

## A SHORT NOTE ON 'HANGING'- BOYCOTTING THE RUTHLESS MODE OF EXECUTION

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### INTRODUCTION

*“The ‘gallows’ are not only a symbol of death, but also a symbol of cruelty, terror and irreverence for life; the common denominator of primitive savagery, medical fanaticism and modern totalitarianism.” - Arthur Koestler*

The Hungarian-British author in his reflections on Hanging had condemned the whole process of Hanging stating how the judges give their verdicts. The various methods of execution are **electrocution, lethal gas, lethal injections, hanging and shooting**. In India, Section 354(5) of Criminal Procedure Code, 1973 states, “When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.”<sup>1</sup> signifying that **death by hanging** is practiced in our nation. It was laid down in *Deena*,<sup>2</sup> that the execution of death punishment should satisfy the following test:

1. It should be simple and quick as possible
2. The act of the execution should produce immediate unconsciousness of the person passing quickly into the death
3. It should be decent.
4. It should not involve mutilation.

The ECOSOC describes “Where capital punishment occurs it shall be carried out so as to inflict **minimum possible suffering**.”<sup>3</sup> Hanging is the suspension of a person by a noose or ligature around the neck.<sup>4</sup> Hanging as mode of execution has been a hotbed of controversy.

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<sup>1</sup> S. 354(5), Code of Criminal Procedure, 1973.

<sup>2</sup> *Deena v. Union of India* (1983)4 SCC 645

<sup>3</sup> Ravi Boolchandani, Death Penalty, International Journal of Law and Legal Jurisprudence, ISSN:2348-8212:Vol-2, Issue 7.

<sup>4</sup> Oxford English Dictionary, 2nd ed.

## DEATH BY HANGING- SUPPORTING ARGUMENTS

The supporters of Hanging as mode of execution believe that it is constitutionally valid and is the least inhumane mode. "The mechanism of Hanging is easy to assemble. The preliminaries to the act of hanging are **quick and simple**. The prerequisites for hanging are free from anything that would unnecessarily sharpen the poignancy of the prisoner's apprehension. There are fewer chances of any accident. The technique of hanging quickly **eliminates the possibility of a lingering death**"<sup>5</sup> The majority ruling by then CJI Y.V. Chandrachud had held hanging to be a mode "**not relentless in its severity**" and "**does not violate right to life under Article 21**"<sup>6</sup> In view of the constitutional provision, it can be said that death penalty under section 302, I.P.C. either per se, or because of its execution by hanging does not constitute an unreasonable cruel or unusual punishment.<sup>7</sup> The **U.K. Report of the Royal Commission on Capital Punishment (1949-1953)** favours hanging stating, "Neither electrocution nor the gas-chamber has, on balance, any advantage over hanging."<sup>8</sup>

## DEATH BY HANGING- REFUTING ARGUMENTS

The **Law Commission in its 187<sup>th</sup> Report** has observed that a more humane method of execution should be adopted and so Sec. 354(5), CrPC should be amended. Hanging does not cause quick and simple death with least suffering as given in *Deena*<sup>9</sup>. The death as a result of the hanging in most of the cases is due to strangulation or asphyxia which causes the lingering and painful death of the sentenced person.<sup>10</sup> In judicial hangings, death is pronounced at the occurrence of heart attack or in biological terms, cardiac arrest, which may occur at times from several minutes up to 15 minutes or longer after hanging.<sup>11</sup> If the inmate is very light, has strong neck muscles, if the 'drop' is too short, or the noose has been wrongly positioned, the fracture-dislocation is not quick and instant and thus, the death results from slow asphyxiation. If this

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<sup>5</sup> *Supra* 2

<sup>6</sup> *Ibid*

<sup>7</sup> *Rajendra Prasad v State of Uttar Pradesh*, ((1979) 3 SCC 646)

<sup>8</sup> Report of the Royal Commission on Capital Punishment (1949-1953): A Review, Part III., Methods of Execution el seq., pars. 58 to 89, Pg- 280-282, Vol-44, Issue-6.

<sup>9</sup> *Supra* 2.

<sup>10</sup> 187<sup>th</sup> Report on Mode of Execution Of Death Sentence And Incidental Matters, Law Commission of India, October, 2003.

<sup>11</sup> Accessed from: <http://www.newworldencyclopedia.org/entry/Hanging> (Last visited: 27<sup>th</sup> August, 2017 at 14:00 hrs.)

occurs, the eyes pop, the face becomes bloated, the body defecates, the tongue protrudes, and violent movements of the limbs happen.<sup>12</sup>

## COMPARISON OF HANGING WITH OTHER MODES OF EXECUTION

- i. **Electrocution:** Seeking a more humane method of execution than hanging, New York built the first electric chair in 1888 and executed William Kemmler in 1890.<sup>13</sup> In this process of electrocution, the person is strapped to a specifically built chair, his body and head is shaved for closer and better contact of electrodes. Then a high voltage current of 200 wt. is passed through their bodies.<sup>14</sup> Some argue that Electrocution is better than hanging because electricity travels fast and causes quick brain death but it has been held in various countries like Georgia<sup>15</sup>, Nebraska<sup>16</sup> that electrocution institutes unusual and cruel punishment.
- ii. **Lethal Injection:** The countries that permit lethal injection are China, Guatemala, Taiwan, Thailand, United States, and Vietnam.<sup>17</sup> In the United States of America, hanging is an only option only in 2 states, one of which is Washington; while most states execute the sentenced persons through lethal injections. <sup>18</sup>Here, Sodium Thiopental is injected causing the convict to fall into deep sleep, afterwards Pancuronium Bromide is injected to stop breathing, and finally potassium chloride is injected to stop the heart.<sup>19</sup> Lethal injection is considered to be less painful, not lingering and best controlled mode where unconsciousness happens immediately with the pain of a needle prick and with no mutilation as opposed to hanging.
- iii. **Shooting:** The countries that use shooting include: Bangladesh, Belarus, Congo, Eritrea, Guinea, etc. The Indian provisions of The Army Act, 1950, The Navy Act 1957 and The Air Force Act, 1950 also provide for the option of by being shot at death.

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<sup>12</sup> Accessed from: <https://deathpenaltyinfo.org/descriptions-execution-methods#hanging> (Last visited: 27th August, 2017) at 14:00 hrs.

<sup>13</sup> Supra 11.

<sup>14</sup> Supra 10.

<sup>15</sup> Dawson v. Georgia, 274 Ga. 327 S.E.2d (2001)

<sup>16</sup> State v. Mata, 275 Neb. 1 N.W.2d 229 (2008)

<sup>17</sup> Accessed from: <http://www.deathpenaltyworldwide.org/methods-of-execution.cfm> (Last Visited: 27<sup>th</sup> August, 2017 at 15:00 hrs.)

<sup>18</sup> Accessed from: <https://www.livescience.com/10767-execution-science-kill-person.html> (Last Visited: 27<sup>th</sup> August, 2017 at 15:30 hrs.)

<sup>19</sup> Supra 10.

Shooting has advantages over hanging as it causes less pain, instant death and is better controlled.

- iv. **Lethal Gas:** A majority of the UNHRC found that execution by gas asphyxiation amounted to inhuman and cruel treatment.<sup>20</sup> Today, 5 states authorize lethal gas but all have lethal injection as an alternative method. The sentenced person is strapped to a chair in an airtight chamber where he has to breathe in hydrogen cyanide gas but he doesn't lose consciousness immediately<sup>21</sup> much like hanging.

## CONCLUSION AND RECOMMENDATION

Hanging has not only failed to be a humane mode on medical grounds but also on humanitarian grounds where the person has to go through the trauma of being weighed, examined etc. a day before, anticipating his death. Hanging doesn't follow the guidelines laid down in *Deena*<sup>22</sup> but lethal injection follows as it is quick, simple, decent and does not mutilate.

- 'Hanging by neck till death' should be done away with in India as medically it is painful and lingering based on the post-mortem reports.
- Shooting should not only be the mode of execution in military provisions but in CrPC as well.
- Section 354(4), CrPC should be amended by substituting 'hanging' with 'lethal injection' and 'shooting' as the modes of execution.
- Lethal injection should be instituted only once it has been medically approved that all the equipment and doctors are prepared.
- Where lethal injection is not suitable considering offender's health, shooting should be the mode.
- Lethal injection should be added and hanging should be removed in section 166 of the Army Act, 1950, section 163 of the Air Force Act, of 1950 and section 147 of the Navy Act of 1957.

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<sup>20</sup> Ng v. Canada, Communication No. 469/1991, para. 16.4., Fierro v. Gomez, 865 F.Supp. 1387 (N.D. Cal. 1994)

<sup>21</sup> *Supra* 12

<sup>22</sup> *Supra* 2.

Even after Yakub Memon's hanging, the Legislature paid no heed to outcry on this inhumane mode of execution. It's high time that hanging should be replaced with more humane modes.

