

IS ROPE THE LAST RESORT?

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ABSTRACT

"State should not punish with vengeance"

-Emperor Ashoka

Not much has been debated on the issue of the method of execution of death sentence in India. Section 357(5) of Cr.P.C reads as *"When any person is sentenced to death, the sentence shall direct that he be hanged by the neck until he is dead."* is barbaric, inhuman and cruel but also against the resolution passed in United Nations Economic & Social Council (ECOSOC) which had categorically resolved by way of safeguard no. 9 which reads as *"where capital punishment occurs it shall be carried out so as to inflict minimum possible suffering"*.

The Supreme Court in *Bachan Singh vs. the State of Punjab (1982) 3 SCC 25*, has observed that *"physical agony suffered during the execution of the sentence of death is no less cruel and inhuman"*. Apex court's judgment in *Deena vs Union of India, 1983 AIR 1155*, which says:

"The act of the execution should be as quick and as simple as possible and free from anything that unnecessarily sharpens the poignancy of the prisoner's apprehension, should produce immediate unconsciousness passing quickly into the death, should be decent and not involve any mutilation."

Therefore, the author has decided to discuss the various modes which are less painful and can be considered as the new modes of the executing death sentence. The author would focus on the case studies and lastly, the author would come up with the conclusion and suggestions.

The present research study will be based on doctoral research methodology which will cover all the available literature over the issue, the latest information available on the government

websites including reports of law commission and other informational sources as well. The research will also cover the latest news on the chronicles attached to the issue and comparative study with other countries.

Keywords: Capital Punishment, Execution, Modes, Sentencing, Legislations.

INTRODUCTION

About two decades ago, Hon'ble Supreme Court in the Constitution Bench Judgment rendered in "*Gian Kaur Vs. State of Punjab*"ⁱ devolve upon a fundamental issue of Right to Life and Right to Death.

In the above state case, Hon'ble Supreme Court of India also reiterated that "The right to life, including the right to live with human dignity, would entail the survival of such a right until the end of natural life. This also includes the right to a dignified life and also right to a dignified death. In other words, this may include the right of a dying man to die with dignity".

In a given case, Justice A.S. Anand and Justice N.P. Singh, Supreme Court of India stated that, "the measure of punishment is dependent upon the atrocities of the crime, the actions of the offender and the victim's defenceless and helpless condition and to provide Justice, the courts should impose punishments appropriate to the crime, so that the courts reflect the public abhorrence of the crime."ⁱⁱⁱ Therefore, It must, however, be added that a mere objective consideration of dangerousness of the act (crime) to the society by itself would not be enough to assess Criminal's culpability but his personal attributes and circumstances and gravity of the offences have also to be taken into account to decide whether or not he deserves the death sentence. Thus, the death sentence is given only when the court comes to an end that life imprisonment is insufficient, based on situation of the case.

The purpose of this paper is not whether the Death penalty should prevail or abolished but the main aim of this study is: -

- To study about the criminological viewpoint of capital punishment.

- To question the vires of sec.354(5) Cr.P.C. which reads as under: -
“(5) When any person is sentence to death, the sentence shall direct that he be hanged by the neck till he is dead.”
- To study the methods of execution which are humane, less painful and as quick as possible.

This paper would also highlight that the said Execution as contemplated u/s 354(5) Cr.P.C. is not only barbaric, inhuman and cruel but also against the Resolutions adopted by the United Nations Economic & Social Council (ECOSOC) in safeguard no. 9 which reads as "*where capital punishment occurs it shall be carried out so as to inflict minimum possible suffering*"ⁱⁱⁱ.

RESEARCH METHODOLOGY

This research is based on doctrinal type pattern. Doctrinal research is also known as traditional research. Doctrinal research is divided into different types such as analytical and descriptive method. This research is based on information which has been already available and analyzed those facts to make an evolution of this research. This research involves secondary data. In this research the researcher has referred the cases decided by Hon'ble Supreme Court of India, various High Courts, reports of various Commissions, history of various modes of execution, various books, articles, newspaper reports, contemporary developments and concerned web sites on these aspects.

DEATH PENALTY

The death penalty is a legal process whereby a person is put to death by the state as a punishment for a crime^{iv}. The judicial decree that someone is punished in this manner is a death sentence, while the actual process of killing the person is an execution^v. A man once executed for a crime can never be brought back to life. So, if any error has crept in while deciding on a

matter, this error cannot be rectified at a later stage. The death penalty has existed since antiquity.

A majority of countries in the world has now abandoned the use of the death penalty. But the world has not yet formed a consensus against its use. The most populous country in the world, China, executes thousands of people every year, and the most powerful country, the United States, uses it regularly.^{vi} Eighty-four countries have retained the use of capital punishment under their legal system. However, the number of nations retaining capital punishment had declined in past few years and it might go down in the years to come.^{vii}

The first proposal on this issue came in Lok Sabha in 1949, however, it was pulled back at the instance of the then Home Minister Sardar Patel who described it as the most unfavorable proposition. The matter came up for debate again in Rajya Sabha in 1958 but met the same fate as above. The subject was, nonetheless, acknowledged for discussion in Rajya Sabha in 1962, however, the general assessment of the House favored maintenance of capital punishment understanding that time had not come when its nullification from the Statute book could be legitimized. Subsequently, the proposition was dropped.^{viii}

The ancient law of crimes in India provided death sentence for quite a good number of offenses. The Indian epics, viz., the *MAHABHARATA* and *RAMAYANA* also contain references about the offender being punished with *vadhadand* which meant *amputation* by bits.^{ix}

In the view of king *Dyumatsena*, “if the offender were leniently let off, crimes were bound to multiply”.^x He argued that *ahimsa* lay in the execution of unworthy people and along these lines; execution of criminals was impeccably supported. “*Manu*” likewise put the component of dread as a basic quality of justice. As indicated by him, with a specific end goal to shun individuals wicked homicides, capital punishment was vital and without this method of punishment, a condition of political agitation will win and individuals would end up eating out each other as a fish do in water, more grounded gobbling up the weaker.

Offences punishable with the death penalty

It would be pertinent to refer to the relevant provisions of IPC which provide for the death penalty as a form of punishment for certain offenses. These offenses are:-

1. Waging war against the Government. (Section 121).
2. Abetment of Mutiny. (Section 132).
3. Murder. (Section 302).
4. Abetment of suicide by a child or insane person. (Section 305).
5. Attempt to murder by a life convict, if hurt is caused. (Section 307).
6. Dacoity with murder. (Section 396).
7. Kidnapping for ransom etc. (Section 364-A).

The Indian Constitution has an arrangement for the pardon of the death penalty by the President. Once the Sessions Court has granted death sentence to a convict for a situation, it must be affirmed by the High Court. Even after that, the convict may prefer an appeal to the Supreme Court. If this also fails the accused has the option of submitting a 'mercy petition' to the President of India and the Governor of the State. Detailed instructions regarding the procedure to be observed by the states for dealing with petitions for mercy from or on behalf of convicts under sentence of death and with appeals to the Supreme Court and applications for special leave to appeal to that court by such convicts are laid down by the Ministry of Home Affairs.

DETERRENT EFFECT OF DEATH SENTENCE

The fear of being condemned to death is perhaps the greatest deterrent which keeps a criminal away from criminality. In fact, for justice to prevail some criminals need to die. The death penalty in the event of murder fills in as a viable to remind the murderer about the seriousness of law towards this offensive wrongdoing and positively helps in diminishing the rate of manslaughter. The old methods of public execution which are now wholly discarded were directed to make the sentence as frightening as possible.

Modes of Execution

Not much has been spoken about the modes of execution, a bare perusal of the history of death penalty tells a lot about the modes of executing a person. This part focuses on various modes and methods of imposing death sentences on the criminal as practiced in different societies. The research is not exhaustive of all modes of execution, but it includes some of the essential procedures followed.

However, there was great divergence as to the mode of its execution. The common modes of inflicting death sentence on the offender were a crucifixion, drowning, burning, boiling, beheading, throwing before wild beasts, flaying or skinning off alive^{xi}, hurling the offender from rock, stoning, strangulation, impelling, amputating, shooting by gun or starving him to death. Hanging the offender by the neck till death in public places has been a common mode of putting an end to the life of an offender.

Since Middle Ages capital punishment was the normal practice all through the world and was incurred on account of conviction for a vast number of violations, including trivial offenses including property. In England, in the midst of the eighteenth century, passing was the train for a couple of offenses which were around a hundred. The death penalty was executed in various ways. A couple of procedures for execution of capital disciplines included torment, devouring at the stake, breaking on the wheel, direct strangulation, beating under elephant's feet, hurling from a cliff, rising in the oil, stoning to death et cetera. With the ascent of various models relating to sensible framework contained in the Constitutions of a couple of vote-based countries and with the strong, advancement of human rights improvement, such outrageous death disciplines including torment began to stop to exist since the eighteenth century. The number of offenses punishable by death was also reduced in all leading countries. Also, penalties involving torture disappeared with the idea that punishment by way of a death sentence should be swift and humane, whether by guillotine, hanging, the garotte, or the headman's ax.^{xiii} Some of the modes of executing criminals have been explained as follows:^{xiii}

A. Crucifixion

Nailing a person to a wooden cross and leaving him there till he died was the

Torturous and popular method of executing death sentence during the years in B.C. Jesus Christ was crucified in this manner. This is the cruelest mode of the death penalty and request of this method of execution of death discipline is found even today in a few nations everywhere throughout the world in the image of the traverse each Christian Church.

B. Burning at the stake

'Burning' takes us back to Christian era. Burning at the stake was a well-known method of torture and awarding death, which was utilized for blasphemers, witches, and suspicious ladies. It was in the year 643 AD, an Edict issued by Pope announced it unlawful to consume witches. In any case, the expanded abuse of witches during the time brought about a great many ladies being scorched at the stake. The primary real witch chases happened in Switzerland in the year 1427 AD. All through the sixteenth and Seventeenth Centuries, witch preliminaries wound up normal all through Germany, Austria, Switzerland, England, Scotland, and Spain amid the Inquisition.

C. Headman's axe

This type of execution was very famous in Germany and England amid the sixteenth and seventeenth hundreds of years, where beheading was believed to be the most altruistic type of the death penalty. A killer, typically hooded, would slash off the individual's head with a hatchet or sword. The last executing occurred in 1747 in the United Kingdom.

D. Firing squad

There is no settled strategy with regards to execution by terminating squad. Generally, the convict is fixing to the post, with hands and is visually impaired collapsed and a fabric fix is put on his heart, or he is attached to a seat. A few nations like Russia and eastern nations like China, Thailand utilize this technique. It is huge to take note of that shooting by terminating squad is likewise allowed in India when a capital punishment is given by Court Martial (This is talked about in detail in this manner). In a few states in the United States like Utah and Oklahoma, the decision is given to the convict whether he ought to be shot to death by discharging squad or by deadly infusion.

E. Gas Chamber

In an execution by the method for deadly gas, the detainee is controlled and fixed in a hermetically sealed chamber. At the point when given the flag, the killer opens a valve, enabling hydrochloric corrosive to stream into a container. Upon another flag, either potassium cyanide or sodium cyanide gems are dropped mechanically into the corrosive, creating hydrocyanic gas. Be that as it may, on the off chance that he or she holds their breath, demise can take any longer, and the prisoner more often than not goes into wild shakings. Passing more often than not happens inside six to 18 minutes. After the proclamation of death, the chamber is cleared using carbon and killing channels. Teams wearing gas covers disinfect the body with the fade arrangement, and it is outgassed before being discharged.

F. Lethal injection

Death by lethal injection includes the constant intravenous infusion of a deadly amount of three distinct medications. The detainee is anchored on a gurney with lined lower leg and wrist restrictions. A cardiovascular screen and a stethoscope are appended, and two saline intravenous lines are begun, one in each arm. The detainee is then secured with a sheet. The saline intravenous lines are killed, and Sodium Thiopental is infused, making the detainee fall into a profound rest. Second chemical agent, Pancuronium Bromide, a muscle relaxer, follows. This causes the inmate to stop breathing due to paralysis of the diaphragm and lungs. Finally, Potassium Chloride is injected, stopping the heart.

G. Electrocutation

In a commonplace execution utilizing the hot seat, a detainee is lashed to an exceptionally assembled seat, his head and body shaved to furnish better contact with the dampened copper terminals that the killer connects. In Georgia, killers apply 2,000 volts for four seconds, 1,000 volts for the following seven seconds and afterward 208 volts for two minutes. Electric shock delivers obviously damaging impacts on the body, as the inner organs are burnt. The body changes shading,

swells, and may even burst into flames. The detainee may likewise crap, urinate, and upchuck blood.

These draconian and savage strategies for executing criminals to death were advocated on the ground that they were the fastest and least demanding methods of punishment and in the meantime conveyed with them a component of deterrence and retribution. They have, however, fallen into disuse in the recent times with an advanced approach to penology.

EXECUTION PROCEDURE IN USA

Lethal injection facility is the primary method which is used for execution in USA. There are some other states in USA which use other methods like electrocution For eg., Alabama, Arkansas, Florida, Kentucky, Oklahoma, South Carolina, Tennessee and Virginia also use electrocution for executing criminals.^{xiv} Three states in USA permit the use of gas chambers (Arizona, Missouri, Wyoming) and three other states also uses hanging (Delaware, New Hampshire and Washington).

EXECUTION OF DEATH SENTENCE IN INDIA

Not much has been spoken about the methods of execution of capital punishment in India. In India Execution is done by two modes to be specific hanging by neck till death and being shot to death. The Jail Manuals of different States provides for methods of execution of death sentence in India. When a death sentence is granted and is affirmed, the execution is completed as per Sec. 354(5) of the Code of Criminal Procedure 1973 i.e. hanging by neck till death. It is likewise given under The Air Force Act, 1950, The Army Act 1950 and The Navy Act 1957 that the execution must be completed either by hanging by neck till death or by being shot to death.

Part VI of The Air Force Act, 1950 in Section 34 accommodates the offenses in connection to the adversary which are culpable with death. Segment 37 accommodates the punishment of capital punishment in the event that the charged is sentenced. Section VII accommodates the different disciplines and the equipped court-martials are engaged to suggest such disciplines. Segment 73 accommodates the disciplines awardable by Court military. Section XII accommodates the Confirmation and Revision arrangements. Chapter XIII accommodates the Execution of Sentences; section 163 manages the type of the sentence of Death. The provision related to death sentence in The Army Act, 1950 are articulated in Chapter VI Section 34 (a) to (l) identifies with offenses in connection to the foe and culpable with death, Section 37 identifies with Mutiny and accommodates the curse of capital punishment on the off chance that the denounced is sentenced. Part VII deals with offenses awardable by court-martials, Chapter XII identifies with Confirmation and Revision, Chapter XIII is on Execution of Sentences, Section 166 manages the type of Sentence of Death. Section 147 of The Navy Act 1957 accommodates the Form of Death Sentence, as clarified beneath: -

Code of Criminal Procedure, 1973, and the Prison Manual:

Section 354(5) reads as under: -

"When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead."

The code of criminal procedure 1973, also contains a provision regarding death sentence. Section 354(3) of the code provides that while awarding the sentence of death, the court must record "special reasons" justifying the sentence.

Procedure of execution as per jail manuals:

The execution of the death penalty is executed as per section 354(5) of the Code of the Criminal Procedure, 1973, and Jail Manuals of the respective States. For instance, Chapter XXXI, Jail Manual of Punjab and Haryana accommodates the different advances prompting the execution of capital punishment: -

(1) "Each prisoner who is condemned to death might be instantly on his entry in the jail be sought, by request of the Deputy Superintendent, and all articles should be taken

from him which the Deputy Superintendent esteems it perilous or inexpedient to leave in his ownership."

(2) Every such prisoner should be locked up in a cell separated from every other detainee, and might be set by day and by night under the charge of a watch."

After such confirmation of the detainee in the Deputy Superintendent is required to examine the cell and needs to fulfill himself that there is no article which can be utilized as a weapon or instrument with which the detainee can submit suicide.

Cell to be examined – Deputy Superintendent shall examine every cell in which any convict who is under sentence of death is to be placed. The examination shall be made before the convict is placed in that cell, Deputy Superintendent shall satisfy himself that the cell is secure and contains no article of any kind which the prisoner could by any possible use as a weapon of offense or as an instrument with which he could commit suicide.^{xv}

The paragraph 854 Jail Manual of Punjab & Haryana, Chapter XXXI provides that such prisoner shall be under the constant surveillance of the guard and that he should not be allowed to meet or communicate with any person except those persons authorized by the Superintendent. Paragraph 855 states that in case the prisoner tries to commit suicide, an alarm must be raised.

Management of keys, Conditions under which the door may be opened^{xvi}:

- (1) The keys of the cell in which a condemned prisoner is confined shall be kept by the head warden on duty who, on hearing the alarm, shall proceed to such cell which, in case of emergency such as attempt by the prisoner to commit suicide, he shall enter and with the help of the sentry fire grate it.
- (2) The door of the cell in which a condemned prisoner is confined, shall not be opened without first handcuffing the prisoner and so securing him against the possibility of using violence or if he declines to be handcuffed unless at least three members of the jail authorities are present.

Condemned prisoners to be searched twice daily:

The Deputy Superintendent or, under his directions, the Assistant Superintendent, shall carefully search every condemned prisoner and the cell he occupies at least twice a day (Morning and evening), with his own hands and make a note of his having done so and of the result in his Journal^{xvii}

Paragraph 859 states that it is the duty of Deputy Superintendent and other officers to examine the food given to the condemned prisoner. It is enunciated that the ordinary diet of a laboring convict should be provided to the condemned prisoner.

Description and testing of rope:

(1) A Manilla rope one inch in diameter shall be used for executions. Not less than two such ropes in useful condition should be kept up at every jail facility where executions will be held.

Note - The rope should be 19 feet long, well twisted, and fully stretched. It should be of equal thickness, able to be going promptly through the nose-ring and adequately solid to endure a strain of 280 lbs. with a 7-foot drop.

(2) The ropes shall be tested within the sight of Superintendent, no less than seven days before the date settled for the execution and in the event that they neglect to finish the test, others will be acquired without a moment's delay and tried when gotten.

(3) Ropes that have been tested shall be locked up in a place of safety.

Note - The rope will be tested by appending to one end a sack of sand or earth equivalent to one and a half circumstances the heaviness of the detainee to be executed and dropping this weight the separation of the drop to be given to the prisoner.

EXECUTIONS IN ACCORDANCE WITH ARMY ACT, AIR FORCE ACT, AND NAVY ACT

The provisions regarding the execution of death sentence are provided in The Army Act and Air Force Act. The various provisions under these Acts are stated here as under^{xviii}:-

- ***The Air Force Act, 1950***

The Air Force Act, 1950 also deals with a death sentence and its execution methods which are explained there under in detail. The Death Sentence as laid down in The Air Force Act, 1950 will be relevant for the purpose of studying the execution of the death penalty awarded according to the provisions of the Act. Section 34 of the Act provides for the various offenses punishable with a death sentence. This section authorizes the court-martial to award the death sentence for the offenses mentioned in section 34 (a) to (o) of The Air Force Act, 1950.

A form of the sentence of death^{xix} as:

“In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he is dead or shall suffer death by being shot to death”.

This serves the fact the Court Martial to either accommodate the execution of capital punishment by hanging or by being shot to death. This segment accommodates the technique and strategy in which capital punishment is to be completed as per the arrangements under the Act. It is important to note that The Air Force Act, 1950 provides for the execution of the death by being “shot to death.” This implies the execution in India additionally allows the execution of the Death sentence up to a certain degree by another strategy in particular by being shot to death. This is with the objective to provide for the simplest method for the execution in case of the convicted offender of the offenses mentioned in the Act^{xx}.

It is worth mentioning that unless the punishment is confirmed by the concerned authorities under the Act^{xxi} the convict will not be executed. The Act provides for the findings and the order to be confirmed by the Central Government or any officer empowered by the same in

this behalf^{xxii}. This implies that it is an obligation to review all the decisions of the Court Martial by the Central Government. This empowers the Central Government to investigate the abnormality relating to the strategy or the finding of the Court Martial. The Army Act, 1950, The Navy Act 1957 provides similar provisions like in The Air Force Act, 1950. The provisions in The Army Act, 1950, The Navy Act 1957 are comparable in nature to that of in The Air Force Act, 1950 accommodating the alternative of the execution of capital punishment by being shot at death. Chapter VI of The Army Act, 1950 deals with provisions relating to the award of Death Sentence.

Section 34 (a) to (l) relates to offenses in relation to the enemy and punishable with death, Section 37 of the act deals with Mutiny and provides for the infliction of the death sentence in case the accused is convicted. Chapter VII provides the punishments awardable by Court Martial, Chapter XII is on Confirmation and Revision, Chapter XIII is on Execution of Sentences, Section 166 deals with the form of Sentence of Death. Similarly, Section 147 of The Navy Act 1957 also provides for the Form of Death Sentence.

Suggesting the arrangements in these Acts, a conclusion can be drawn that the procedure for shooting as one of the methods given for the execution of the death penalty under the Act intends to make it essential and easy to be executed with the weapons and kinds of apparatus open with these forces. It may be pointed out here that in the midst of the Nuremberg trials after the Second World War executions, the people from the German High Command who were condemned to death settled on the execution of the death penalty by being shot to death as against the system for hanging. They required officers' going by shooting instead of the ruining destruction by hanging. This is sufficient to fair-mindedly verify that the execution by being shot to death is less intricate and less unbearable to the hanging by neck till death. The demonstration of this method both in various making and made countries is clearly in light of the fact that this methodology is essential, easy to execute and less anguishing.

BRIEF ANALYSIS OF VARIOUS MODES OF EXECUTION OF DEATH SENTENCE

The Law Commission of India in its 187th Report had conducted a comparative analysis of various modes of executing death sentence to find out the most humane, less painful mode with no mutilation of the body and which is at the same time easy to execute. This comparative analysis is among *Hanging, Intravenous Lethal Injection, and Shooting*.

This analysis is founded on some basic and widely accepted norms. These are drawn from the conclusion of cases decided by Hon'ble Supreme Court of India, discoveries of the Law Commissions and resolutions adopted by the United Nations Economic and Social Council^{xxiii}. The test laid down in *Deena v. Union of India*^{xxiv} provides that the execution of death punishment should satisfy the threefold test: -

1. The execution process should be quick and simple as possible and free from anything that unnecessarily sharpens the miseries of the prisoner's apprehension.
2. The act of the execution should deliver immediate unconsciousness to the person passing quickly into the death.
3. It should be decent.
4. It should not involve mutilation.

The ECOSOC portrays one of the critical benchmarks by setting standards and safeguards against the death penalty in safeguard No.9 as, “*Where capital punishment occurs it shall be carried out so as to inflict minimum possible suffering.*”

The execution of capital punishment by hanging by rope must be judged with reference to the factors, such as the worldwide gauges or standards or the atmosphere of the global feeling, present-day penological speculations and advancing principles of human tolerability. The standard of human decency with reference to death punishment is required to be judged with reference to different viewpoints which fluctuate from society to society contingent upon the social and otherworldly convention of the general public, its history and rationality and its moral values. For example, if a sentence of cutting off the arm for the offence of theft or a sentence of stoning to death for the offence of adultery were prescribed by law, as honed in South Africa, there can be most likely that such punishments would be denounced as barbaric

and merciless in our nation, despite the fact that it might be viewed as proportionate to the offense and consequently sensible and just in some different nations. A comparative analysis of the different modes of execution of the death sentence was dealt with which is reproduced herein as under: -

	Hanging by Neck till Death.	Shooting	Intravenous Lethal Injection
1.	It is easy to execute	It is easy to execute	It is easy to execute
2.	It takes more than 40 minutes to declare a convict to be dead.	It takes not more than a few minutes to declare a convict to be dead.	It takes 5 to 9 minutes to declare a convict to be dead.
3.	Not much of scientific equipment is required in execution.	Not much scientific equipment are required.	It requires more scientific equipment and they are easily available.
4.	Uncertainty as to the time required for the prisoner to become unconscious.	Instant death.	Unconsciousness takes place immediately after the application of anaesthesia and dies in sleep.
5.	May cause a lingering death.	Instant death.	Not a lingering death.

6.	Most of the time may involve enormous pain.	Pain may hardly be involved.	The pain only as result of a needle prick.
7.	It has been abolished by most of the countries considering it as a barbaric and inhumane mode of execution.	Most of the countries provide for the option of either lethal injection or shooting.	It is being accepted now to be the most civilized mode of execution of death sentence.
8.	Mutilation involved.	Mutilation involved.	No mutilation involved.
9.	Not a controlled way of execution. It depends on various factors.	It is always under control and does not depend on the factors like physique etc. of the convict.	It is the best-controlled way of execution.
10.	Not generally swift.	It is comparatively swift and painless.	It is the painless and swift method of execution.

CONCLUSION

The Constitution of India guarantees a life with dignity as a Fundamental right. There is need to recognize that the death is the inevitable consequence of life and that the person should be allowed to go with as much as dignity as possible. The members of the judiciary are sharply

divided on the crucial issue of life-or-death sentence. Those who support nullification of the death penalty argue that death penalty is contrary to the notion of human dignity; it is irrevocable and an expression of retributive justice which does not serve the purpose of modern penology. Those in favor of death penalty, on the other hand, believe that death sentence has a unique deterrent force.

Law Commission of India, in its Report No 262 on Death Penalty has made a thorough survey on the state of affairs of the position on capital punishment in India. This is the third in this series, other two being Report No 35 on Capital Punishment, 1967 and Report No 187 on Mode of Execution of Death Sentence and Incidental Matters, 2003.

The Constitutional validity of Section 354(5) has been upheld by a *three-judge Bench of this Court in Deena alias Deen Dayal and Others Vs. Union of India and Others*^{xxv}. It is well settled in law that view of constitutional perspective does not remain static. The Constitution of India is an organic, living and a compassionate Constitution recognizes the sanctity of progress with the efflux of time. The provision that once held to be valid, with the passage of time may become invalid, more so, when there is dynamic progress in science as well as social thinking.

When a man is hanged, his dignity is destroyed. A man must have dignity even in his death and when dignity at the time of death is lost, living the life with dignity is daunted. He has drawn our attention to the dissenting opinion of Bhagwati, J. (as the learned Chief Justice then was) in *Bachan Singh vs. State of Punjab (supra)*. The physical agony which the execution of the sentence of death involves is barbarous and brutal. In India, the mode of execution followed is hanging by the rope. According to Japanese Supreme Court hanging is not cruel punishment but certainly it carries intense physical torture and pain^{xxvi}.

Warden Duffy of San Quentin, a high-security prison in the United States of America, describes the hanging process with merciless candor in offensive subtle elements^{xxvii}: “The day before an execution the prisoner is weighed, measured for length of a drop to guarantee to break of the neck. when the trap springs he dangles toward the finish of the rope. There are times when the neck has not been broken and the prisoner gags to death. His eyes pop generally out of his head, his tongue swells and bulges from his mouth, his neck may be broken, and the rope normally takes enormous bits of skin and tissue from the side of the face and that the noose is on. He urinates, he craps, and droppings tumble to the floor while witnesses look on, and at all

executions no less than one pass out or should be helped of the witness room.^{xxviii} The prisoner remains dangling on the rope for 8 to 14 minutes before the doctor, checks his heartbeat with a stethoscope, pronounces him dead. A guard stands at the feet of the hanged body and holds the body steady because during the first few minutes there is usually considerable struggling in an effort to breathe. If the drop is too short, there will be a slow and agonizing death by strangulation, On the other hand, if the drop is too long, the head will be torn off. In England centuries of practice have produced a detailed chart relating a man's weight and physical condition to the proper length of drop, but even their mistakes have been made.

The above-stated paragraphs clearly establish that the execution of death sentence by way of hanging involves intense physical pain and sufferings as compared to other methods of execution such as electrocution or application of lethal gas or use of lethal injections. That is certainly not the penological goal of our system.

Justice Verma, (as the learned Chief Justice then was) in *Gian Kaur vs. the State of Punjab*^{xxix} has opined that “A Right to life includes the right to live with human dignity which also includes the existence of such a right to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death”. In other words, this may incorporate the privilege of a dying person to die with dignity. A privilege of dignified death must not be confused with a right to or equated with a right to die an unnatural death.

SUGGESTIONS

It is suggested that Section 354(5) of Cr.PC of 1973, shall be amended by providing alternative modes of execution of death sentence. It is suggested that discretion should be given to the Court to decide the mode of execution of death sentence after taking various relevant factors into consideration. The court shall have to pass appropriate orders after hearing the accused on the mode of execution of death sentence. It is suggested that The Supreme Court bench while hearing the case where death punishment has been awarded, should consist of at least five judges and therefore, the Supreme Court rules must be amended. It is suggested that right to

appeal shall be provided in cases where the death sentence has been provided in Court Martial by Judge Advocate General of Army, Navy, and Airforce.

ENDOTES

ⁱ 1996 (2) SCC 648

ⁱⁱ 1994 SCR (1) 37, Para 15

ⁱⁱⁱ Economic and Social Council resolution 1984/50 of 25 May 1984.

^{iv} Franklin E. Zimring, *The Unexamined Death Penalty: Capital Punishment and Reform of the Model Penal Code*, <http://www.jstor.org/stable/4099437>

^v <https://www.scribd.com/document/177411023/Capital-Punishment-or-the-Death-Penalty-is-a-Legal-Process-Whereby-a-Person-is-Put-to-Death-by-the-State-as-a-Punishment-for-a-Crime>.

^{vi} Richard C. Dieter, *The Death Penalty, and Human Rights: U.S. Death Penalty and International Law*, Feb 2004, <http://www.deathpenaltyinfo.org/Oxfordpaper.pdf>.

^{vii} Shivam Dubey and Pooja Agarwal: *Capital Punishment in India: The Unending Conundrum* <http://ijlls.in/capital-punishment-in-india-the-unending-conundrum>

^{viii} https://shodhganga.inflibnet.ac.in/bitstream/10603/132600/10/10_chapter%205.pdf

^{ix} Katyayan Pratyush 'The Retention of Death Penalty in India', *The Indian Journal of Criminology*, Vol. XXVI Issue No. 3, p.45, Sep to Dec, Ministry of Home Affairs, GOI 2005.

^x Mahabharata, Shanitparva Chapter CCLXVII Verses 4-13

^{xi} Skinning alive used to be inflicted in ancient Assyria, Saytha and Persia (see: Rawlinson: *Ancient Monarchies*, vol. 1, p.478).

^{xii} Prof. N.V. Paranjape: *Reading: Criminology, Penology, Victimology* (see: pg. 345).

^{xiii} 187th Report of Law Commission of India, *MODE OF EXECUTION OF DEATH SENTENCE AND INCIDENTAL MATTERS*.

^{xiv} *The Washington Post*, May 1, 2014 <https://www.washingtonpost.com/news/post-nation/wp/2014/05/01/everything-you-need-to-know-about-executions-in-the-united-states/>

^{xv} *Jail Manual of Punjab & Haryana*, Chapter XXXI Paragraph 848.

^{xvi} *Ibid* paragraph 855.

^{xvii} *Ibid* paragraph 858.

^{xviii} Chapter VI of *The Air Force Act, 1950* in Section 34 provides for the offenses regarding the enemy and punishable with death, Section 37 is on mutiny and provides for the infliction of the death sentence in case the accused is convicted.

^{xix} SECTION 163, *The Airforce Act 1950*.

^{xx} Section 34 (a) to (o) of *The Air Force Act, 1950*.

^{xxi} Chapter XII of *The Air Force Act, 1950*.

^{xxii} Section 153 of *The Air Force Act, 1950*.

^{xxiii} ECOSOC resolution as to standards and safeguards guaranteeing protection of the rights of those facing the death penalty viz; Economic and Social Council Resolution 1984/50, annex. General Assembly Resolution 29 / 118, 1984.

^{xxiv} (1983)4 SCC 645.

^{xxv} (1983) 4 SCC

^{xxvi} *Ichikawa v. Japan*, 15 keishu 7, at p. 1106(July 19, 1961), in Hiroshi Itoh, Lawrence Ward Beer, eds, *the constitutional case law of Japan: selected Supreme Court Decisions 1961-70*, Seattle: University of Washington press 1978, at pp. 161-63.

^{xxvii} David Pannick on "Judicial Review of Death Penalty, page 73, 288 prisons in the United States of America.

^{xxviii} Death Under the Shadow of Judiciary, By Dr. N.M. Ghatate, Pg. No. 151.

^{xxix} (1996)2 SCC 648.

