalty" *Spring 2007-The Death Penalty*, April 01, 2007, available at:

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol34_2_007/spring2007/irr_hr_hr_spring07_babcospr07/ (last visited on Jan 18, 2021).

⁶ Law Commission of India, "262nd Report on The Death Penalty" (August, 2015).

⁷ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898. The doctrine of 'rarest of rare cases' is a court's endeavour to limit the arbitrary use of death sentence and to restrict its application in exceptional cases of extreme culpability along with the special reasons to sentence the accused to death.

⁸ Indian Penal Code is the statute of India that intends to cover all the substantive aspects of criminal law such as offences against state, public tranquillity, body, property, etc. It came into effect on 1 January, 1862 and is applicable to whole of India.

⁹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 53.

the death penalty¹⁰. India supported the amendment¹¹ introduced by Singapore along with 34 other nations saying that the countries, being sovereign, possess a right to frame their own legal system and to determine the penalty for law violations in accordance with their international law obligations.¹²

Capital punishment, *in observantia*, forms part of various Indian statutes but differs qualitatively from other forms of punishment provided in substantive criminal laws as it is irreversible by its very nature and if an error is committed, there is no way to rectify that, i.e. there is no going back from this punishment. Though the punishment is different from others viz. life imprisonment, rigorous imprisonment but it is not very new to the Indian society. Indian society, being one of the earliest civilizations in the world, has been historically observing this punishment since long.¹³

II. Historical Account of Death Penalty in India

Over the centuries, various rulers in India have ordered death as punishment. With the progression of time, there have been a lot of significant changes in the mode of execution, viz. a shift from crushing to hanging, spinning and the headman's axe to hanging, electric chair to lethal injection, etc. However, there neither seems much of change nor as much debate on the methods of execution in India as in major democracies like the United States.¹⁴

In ancient India, the King was considered divine and he had supreme authority. Death was a rule for most of the crimes such as theft, tax evasions, rebellion, etc.¹⁵ The ability to punish

¹⁰ UN General Assembly, *General Assembly Adopts Landmark Text Calling For Moratorium on Death Penalty*, GA/10678, GAOR, UN Doc A/10678 (December 18, 2007).

¹¹ Singapore did not support the UN Resolution "to progressively restrict the use of death penalty and reduce the number of offences for which it may be imposed." Singapore tabled the amendment in response to this mentioning "UN had ignored the diversity of States and their judicial systems. In addition, they had resorted to pressure tactics and demarches. While the co-sponsors would celebrate their victory, it had come at the expense of acrimony in the Third Committee. Each State had a sovereign right to choose its own political, criminal and judicial systems, stressing that Singapore would continue to follow its own course in the matter." See UN General Assembly, *Singapore: Amendment to Draft Resolution A/C.3/67/L.44/Rev.1*, GA/A/C.3/67/L.63, GAOR, UN Doc A/C.3/67/L.63 (November 15, 2012).

¹² "India votes against UNGA Draft Resolution on use of death penalty", *The Economic Times*, November 14, 2018, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/india-votes-against-unga-draft-resolution-on-use-of-death-penalty/articleshow/66616339.cms> (last visited on Feb 25, 2020).

¹³ Law Commission of India, "Consultation Paper on Mode of Execution of Death Sentence And Incidental Matters" (October, 2003).

¹⁴ The History of the Death Penalty: A Timeline, Death Penalty Information Center, available at: <https://deathpenaltyinfo.org/stories/history-of-the-death-penalty-timeline> (last visited on Jan. 18, 2021).

¹⁵ Gopalkrishna Gandhi, *Abolishing the Death Penalty*, 14 (Aleph Book Company, 2016).

by death is an attribute of power. India's earliest recorded policy of punishment in sixth century also talks of the same.¹⁶ During the Maurya Dynasty, Emperor Ashoka talks of death penalty as a standard feature of his polity and his kingdom's highly evolved jurisprudence. He mentions the death penalty matter-of-factly in passant in his Pillar Edict IV: '*it is most desirable that there should be absolute equality for all in the legal proceedings (viyohala samata) and in the punishment awarded (danda samata).*'¹⁷ In order to create deterrence among others, people were punished publicly for their crimes. Elephants were considered smarter than other wild animals and were easy to train. So, the rulers adopted the most brutal method of crushing by Asian elephants to carry out public executions.¹⁸ This method was used by the Mughal Emperor Akbar the great, and was known as "Gunga Rao".¹⁹ But this method declined faster to the point of extinction and was not able to find a place in medieval period.

The demonstration of crushing lost its significance another hundred years later. The rise of Peshwa to the fore brought a new system of punishment with it. Executions were carried out either by hanging the condemned man, cutting him to pieces, or decapitating him. A further refinement included breaking the skull with mallets.²⁰ But Brahmins, if sentenced to death, was executed more compassionately – they were poisoned.²¹ Later, hanging transformed into the exceptionally ritualized process of 'drawing, hanging and quartering' – the more serious the crime, the harsher the punishment. In this, drawing refers to dragging the person to the place of execution where they were hanged; their body was rebuffed further by disembowelling, beheading, burning, and 'quartering' – removing the head and limbs of the condemned. The head and appendages were regularly openly shown following the execution.²²

By the end of the seventeenth century, India's new guest, British East India Company, was making inroads into the country. The Supreme Court of Judicature was set up in Calcutta at

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Ancient Origin "Execution by Elephant: A Gory Method of Capital Punishment", available at: <https://www.ancient-origins.net/history-ancient-traditions/execution-elephant-gory-method-capital-punishment-004932> (last updated on Dec. 15, 2015).

¹⁹ *Ibid.*

²⁰ *Supra* note 15 at 25.

²¹ *Ibid.*

²² Kelly J., *Punishing The Dead: Execution and The Executed Body In Eighteenth-Century* 49 (Palgrave Macmillan, London, 2015).

Fort William under the Regulating Act of 1773.²³ In its very initial years, the Court was approached for the verdict on Raja Nanda Kumar. Nanda Kumar brought up the charges of bribery and corruption against the then Governor General, Warren Hastings. The council found the charges to be true and Hastings had to pay the amount back to the Company's treasury and had to leave the seat. Revengefully afterwards, he took the help of the Chief Judge, and got Nanda Kumar booked for forgery.²⁴ A jury of twelve Englishmen returned the verdict 'guilty' thereby sentencing him to death under the Perjury Act, 1728.²⁵ Nanda Kumar was finally hanged at Fort William on August 5, 1775.²⁶

Another example is the execution of Panchalankurichi. The Collector of Tinnevely conquered the defiant ruler of Panchalankurichi in 1799 and had him hanged from a tamarind tree.²⁷ These examples remained strong on every colonial and colonized mind and eventually became a practice to be followed by the European Empire during late 18th and 19th century in Modern India.²⁸

Since then, hanging by chain is the most common ritual that is being followed throughout the nation for penalising the condemned. The British valued execution as a deterrent punishment and adopted variegations in the post execution practices. They adopted the practice of displaying severed heads after beheading and hanging by chain, anatomisation and dissection, burial and burning of the dead bodies. Same was adopted by India and is followed till date. The British termed it as a judicial murder with the command of the supreme and has got it written in the statute 'The Murder Act'.²⁹ Same practice was adopted in India during the making of Indian Independence Act.³⁰

At the time of Independence, India retained many of the civil and criminal laws framed by the British colonial government during its regime. This includes the Indian Penal Code and

²³ Sudipta Sen, "Imperial Subjects on Trial: On the Legal Identity of Britons in Late Eighteenth-Century India" 45(3) *JBS* 547 (2006).

²⁴ H. Beveridge, *The Trial of Maharaja Nanda Kumar, A Narrative of a Judicial Murder* 189 (Thacker, Spink And Co., Calcutta, 1886).

²⁵ Perjury Act is an act of the Parliament of Great Britain related to the acts of perjury and forgery. The Act got repealed by the Forgery Act of 1830.

²⁶ *Supra* note 23.

²⁷ Lekshmi Priya S, "Kattabomman: The Legendary Chieftain Who Didn't Bow Down to the British", *The Better India* (Jan 3, 2018).

²⁸ *Supra* note 15.

²⁹ Peter King, *Punishing The Criminal Corpse 1700-1840* 79 (Palgrave Macmillan, London, 2017).

³⁰ Clare Anderson, *A Global History of Execution And The Criminal Corpse* (Palgrave Macmillan, London, 2015).

the Code of Criminal Procedure, 1898 (now repealed and substituted by Code of Criminal Procedure, 1973). The earlier code gave wide powers and solicitude to judges in cases punishable with death and in cases where the accused is convicted of an offence punishable with death but not awarded death sentence, special reasons were need to be recorded.³¹ This gave rise to the issue of desirability of the death penalty and its arbitrary imposition on convicts. For the very first time, a resolution was passed against the death penalty by the Congress government in its Karachi session³² and this punishment was again questioned in the Indian Constituent Assembly in 1947 and 1949.³³ At that time, it was left to the Parliament as a matter of legislation to decide upon.

Later, in 1967, *The Capital Punishment*, a report of the Law Commission of India³⁴ was released which recommended that India cannot risk the abolition of capital punishment owing to the circumstances and condition of the country. The commission recommended that keeping in view the vast population, variety of social upbringing, literacy rate, unevenness in the levels of morality of the people and in order to maintain law and order in the country, it is necessary to retain death penalty for grave and heinous offences.³⁵

Having regard to the diversity of population in India, the state of affairs in the country has changed significantly. India has not carried out any execution in either 1990s or 2010s. The figure of execution during several years has declined remarkably. Only two prisoners were executed from 2013 to 2017 in the country. The execution rate has reached its lowest to 0.0003 among fifty-six nations that presently impose death penalty.³⁶ As of 2017, India has long used its judicial execution that during the span of last twenty two years, India hanged only four people, giving it an annual rate of execution that is around 1/25,000th the rate of executions in China.³⁷

With the progression in time and society, it is evident that this punishment is losing its significance and becoming a subject of hatred and disaffection with evolving concepts of

³¹ Law Commission of India, “35th Report on Capital Punishment” (September, 1967).

³² Special Correspondent, “It’s time death penalty is abolished: Aiyar” *The Hindu*, Aug. 7, 2015, available at: <http://www.thehindu.com/news/national/its-time-deathpenalty-is-abolished-aiyar/article7509444.ece> (last visited on Jan 8, 2020).

³³ *Supra* note 31.

³⁴ Law Commission of India, “262nd Report on The Death Penalty” (August, 2015).

³⁵ *Id.*, at 19.

³⁶ David T Johnson, “A Factful Perspective on Capital Punishment” 11(2) *JHRP* 339 (2019).

³⁷ *Ibid.*

human rights.³⁸ It has been challenged before the court in numerous cases³⁹ as inconsistent with the fundamental rights enshrined in the Constitution of India.

III. Constitutional Validity of Death Sentence

Initially, death was the rule since ages and in the earlier Code of Criminal Procedure (CrPC) also until it stood amended in 1955 by Act No. 26 of 1955.⁴⁰ After this, the death rule got out of shape and the discretion now lies with the court to award death penalty or imprisonment for life with certain conditions. One, the death sentence should not be awarded to the convict who is a minor (below eighteen years) at the time of commission of offence,⁴¹ and second, no sentence of death should be imposed on a woman convict, who was pregnant.⁴² This provision remained intact till 1973 until the Code was amended again. As of now, under the present Code of Criminal Procedure (CrPC), this punishment has become the exception rather than the rule and special reasons have to be recorded for the award of this punishment.⁴³ In other words, it took almost seventy-five years for the Legislature to turn this rule into an exception. The provision, as amended thus, reads as under:⁴⁴

When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

There exists a lot of debate over the constitutionality of the death sentence.⁴⁵ The sentence was questioned, for the very first time in 1973 before the apex court on the grounds of unreasonableness, being opposed to the public interest and fundamental rights guaranteed

³⁸ *Supra* note 31.

³⁹ *Deena @ Deena Dayal v. Union Of India*, 1983 AIR 1155, 1984 SCR (1) 1; *Attorney General of India v. Lachma Devi*, AIR 1986 SC 467; 1986 Cr LJ 364; 1986 (1) SCJ 166; *Shashi Nayar v. Union of India*, AIR 1992 SC 395; 1991 AIR SCW 3006; 1992 Cr LJ 514.

⁴⁰ The Code of Criminal Procedure, 1898 (Act No. V of 1898) w.e.f July 1, 1898 was a code to regulate the criminal procedure in the country. The code laid down the procedure to be followed for investigation, inquiry and trial of crimes mentioned under IPC and other substantive criminal laws.

⁴¹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016), s. 21.

⁴² The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 416. *See Pawan Jain, Supreme Court on Death Penalty 2* (Universal Law Publishing, 2016).

⁴³ CrPC, 1973, s. 354(3) reads: "When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded and, in the case of sentence of death, the special reasons for such sentence."

⁴⁴ *Ibid.*

⁴⁵ *Supra* note 31 at 22.

under article 19(1)(a) to (g) and being violative of article 14 and 21.⁴⁶ The court upholding the constitutionality of the sentence said:⁴⁷

The impossibility of laying down standards is at the very core of the criminal law as administered in India, which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. That discretion in the matter sentences as already pointed out, is liable to be corrected by superior courts... The exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused.

In 1979, the court in *Rajendra Prasad case*⁴⁸ found itself confronting the sentencing discretion and the scope of the term ‘special reasons’ in imposing the death sentence as embodied under section 354(3) of CrPC⁴⁹ and iterated “*special reasons necessary for imposing death penalty must relate, not to the crime as such but to the criminal.*”⁵⁰

The question of death penalty includes a subjective element and invests the judges with wide discretionary powers in the matter of fixing the quantum of punishment in our criminal justice system. Barely, seven years later, the same argument was advanced with even greater force before another Constitution Bench in *Bachan Singh v. State of Punjab*.⁵¹ It was submitted that the requirement of penning down the special reasons for award of death penalty left the door open for it to be imposed in an arbitrary and impulsive manner. It was further argued that the court must step in to define the scope of this unusual punishment and should unmistakably mark the circumstances under which the offence would call for death penalty and the circumstances under which it would call for an alternate punishment of imprisonment of life. This would not only minimise the chances of grave injustice to the condemned but also limit the discretion of the judges in the country.⁵²

The Supreme Court, likewise in *Jagmohan*⁵³ and *Rajendra Prasad*,⁵⁴ also rejected this submission saying that penning down the standard guidelines or fettering the court’s

⁴⁶ *Jagmohan Singh v. State of U. P.* (1973) 1 SCC 20

⁴⁷ *Id.*, at 26.

⁴⁸ (1979) 3 SCC 646.

⁴⁹ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 354(3).

⁵⁰ *Rajendra Prasad v. State of Uttar Pradesh* (1979) 3 SCC 646.

⁵¹ AIR 1980 SC 898.

⁵² Pawan Jain, *Supreme Court on Death Penalty* 72 (Universal Law Publishing, 2016).

⁵³ *Supra* note 46.

⁵⁴ *Supra* note 50.

discretion is the wholesome act of legislation and it would not be advisable to encroach upon this power by merely enacting the guidelines or laying down the criteria to be followed in sentencing. The parliament should do what, in its opinion, is required for the administration of the justice and we should not overlap it by establishing another set of rules.⁵⁵ That court also refused to make an exhaustive enumeration of the indicators that would serve as milestone for awarding this grave punishment and preferred not to hamper judicial discretion in a way or the other. The court observed the real question concerning the dignity of individual postulates the system should refrain in taking the human life by instruments of law. The punishment should be imposed only when all other options are unquestionably foreclosed.⁵⁶ Thus, the validity of this punishment has been shown. It will now be followed by an assessment of the process of executing the death penalty in the country.

IV. Procedure of Executing Death Sentence in India

The execution of death sentence in India is usually carried out by means of hanging by neck. Though, there are two ways prescribed by the statutes for execution - hanging by neck till death or being shot to death.⁵⁷ The method of shooting by the firing squad is, however, restricted to the Army, Navy and Air Force in limited circumstances.⁵⁸ The court martial tribunal has the discretion to adopt any of the two methods to execute the sentence of the condemned prisoner under the Army Act,⁵⁹ Navy Act,⁶⁰ and Air Force Act⁶¹. In other cases, when the sentence is confirmed by the Supreme Court and the entire available remedies *viz.* curative petition (review) and seeking clemency are exhausted, the sentence is then duly executed in conformity with the provisions laid down in the Code of Criminal Procedure⁶² and the Prison Manual of the respective states.⁶³

Hanging someone is a complicated process practically as well. Everything is attempted to be done at its best to ensure that the process goes as smoothly as possible for everyone involved.

⁵⁵ *Supra* note 52.

⁵⁶ *Id.*, at 74.

⁵⁷ "Death Penalty In India: Did You Know Shooting By Firing Squad Is An Execution Method?", *India Today*, Dec.12, 2019.

⁵⁸ *Supra* note 2 at 23.

⁵⁹ The Army Act, 1950 (Act 46 of 1950).

⁶⁰ The Navy Act, 1957 (Act 62 of 1957).

⁶¹ The Air Force Act, 1950 (Act 45 of 1950).

⁶² CrPC, 1973, s. 354(5) reads: "When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead."

⁶³ *Supra* note 2.

Today hangings are always indoors (behind enclosures within the jails) but in the past there was a provision to make examples of the prisoners, and thus other prisoners were made to watch the execution. This was done to serve as a deterrent.

The Prison Manual states the procedure for executing a prisoner. For instance, Paragraph 11.01 of the Model Prison Manual⁶⁴ provides for search and seizure of every prisoner awarded with sentence of death. The prisoner shall after his arrival in the prison be searched without any delay under the order of the Deputy Superintendent and all articles which the Deputy Superintendent deems dangerous or fatal shall be taken away from him/her.⁶⁵

Once the clemency is rejected by the President of the State and after communication of the final confirmation and the date of execution by the government, the Jail Superintendent will inform the prisoner and his relatives about the date and start making arrangements for the execution of the death sentence.⁶⁶ There are various steps that the government has to take in order to ensure that they are executing the worst of the worst and not the innocent people.

Firstly, the prisoner will be kept in isolation cells until the date of the execution arrives.⁶⁷ Further, the Manual provides that a last meeting of the prisoner with his relatives can be arranged if he so desires. The convict can also propose if he wish to make in will in regard to his property and valuables.⁶⁸ As the execution approaches, the superintendent of the prison will inspect the gallows and the rope that is to be used for execution. The official will also scrutinize the rope, made of either cotton yarn or Manila and a test will be performed to check the strength of the rope.⁶⁹ A dummy or a sand bag of one and half times of prisoner's weight is hanged and dropped between 1830 and 2440 meters to test the rope.⁷⁰

⁶⁴ Model Prison Manual is a document by the Government of India to bring the basic uniformity in the laws, rules and regulations related to prison administration in the country. It consists of 32 chapters.

⁶⁵ Bureau of Police Research And Development, Government of India, Model Prison Manual for the Superintendent and Management of Prisons in India (Ministry of Home Affairs, 2003), *available at*: <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf> (last visited on Feb12, 2020).

⁶⁶ The Model Prison Manual, para 11.45.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, at 157.

⁶⁹ The Model Prison Manual, para 11.50.

⁷⁰ *Id.*, at para 11.52.

The rules of the Prison Manual run into great detail with respect to the weight of the prisoner and the corresponding height from which he should be hanged.⁷¹ The height of the drop is inversely proportional to the weight. For example, if a prisoner weighs less than 45.360 kg, he is given a drop of 2440 m and if he weighs more than 90.720 kg then, in that case a drop of 1830 m is given to avoid the chances of breakage of the rope during the execution. These extreme limits of 1830 m and 2440 m are strictly followed as per the physical particulars of the prisoner. Wax or butter is also applied to soften the ropes.⁷²

In addition to this, the rules also make mention about the timings of the execution. According to the Prison Manual, the execution should be carried out in the early morning before the sun rises.⁷³ For instance, The Punjab and Haryana Jail Manual⁷⁴ is being followed for executions in the Punjab and Haryana. Paragraph 872⁷⁵ of the Manual provides the time for execution and the procedure that is to be followed in execution of death penalty in the state.

The present rules permit the officers including superintendent, deputy superintendent, medical officer in charge and a resident medical officer to witness the executions.⁷⁶ The prisoner can also request for a priest of his religion to be arranged to recite the prayer at the time of execution. No other individual, particularly family members of the condemned ought to be permitted to see the execution.⁷⁷

The jail authorities may, despite anything, permit social researchers, psychologists, and psychiatrists and so on to conduct their research there.⁷⁸ On the morning of the execution before taking the prisoner to gallows, the superintendent needs to ensure that no correspondence from any officer remains unread before executing the prisoner. He should then meet the prisoner in his cell to complete the documentation and other formalities that

⁷¹ *Id.*, at para 11.49.

⁷² *Id.*, at para 11.53.

⁷³ *Id.*, at para 11.46.

⁷⁴ The Punjab and Haryana Jail Manual is an enactment that contains provisions relating to jail and prisoners in the state. It regulates the establishment and management of jails, the confinement, treatment and transfer of prisoners, the maintenance of discipline amongst them and other matters relating to prisoners. Chapter XXXI (paragraph 847-874) deals with the prisoners condemned to death.

⁷⁵ Punjab and Haryana Jail Manual, para 872 reads: "Time of execution, procedure to be adopted. - (1) Executions shall take place at the following hours:- November to February, 8 A.M. March, April, September and October, 7 A.M. May to August, 6 A.M", available at: <http://haryanaprison.gov.in/sites/default/files/documents/CHAPTER-XXXI.PDF> (last visited on Feb 12, 2020).

⁷⁶ *Supra* note 65 at 158.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

requires his signature or thumb impression or requires attestation such as the will, marked by him.⁷⁹

After this, both the hands are tied behind his back to take him to the gallows on the command of the head superintendent and is escorted by six jail warders out of which two walks in front, two behind and two hold the prisoner with arms. On arrival near the gallows, the prisoner's identity is confirmed by the superintendent to the magistrate. The Superintendent then at that point of time reads the warrant to the prisoner in the language understood by him and then his face is covered with a cotton cap.⁸⁰

The prisoner is not allowed to see the gallows. According to the Manual, after arriving into the gallows the warden will make the prisoner to stand on the scaffold under the beam where the rope is attached.⁸¹ Then his legs are tied together tightly and the noose around his neck is adjusted accordingly to place the knot at a proper position. Next, the hands are released by the officers and their support is withdrawn and on receiving a signal from the superintendent, the hangman shall draw the bolts. This activity ought to be done all the while and as quickly as could be expected under the circumstances. On completion of all these formalities, the superintendent shall ask the hangman to push the lever to discharge the trapdoor.⁸² On opening of the trap door, the body of the prisoner falls through and remains suspended until the doctor declares him to be dead. Upon a declaration by the prison medical officer following this, the dead body is taken down.⁸³

The body of the executed prisoner is then disposed of according to the religious requirements of the prisoner and if any application is made by the relatives of the prisoner, the body may be given to them also for final ceremonies.⁸⁴ With this, the process of execution comes to an end and the Superintendent shall submit the execution report to the Inspector-General of Prisons. The execution warrant shall, then be returned to the executing court with an endorsement and countersigned by the Medical Officer.⁸⁵

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Supra* note 65 at 159.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ The Model Prison Manual, para 11.66-11.67.

⁸⁵ *Id.*, at para 11.69-11.70.

The Supreme Court in *Shatrughan Chauhan judgement*⁸⁶ in January 2014 made it a mandate to conduct a post-mortem after the execution. This ended the arbitrary manner in which hangman or prison officials operated at times and for whom executions simply meant the quickest way of ending a life.

Thus, it may be mentioned that the modes of inflicting sufferings on those accused of capital crimes and on enemies of the ruling power' seem less barbaric now than they were in earlier times. A check has also been put on this by elaborating the details in the official Manuals and inducing some dignity into the hanging process.

After understanding the procedure of execution by this method, it is pertinent to study whether this method is *ultra vires* the Constitution or within the framework of our legal system. In the next part, we will analyze various decisions of the Apex court on the subject supporting or opposing the validity of the procedure.

V. Constitutional Validity of using Hanging as a Means of Execution

The death penalty is consistently questioned on grounds of the right to life.⁸⁷ The issue whether method of executing the death penalty by hanging the convict by a rope is inhumane and cruel was not examined substantially in the *Bachan Singh's case*⁸⁸. The section 354(5) of Code of Criminal Procedure⁸⁹ was constitutionally challenged in bunch of cases⁹⁰ before the Supreme Court in 1983. The said section was questioned on the ground that death by hanging convict with a rope is cruel and barbarous and thus violative of article 21 of the Constitution.⁹¹ The validity was challenged on the following grounds:⁹²

- i. It is impermissible to take away human life even under the decree of a Court since it is inhuman to take life under any circumstances;
- ii. It is also impermissible to inflict pain and suffering on any person under sentence of death and substantially while executing his sentence by virtue of freedoms guaranteed under article 21;

⁸⁶ *Shatrughan Chauhan v. Union of India*, Writ Petition (Criminal) No. 55 of 2013.

⁸⁷ The Constitution of India, art. 21.

⁸⁸ *Supra* note 7.

⁸⁹ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 354(5).

⁹⁰ *Deena @ Deena Dayal v. Union of India*, 1983 AIR 1155, 1984 SCR (1) 1.

⁹¹ *Ibid.*

⁹² *Ibid.*

- iii. Section 354(5) prescribes the method of hanging but this method for executing sentence is barbarous, inhuman and degrading and contrary to law;
- iv. The state is under an obligation to adopt a humane and dignified method for executing the severest form of punishment and the method adopted should not involve torture of any kind.

The Supreme Court after referring to the cases in India and United States bearing on the subject and the Reports of the Royal Commission of England on Capital Punishment⁹³ and Law Commission of India⁹⁴ on mode of executing death, the Court recorded its decision by saying, *inter alia*, the system of hanging which is being followed these days consists of a process that is simple, quick and easy to follow. The fundamentals to the act of hanging are quick, direct and straightforward and are free from anything that would unnecessarily add to the melancholy of the prisoner's apprehension. The probability of the process going wrong is very less, say next to negligible in this method and can safely be prevented.⁹⁵ The method is a speedy and secured means of executing the extraordinary punishment of law.

Moreover, adopting this method reduces the possibility of a lingering death. The prisoner becomes unconscious as soon as the process is set in motion and due to the dislocation of the cervical vertebrae; the prisoner loses his breath and dies.⁹⁶ Not only this, the process of hanging as in vogue now eliminates the chances of strangulation which results by virtue of too long a drop. This framework is, also in consistency with the state's obligation of ensuring that the process of execution is conducted with decency and decorum without involving degradation or brutality of any kind.⁹⁷

During the final moments, when life dies out from the body of a convict, some physical pain and agony would be implicit in the very process of ebbing out of life. However, the sufferings are very less than what is comprehensible by virtue of the fact that death supervenes instantaneously. As to the pain, the purpose of the law is to ensure that the various steps which are orderly upon or incidental to execution of any sentence, all the more so capital punishment, do not add to the punishment. When a prisoner is executed, it has to be borne in

⁹³ Report of The Royal Commission on Capital Punishment, 1949-1953 Cmd. 8932, (September, 1953).

⁹⁴ Law Commission of India, "187th Report on Mode of Execution of Death Sentence and Incidental Matters" (October, 2003).

⁹⁵ *Supra* note 52 at 89.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

mind that he is subjected to that punishment only and no other punishment should be attached to it. It is unlawful to execute any other sentence in addition to death sentence. He cannot be exposed to physical or mental dilemma, agony or sufferings more than that he deserves at any point of time. “Humaneness is the hallmark of civilised laws; therefore, any act that leads to misery, agony, mutilation, degradation, brutality, barbarity, humiliation of any kind should be unlawful during the execution of any sentence. The process of hanging does not involve any of these, directly, indirectly or incidentally.”⁹⁸ Therefore, if it is lawful to impose a sentence of death in appropriate cases that to be executed in a proper manner. Hence, it was held that the method prescribed by section 354(5) of the Code of Criminal Procedure⁹⁹ for executing the death sentence does not violate the provisions contained in article 21 of the Constitution.¹⁰⁰

Although an attempt was made to re-open the issue of legality of section 354(5) of the Code of Criminal Procedure in *Shashi Nayar’s case*¹⁰¹, court rejected the prayer by citing *Deena’s case*¹⁰², it had already been held that hanging by neck is a scientific method whereby cervical vertebrae is dislocated without any degradation and is one of the least painful methods of the execution of death sentence and the court finds no justification for taking a different view.¹⁰³

Later in 1986, the Court again confronted the same issue in *Attorney General of India v. Lachma Devi*¹⁰⁴, and speaking positively on the constitutionality of the hanging method, the Court upheld that the procedure prescribed in the jail manuals should be followed while executing a prisoner unless any amendment or modification is done in the rules.¹⁰⁵

At this stage, two overlay considerations need to be borne in mind in the area of criminal sentencing. Substantively, the sentence needs to be in line with the constitutional mandate, particularly, in articles 14 and 21.¹⁰⁶ Procedurally, the manner in which the sentence is legally carried out also needs to be in conformity with mandate under article 21. The mandate of article 21 isn’t that capital punishment will not be executed but that it will not be executed in

⁹⁸ *Supra* note 90 at para 3(b).

⁹⁹ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 354(5).

¹⁰⁰ *Supra* note 52.

¹⁰¹ *Shashi Nayar v. Union of India*, AIR 1992 SC 395.

¹⁰² *Supra* note 90.

¹⁰³ *Ibid.*

¹⁰⁴ AIR 1986 SC 467: 1986 (1) SCJ 166.

¹⁰⁵ *Ibid.*

¹⁰⁶ The Constitution of India, arts.14 and 21.

a remorseless, boorish or degrading way. Accordingly, after reading all these judgements singly and cumulatively, it can be said that the system of hanging as prescribed under section 354(5) of the Code of Criminal Procedure¹⁰⁷ for executing the death sentence does not violate the provisions contained in article 21 of the Constitution.¹⁰⁸

In fact, if the contentions on mode of execution are conveyed to their obvious end results, then, it will make it difficult to execute any sentence at all, especially of imprisonment on the grounds that each sentence of imprisonment essentially includes torture and sufferings to a lesser or more prominent degree.¹⁰⁹

However, in order to make concretized suggestions, it is necessary to have an idea about other modes of execution as well. Though hanging has been abolished by various countries, it is still in practice in some nations. An increase has been observed in the number of countries who have adopted lethal injection as a mode of execution.¹¹⁰

VI. Methods of Execution — The Global Scenario

The common methods of execution of the death sentence which were involved in different parts of the world are Electrocutation in twenty three states of USA; Guillotine in France and Belgium; Hanging in England, Scotland, Commonwealth countries and ten states of USA and Lethal injection and Gas chambers in eight states of USA; Shooting in state of Utah in America and Beheading.¹¹¹ Besides, Shooting was used in almost every country as a method of execution of persons sentenced to death for offences against the military court.¹¹² The United States is the only country to have authorised both electrocution and gas chamber as

¹⁰⁷ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 354(5).

¹⁰⁸ *Supra* note 52.

¹⁰⁹ *Ibid.*

¹¹⁰ States that use Lethal Injection as method of execution of death sentence are- “Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington and Wyoming”. See Law Commission of India, “Consultation Paper on Mode of Execution of Death Sentence And Incidental Matters” (October, 2003).

¹¹¹ Cornell Law School, *Methods of Execution*, Cornell Center on the Death Penalty Worldwide, available at: <https://deathpenaltyworldwide.org/publication/methods-of-execution/?version=html#methods-of-execution> (last visited on Jan17, 2021).

¹¹² Melvin F. Wingersky, “Report of the Royal Commission on Capital Punishment (1949-1953): A Review” 44 *JCLC* 709 (1954).

the method of executing death penalty while Iran is the only country who has authorised pushing individuals from an unknown height as method of execution.¹¹³

Guillotine and shooting, as methods for executing death sentence, were rejected worldwide for the reason that the former produces mutilation and the latter one is inefficient, uncertain and unacceptable as a standard method of civil executions.¹¹⁴

Death by Method of Electrocutation

The first electric chair was built in 1888 in New York.¹¹⁵ William Kemmler in 1890 was the first prisoner to be executed by this method.¹¹⁶ Later, this method was adopted by other states as well. Nebraska in U.S. was the only state that solely relied upon this method for execution until February 2008 when the Supreme Court ruled this as unconstitutional.¹¹⁷

In electrocution method, the condemned prisoner is buckled to the chair and is tied around the midsection, legs and wrists. His face is then covered with a mask and the electrodes are buckled with his head and legs. When this step is completed, the officer gives the signal and the electrician pulls the switch which makes the current flow in the electrodes and this current is left on for two minutes at alteration of two or more different voltages. The body slumps forward in the chair, when the current is switched off. The prisoner does not make any sound when the current is turned on and suddenly becomes unconscious with the flow of current. It takes few minutes after disconnection of flow of current to declare the prisoner as dead. The method, sometimes fails to cause death and it might be possible that only legs are slightly burnt, but the body is not otherwise marked or mutilated.¹¹⁸ This method is commonly popular in the states of New York and Washington in America.¹¹⁹

¹¹³ *Supra* note 65.

¹¹⁴ *Supra* note 94 at 13.

¹¹⁵ Death Penalty Information Centre, *Description of Each Execution Method*, available at: <https://deathpenaltyinfo.org/executions/methods-of-execution/description-of-each-method> (last visited on Jan 17, 2021).

¹¹⁶ *Ibid*

¹¹⁷ *Ibid*.

¹¹⁸ *Supra* note 50 at 85.

¹¹⁹ *Supra* note 94 at 16-17.

Death by Lethal Gas Chambers

This method of execution was first authorised by Nevada to carry out its first execution in February 1924.¹²⁰ Gee Jon was the first person to be executed by this method.¹²¹ The said method is authorized by five states in Unites States, namely, Arizona, California, Maryland, Missouri, and Wyoming as an alternative to lethal injection. The prisoner is allowed to decide between the two methods for his execution depending upon the date of execution.¹²²

Execution by lethal gas is very elaborative in terms of mechanism as compared to other methods of execution. The cost of arranging the mechanism is high as it requires a perplex plan to deliver the gas and to dispose of it from that point.¹²³ In this process, the chamber is needed to be air tight to keep the gas from releasing, the entryways provoking the chamber are needed to be related with an electrically controlled board, the prisoner's arms, legs and midsection are attached to the seat with leather straps, a pound of sodium cyanide pellets is set in a snare in the seat of the chair and three pints of sulphuric acid are blended in with six pints of water in a lead container are set in a setting to get the cyanide pellets. An elastic hose is associated with the head of a stethoscope which is tied to the prisoner's chest. The Prisoner is then made to remove his all clothes except the shorts. A leather mask is used to cover his genitals. After the prisoner is declared dead, ammonia gas is pushed into the chamber until the indicators placed within the chamber begins reflecting that all cyanide gas has been neutralised. This ammonia gas is later removed using a specially constructed exhaust fan.¹²⁴ The length of time taken by this method of execution is about forty-five minutes.¹²⁵

Death by Lethal Injection

Lethal Injection as a method of execution was first introduced in the State of Oklahoma in America in 1977 and replaced the earlier method of electric chair there.¹²⁶ Though, the method was first used in Texas in the U.S. on December 2, 1982 when Charles Brooks was

¹²⁰ Death Penalty Information Centre, *Description of Each Execution Method*, available at: <https://deathpenaltyinfo.org/executions/methods-of-execution/description-of-each-method> (last visited on Jan 17, 2021).

¹²¹ *Ibid.*

¹²² *Supra* note 94.

¹²³ *Supra* note 52 at 86.

¹²⁴ *Supra* note 93 at para 719-722.

¹²⁵ *Supra* note 120.

¹²⁶ *Supra* note 94 at 18.

put to death.¹²⁷ This method has been accepted by most of nations as a mode of executing death sentence and now, has been retained by almost 32 countries worldwide.¹²⁸

In this method, there is intravenous administration of injection-sodium thiopental, an anaesthetic that puts the prisoner to sleep.¹²⁹ Then he is injected with pavulon or pancuronium bromide that paralyzes his muscle system followed by flow of potassium chloride that stops the beating of heart. A respiratory and cardiac arrest occurs to the prisoner while he is asleep and slowly results in his death.¹³⁰ Administration of this injection is a delicate and skilled operation. Technical Assistance of the medical practitioner is required to perform the actual process or to instruct others in executing death by this method.¹³¹

Comparative Analysis of Methods of Execution

On analysing the fundamentals of various modes of executing death sentence, the question as to which method is preferable on the considerations of humanity, certainty and decency is still an open question.

The Lethal Injection, by-and-large is an untried method in India and also, instances of botched executions are cropping up in recent times. This method further is a complicated one as technical guidance along with anaesthesia is required for its administration and there is no assurance of death. Though the science has progressed, yet the drug used in the process impacts the human body by cardiac arrest and respiratory failure causing degradation and mutilation. Sometimes the prisoner might take minutes to die whereas sometimes it results in discomfort only.¹³² Unlike hanging, death is not instantaneous in this method and hence lethal injection fails to provide any demonstrable advantage over hanging method.¹³³ The efficiency of lethal injection was also questioned in a study carried out by death penalty consultants in

¹²⁷ *Supra* note 120.

¹²⁸ *Ibid.*

¹²⁹ Death Penalty Information Centre, *Description of Each Execution Method*, available at: <https://deathpenaltyinfo.org/executions/methods-of-execution/description-of-each-method> (last visited on Jan 17, 2021).

¹³⁰ *Ibid.*

¹³¹ *Supra* note 94.

¹³² Mark Berman, "What It was Like Watching the Botched Oklahoma Execution" *The Washington Post*, May 02, 2014.

¹³³ Bhadra Sinha, "Hanging best Option in Death Sentence: Centre to Supreme Court" *Hindustan Times*, April 25, 2018.

U.S.¹³⁴ Moreover, countries are facing troubles in obtaining or arranging the drug required for the injection. The manufacturers are also objecting for using their drugs in execution. This is a reason why state like Oklahoma is changing its primary mode of execution to nitrogen gas inhalation.¹³⁵ There are circumstances in which the drug could fail or situation may arise where it becomes difficult to find the right vein or to administer the right dose of the drug calling in complications or other problems may also persist. Sometimes, medical professionals are also unlikely to participate in the process. Same has been submitted by the Central Government of India to Supreme Court in 2017 on the question of right to die by a dignified procedure.¹³⁶

On the other hand, hanging is more viable and a human approach with no degradation or mutilation of human body. Death ensues easily on a drop without any technical assistance and extra cost. The Supreme Court of India also in a case iterated that there is no viable alternative to hanging and right to die with dignity is not to be misunderstood with right to die an uncertain death.¹³⁷

Therefore, on the basis of comparative analysis and *time taken* by the methods, there is ‘no room for doubt’ that hanging is superior to both electrocution and lethal gas. On the basis of *certainty*, the apparatus required for hanging is simpler and straightforward than that required for electrocution or execution by gas chamber.¹³⁸ The gas chamber is a complex process whereas the electricity supply controls the adequacy of the electric chair. This electricity is usually taken from commercial sources. If we dig into the aspect of *decency* in the execution of the death sentence, a duty is casted on every state to conduct the execution with minimal torture, pain and sufferings. The execution should be done without any brutality.¹³⁹ The execution should not be accompanied with any kind of gross physical violence, mutilation or distortion and should be carried out with all the decency possible in the circumstances.¹⁴⁰

¹³⁴ TAZ, JPS, DAL, and LGK, “Lethal Injection for Execution: Chemical Asphyxiation?” 4(4) *PLoS Med.* 156 (2007), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1876417/#> (last visited on Jan 17, 2020).

¹³⁵ “Oklahoma to Use Nitrogen Gas For Executions” *BBC News*, March 14, 2018.

¹³⁶ *Supra* note 133.

¹³⁷ *Rishi Malhotra v. Union of India*, W.P.(Criminal) No. 145/2017.

¹³⁸ *Supra* note 93 at 729.

¹³⁹ *Id.*, at 732.

¹⁴⁰ *Supra* note 94.

Having examined the various modes of execution worldwide, it is instructive to next analyze the benefits of hanging and why this method is given precedence over other methods as a method of execution.

VII. Justification of Hanging as a Mode of Execution

It has been well said that: “*Humaneness is the hall-mark of the civilized laws*”.¹⁴¹ The standard of human decency varies from society to society based upon the cultural and spiritual traditions, moral and ethical values. The system of hanging the condemned by rope is to be judged in the light of pain and sufferings caused to the condemned in the process of execution.

The system of hanging has undergone significant changes and is a perfect science. Asphyxia is not the cause of death in hanging like other methods. In judicial hanging, death is the result of a long drop that dislocates the cervical vertebrae which stops the supply of blood to the brain and is calculate to produce an instantaneous and painless death.¹⁴² The anatomical structure of neck and human body is such that if there is an injury to any of the three vital centres in the body *i.e.* Medulla, Pons, Medulla Oblongata, known as ‘tripods of life’ results, the whole tripod gets affected due to the combination of shock, asphyxia and crushing of spinal medulla and results in instantaneous death.¹⁴³

According to Dr. Chandrakant of All India Institute of Medical Sciences (AIIMS), New Delhi, hanging is the best method to execute death sentence as death ensues instantly in this method. He claims that there are misconstrued assumptions about judicial hangings due to inappropriate mechanism of suicidal hangings. Lack of knowledge about human body raises a question about the system of hanging.¹⁴⁴

Further, the entire history of the system of hanging can be traced through the book “Hanging through the Ages” where in the author has described the system of hanging in great detail.

¹⁴¹ *Supra* note 90.

¹⁴² J.W. Cecil Turner (ed.), *Kenny's Outlines of Criminal Law* 618 (Cambridge University Press, 19th edn., 1966).

¹⁴³ Catherine Hellier and Robert Connolly, “Cause of Death in Judicial Hanging: A Review And Case Study”, 49 (1) *MSL* 18 (2009).

¹⁴⁴ *Supra* note 90.

The system of hanging has improved in its entirety; the technique now serves to expedite the process of human converting into soul, giving less pain to the prisoner.¹⁴⁵

It is significant here to mention about the post-independence era since when the system of hanging was practised in Independent India. The founding fathers of the Constitution, the eminent personalities in the making of Constitution cannot be considered ignorant of the provisions containing death sentence and the prevailing methods of execution. The framers did not question the mechanism of hanging rather recognised the existence and validity of the said method. They did not consider the system as degrading or defiling the dignity of the individual.¹⁴⁶

The Constitution of India guarantees its citizens the freedom of life and personal liberty that includes the right to live with human dignity within it.¹⁴⁷ Every act that offends or is prejudiced to human dignity constitutes destitution of human life. The state is thus, under an obligation to provide at least minimum conditions ensuring human dignity.¹⁴⁸ The dignity as enshrined in article 21, read with article 14 and 19 obligates the state not to confine or punish any person except the procedure established by the law.¹⁴⁹ This is equally applicable at the time of taking away the life. The process of execution or converting human into soul should not violate these rights. The framers of the Indian Constitution touched upon this punishment while dealing with the pardoning power of Executive under article 72(1)(c) of the constitution.¹⁵⁰ The execution of death penalty by hanging the convict is in consonance with the Constitution of India. The procedure of execution is just, fair and reasonable to protect their dignity.¹⁵¹

Additionally, they supported the process of hanging and did not consider either the death penalty or its execution by hanging as a degrading or cruel punishment. Further, the process neither taints the dignity of individual in the society nor subjects him to humiliation, torture

¹⁴⁵ George R. Scott, *Hanging through the ages (History of Capital Punishment)* 211 (Torchstream Books, London).

¹⁴⁶ *Supra* note 90.

¹⁴⁷ Reference to dignity of individual is made in Preamble to the Constitution. *See, Kishore Singh Ravinder Dev v. State of Rajasthan*, AIR 1981 SC 625.

¹⁴⁸ *Vikram Deo Singh v. State of Bihar*, AIR 1988 SC 1782.

¹⁴⁹ K. L. Vibhute, "Right To Human Dignity Of Convict Under 'Shadow Of Death' And Freedoms 'Behind The Bars' In India: A Reflective Perception" 58(1) *JILI* 22 (2016).

¹⁵⁰ *Supra* note 90.

¹⁵¹ *Ibid.*

or degradation.¹⁵² The Constitution of India also guarantees death row prisoners a painless, humane and uncomplicated execution of their capital sentence under article 21.¹⁵³

Further, the system of hanging is in harmony with the state's obligation to carry out the execution with courtesy and modesty. Execution by hanging is a humane method in civilized society as it executes only the sentence imposed by law and doesn't add to the punishment. There is no need to administer anaesthesia or any drug in this method unlike other methods.¹⁵⁴ Any step involved or incidental to the method of hanging does not constitute punishment by itself.¹⁵⁵ The process does not inflict any other punishment on the prisoner without the authority of law and thereby involves no barbarity, torture and sufferings.¹⁵⁶

The process of hanging is carried out after calculating the length of drop in respect to the condemned so that the chances of mishap can be avoided. The method as now in practise, to the full extent eliminates the possibility of strangulation and lingering death. Hanging does not result in decapitation of the condemned or degradation of the human body.¹⁵⁷ All possible scenarios are well considered before taking the prisoner to the gallows. However, no one can rule out on the inevitable accidents. If everything is certain, predetermined and proceeds as per the desire of an individual, the term 'accident' will lose its very meaning. All the efforts are made in order to ensure minimal sufferings to the condemned and there is no evidence to show a botched execution by hanging in India.¹⁵⁸ As soon as the soul departs from the body and the medical officer declares the condemned to be dead, the body is brought down. The body remains suspended only for the time beginning from tightening the noose to the departure of life.¹⁵⁹

The apex court in 1983 in *Deena's case*¹⁶⁰ after careful perusal of the different modes of execution in vogue ruled out on the point of pain involved in the procedure. The Court applied the test of reason and scientific investigations to decide on the point as no first hand evidence could be arranged for this. The three judge bench held that the pain of a prisoner

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Parmanand Katara v. Union of India*, Writ Petition (Criminal) No. 827 of 1991.

¹⁶⁰ AIR 1983 SC 1155.

could not be imagined by others as it can only be felt by the prisoner facing the execution and once the execution takes place, he is not any more to share his thoughts as dead man tell no tales. The court relied upon the medicine and expert evidences and held that the system of hanging is as painless as it could be in the circumstances and causes no greater pain than required as in any other known methods.¹⁶¹

In 1991, an advocate filed a PIL under article 32¹⁶² and challenged the execution of death by hanging as violative of right to dignity under article 21 and suspension of body under paragraph 873 of the Punjab and Haryana Jail Manual.¹⁶³ The court refused to accept the arguments presented by the petitioner and held that the system of hanging is very much in line with the article 21 and hanging does not qualify to be inhumane, cruel and barbarous method of execution.¹⁶⁴

Later in 2017, a similar question was urged before the court in another PIL filed by a Human Right Activist calling in the constitutional validity of death by hanging under section 354(5) Cr.P.C.¹⁶⁵ The petitioner argued that with the passage of time any valid provision may become invalid and it is more so when there is dynamic progress in the society and the social thinking.¹⁶⁶ The court dismissed the petition saying that the right to die with dignity is different from right to die at the end of life and is not to be misunderstood with the right to die an unnatural death lessening the natural span of life.¹⁶⁷

Moreover, the Japanese Supreme Court had also considered the same issue in *Ichikawa v. Japan*¹⁶⁸ and supported the execution of death by hanging. The court held that execution by

¹⁶¹ *Ibid.*

¹⁶² The Constitution of India, art. 32. It reads- “Remedies for enforcement of rights conferred by this Part- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

¹⁶³ Punjab and Haryana Jail Manual, para 873 reads: “Body to remain suspended half an hour. Return of warrant. - (1) The body shall remain suspended half an hour and shall not be taken down till the Medical Officer declares life extinct. (2) The Superintendent shall return the warrant of execution with an endorsement to the effect that the sentence has been carried out.”, *available at*: <http://haryanaprison.gov.in/sites/default/files/documents/CHAPTER-XXXI.PDF> (last visited on Jan 12, 2020).

¹⁶⁴ *Supra* note 159.

¹⁶⁵ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 354(5).

¹⁶⁶ *Rishi Malhotra v. Union of India*, W.P. (Criminal) No. 145/2017.

¹⁶⁷ *Ibid.*

¹⁶⁸ The Constitutional Case Law of Japan: Selected Supreme Court Decisions 1961-70, 161-162.

judicial hanging neither amounts to torture nor regarded as a cruel punishment. Hanging is the most humane method among all methods of execution and not a barbarous punishment within the meaning of article 36¹⁶⁹ of the Japanese Constitution.¹⁷⁰

The Royal Commission on Capital Punishment also unanimously recommended the system of hanging as a human and viable approach to execute death sentences and doubted the effectiveness of other methods practised in different parts of the world for execution.¹⁷¹ The Commission also consulted the British Medical Association and Prison Medical Officers on the score of humanity. The Association told that the process of hanging is quick, speedy and certain as expected of any method that could be adopted. The Association could not appreciate any other method to be more humane, efficient than judicial hanging. Hanging fulfils the criteria of simplicity, humanity and dignity more satisfactorily than any other method in practice.¹⁷²

The United Nations had noted decades ago that, “execution by hanging is the traditional method for executing death sentence in the U.K. and is the most frequently used method. Hanging is also in use in the following countries and territories: Sudan, Gambia, Northern Rhodesia, Nyasaland, Ghana, Nigeria, Tanganyika, the Republic of South Africa, Mauritius, Seychelles, Zanzibar, Netherlands Antilles, Afghanistan, Burma, India, Pakistan, Japan, Ceylon, Hong Kong, Iran, Lebanon, Iraq, Australia, Austria, Czechoslovakia and Turkey.”¹⁷³

In light of these observations, it is evident that system of hanging is just, fair and reasonable mode of execution and is regarded as a legal practice to execute death. The system does not constitute cruel, inhumane, barbarous approach towards the condemned and protects his dignity at the time of death.

¹⁶⁹ The Constitution of Japan, art. 36. It reads- “The infliction of torture by any public officer and cruel punishments are absolutely forbidden.”, *available at*: https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html (last visited on Jan 17, 2020).

¹⁷⁰ Chin Kim and Gary D. Garcia, “Capital Punishment in the United States and Japan: Constitutionality, Justification and Methods of Infliction” 11(2) *LLAICLR* 275 (1989).

¹⁷¹ *Supra* note 93 at 749.

¹⁷² *Id.*, at 704.

¹⁷³ United Nations, “Capital Punishment” 25 (Department of Economic and Social Affairs, 1968).

VIII. Executions in India

In times when the divine right of kings holds no following and all earthly powers of man are accountable to the laws of lawful societies, it becomes necessary, in terms of sequence, to turn here to list of persons who are being punished with death in conformity with the law.

The Indian penal statute *i.e.*, Indian Penal Code (IPC), 1860 lists a number of capital offences including murder, acts against state etc. In 1949, Nathuram Vinayak Godse, who pulled the trigger, and his accomplice Narayan Apte, who was present on the spot, were sentenced to death. The assassins of Mahatma Gandhi were the first in free India to be hanged by neck till death.¹⁷⁴ Evidentiary rigour was missing in the matter of assassination of former Prime Minister Indira Gandhi on October 31, 1984. Kehar Singh and Satwant Singh,¹⁷⁵ duo were executed for the same.

Likewise, in the last two decades, the Indian judiciary has condemned more than 1,810 individuals to death; however, just 8 convicts have been hung till death in this whole era.¹⁷⁶ The executions carried out in last two decades are mostly of those related to the individual cases of terrorism which shook the nation and the rape cases. Mohammad Ajmal Kasab, Afzal Guru and Y.K. Memon are the terrorists who were hanged till death in 2012, 2013 and 2015 respectively.

In 2004, Dhananjoy Chatterjee convicted of raping and murdering a teenage girl, was hanged at Alipore Central Jail in West Bengal; Akshay Kumar Singh, Vinay Sharma, Pawan Gupta and Mukesh Singh, the gang rapists convicted of brutally raping the girl in the National Capital of Delhi in moving bus in December 2012 hanged at Tihar Jail in Delhi. The last execution was carried out very recently on March 20, 2020 which marks the first multiple execution in Independent India in which four convicts are sent to the gallows at a time. No execution has been carried out for the offence of murder though death is widely used by the judiciary for the cases related to murder.¹⁷⁷

¹⁷⁴ Tim Ott, "Nathuram Godse: Learn About the Man Who Assassinated Gandhi", *Biography*, January 18, 2019, available at: <https://www.biography.com/news/nathuram-godse-gandhi-assassination> (last visited on Jan. 17, 2020).

¹⁷⁵ Vipul Mudgal & David Devadas, "Indira Gandhi Assassination Trial: Satwant Singh and Kehar Singh Hanged", *India Today*, January 31, 1989.

¹⁷⁶ Project 39A, National Law University, Delhi, "Death Penalty India Report" 2 (2019).

¹⁷⁷ *Ibid.*

The Supreme Court of India, as we know, has taken great steps forward in the matter of the death penalty as a punishment. It made the award of the punishment a rare exception in 1980, to be exercised in extraordinary circumstances when all other alternatives are foreclosed and the case fits itself into the requirements of ‘rarest of rare cases’.¹⁷⁸ This pronouncement was as pragmatic as it was inspired by the worldwide trend against abolition and was started to be seen as ‘judicial murder’. However, the mandatory death sentence was struck down as unconstitutional in 1983 while hanging as the method of execution is still within the sphere of Indian Constitution.

IX. Conclusion

The death penalty apparently fails to serve the punitive purpose of deterring others any more from committing crimes as it is meant to. Still, it is retained by most of nations as a punishment for horrifying offences. The focus that shifted from retribution (‘eye for an eye; tooth for a tooth’) to deterrence has now moved to reformation and rehabilitation, for instance, compensation to victims¹⁷⁹ under Code of Criminal Procedure, 1973, restoration, *etc.*

The system of hanging which is now in vogue consists of a process easy to accumulate with simple and quick preliminaries and would not increase the distress or pain of the prisoner. It also reduces the probability of strangulation, results in immediate unconsciousness and is a certain means for executing the severe punishment of law. The state has to ensure that the execution is carried out with decency and decorum without any kind of brutality and degradation so as to not to cause greater pain than what is required.

Further, the Apex Court in India has also cleared its stance on preferable and painless mode of execution in last many years. The court also noted that it is difficult to rule out which method is more barbarous, cruel and inhumane as no one can feel the pain and agony what a prisoner undergoes when he is put to death. The court held that the method should be in consonance with the rights guaranteed under the Constitution and has to necessarily meet the requirements of article 21. The Supreme Court, at the same time, found no justification for taking a view that other method i.e. electrocution or lethal injection is more humane and less cruel than hanging. The Court again in 2018 refused to strike down section 354(5) of Cr.P.C

¹⁷⁸ *Bachan Singh v. State of Punjab*, AIR 1980 SC898: (1980) 2 SCC 684.

¹⁷⁹ The Code of Criminal Procedure, 1973(Act 2 of 1974), ss. 357, 357A.

holding it is totally within the scope of article 21 of the Constitution. Hanging by neck is a scientific and one of the least painful methods of execution of the death sentence. 'Rarest of rare' is a guiding principle¹⁸⁰ and the execution of death sentence prescribed by section 354(5) of the Code of Criminal Procedure is not *ultra vires* the Constitution.

To conclude, the practice of hanging by neck is not new and has been in practise since the advent of British in India. Hanging was the only mode of execution during the time of the Constituent Assembly.¹⁸¹ The system of hanging has evolved much since then and is perfectly scientific. Though the process of hanging is a prolonged process but is quick and simple with no extra cost involved. Death becomes a certainty as there is no probability of recovery of consciousness owing to it resulting into a definite stoppage of breathing. The method also inflicts no further pain than required as other known methods of executing the death sentence do. The entire process of hanging is carried out with complete decency and decorum; it does not involve any kind of humiliation, torture or degradation directly or indirectly, as death supervenes instantaneously without any strangulation. The chances of any lingering death or botched executions are minimal and can safely be excluded. Therefore, the authors conclude that hanging is the best mode of execution of death sentence suited to the present times.

¹⁸⁰ *Supra* note 7.

¹⁸¹ *Supra* note 90.