

LETHAL INJECTION AS AN ALTERNATIVE OF HANGING: A COMPARATIVE ANALYSIS

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ABSTRACT

Exhibiting liberal outlook by abolishing death penalty would definitely hit the deterrent principle of punishment, so if the death penalty is unavoidable in certain cases then at least mode of execution of death sentence could be fixed considering humanity. Death by hanging involves enormous pain and mutilation while lethal injection has been proven to be more serene and assign dignified death to the convict by western countries who are proficient with this method. It is undoubtedly accepted that hanging as a mode has flourished to its most advanced stage, it is now a scientific process, but what matters is, in spite of this evolutionary advancement hanging has failed in providing humane death, rather it is a sight with tormenting experience to watch execution by hanging, whereas lethal injection is the offspring of advance anesthetics which ensures the death of a convict in comparatively lesser time and without any pain and mutilation. Though lethal injection as a mode of execution of the death sentence was a part of many strong recommendations which were overlooked. Hence this work concentrates on the comparative analysis of hanging and lethal injection and concludes that lethal injection must be an alternative to hanging.

1. INTRODUCTION

Punishment is imposition or infliction of penalty as retribution for offence on an individual or group by the authority as per the laws.¹ In other words, punishment is making someone suffer for his crimes.² In all salvage and primitive society punishing someone was purely a retaliatory phenomenon as it was man's nature to return blow for blow, moreover punishing

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¹ Available at – <https://en.oxforddictionaries.com/definition/punishment>, visited on 1st September, 2018.

² P.H. Collin, *Dictionary of law*, Bloomsbury Publication, 4th edition, p. 241.

someone in legal scenario was something of far existence. With gradual outflow of law prospect among people, punishment was treated as more of a way to seek revenge than for maintaining discipline.³ The idea of punishment as such was divorced from personal revenge, did not enter into the matter till long.⁴

Perception of purposes of punishment was late, but now more firm and precise ideologies have been established regarding punishment. Admitting to the fact that punishing someone for his crimes serves various purposes and most importantly it serves a rehabilitation platform; it is sought of moral communication to show the deterrence.⁵ The sentencing policy followed by judiciary worldwide is based on various theories of punishment which have been framed considering diverse ideologies. Basically there are five theories of punishment, namely retributive, reformative, expiatory, preventive and deterrent. Discussing deterrent theory of punishment, it relies on a well established principle of inflicting such a harsh and inhumane punishment that the sentence so pronounced would be sufficient to exhibit to society the consequences for committing a crime whereas the retributive theory is backed by the rigid mindset of tooth for tooth and eye for an eye, so, there are distinct conclusions as to whether capital punishment is outcome of deterrent theory of punishment or retributive theory but usually the later is primarily considered. Capital punishment is a punishment which deprives a person of his life; hence, it is not in respect of all crimes, but only in crimes of serious nature and in the rarest of the rare case. The nature of such crimes depends on the policy of law.⁶

In today's morally sensitive world, many countries like Mexico, Portugal and Bhutan etc. have discontinued death sentence⁷ whereas many others are planning to delete the provisions for capital punishment. India being one those countries that are pushing themselves to liberal ideology about capital punishment, in this course an example could be cited where Chief Justice Chandarchud, condemned the retributive goal of punishment in the case of *Mithu*

³ Georg Ryley Scott, *The history of capital punishment*, Torchstream books London, 1950, p. 3.

⁴ *Id.*, at p. 4.

⁵ Esther van Ginneken, 'The Pain and Purpose of Punishment: A Subjective Perspective', *The Howard League*, 2016, p. 8, available at – <https://howardleague.org/wp-content/uploads/2016/04/HLWP-22-2016.pdf>, visited on 25th October, 2018.

⁶ Available at – <https://hdl.handle.net/10603/217455>, visited on 3rd October, 2018

⁷ Available at – <https://deathpenaltyinfo.org/abolitionistandretentionist-countries>, visited on 2nd October, 2018.

*singh v. State of Punjab*⁸. Moreover, Law Commission of India in its 35th report, 1967 has advocated for complete abolishment of death penalty and later in 2015, Law Commission of India in its 262nd report has recommended the abolition of death penalty expect in terrorism related offences.⁹

II. MERCILESS KILLINGS

India would definitely be intolerant towards hanging a pregnant woman for execution of death sentence awarded by the court of law, it is case of *Shabnam v. Union of India and Anr*¹⁰ where India for the first time has sentenced death penalty to a women, she was convicted for parricide of entire family comprising seven member but considering the fact that she was pregnant, execution of death sentence was postponed till birth of child and congenial requirements of child are accomplished. The crime of multiple murders by Shabnam was committed in 2008, the Supreme Court has provided sufficient time for child and mother and commitment towards moral justice is fulfilled. Whereas primitive society lacked this comforting characteristic, the capital punishment in days of antiquity was nothing more than “the craze for judicial murder”¹¹, this term was used in order to depict the vengeance in jurisprudence at that time as not only humans rather animals were also prone to death sentence.

Some of the inhumane and brutal retributive methods of inflicting death on condemned person were:

- I. Execution by sawing in two;
- II. Execution by boiling to death;
- III. Execution by flaying alive;
- IV. Execution by burying alive;
- V. Execution by drowning by tying heavy weight to the neck¹²; etc.

⁸ 1983 SCR (2) 690 (India).

⁹ 262nd report, 2015, Law Commission of India, available at – <https://lawcommissionofindia.nic.in/reports/report262.pdf>, visited on 4th October, 2018.

¹⁰ 2015 SCC 484.

¹¹ George Ryley Scott, *The History of capital punishment*, Torchstream books London, 1950, p. 19.

¹² *Id.* at p. 24.

Thankfully, now the society and law makers are enlightened enough to stand against these black-hearted executions. In the landmark case of *Deena v. Union of India*¹³, Chief Justice Y.V. Chandrachud discussed the imposed mandate of Article 21 of the Indian Constitution that the sentence shall not be executed in barbarous, cruel and degrading manner.

Though the apex Court has propounded the dogma of *rarest of rare case*¹⁴, but the impossibility of laying down guidelines could lead to arbitrariness of the decision. Judicial discretion exercised in ordinary matters one way or the other is understandable and may be accepted, but in matter of life and death grave concern of Judges and law makers is required.¹⁵

A. Is Execution by Hanging an Ideal Method?

Hanging as a method of execution, is quick and certain which eliminates the possibility of lingering death. After the process is set in motion, death follows as the result of dislocation of cervical vertebrae. The mechanism of the method of hanging has undergone significant improvements over the years and hanging has been almost perfected into science. It is now the obligation of the State to ensure the process of execution is conducted with decency and decorum without involving brutality of any kind, observed by the Supreme Court of India.¹⁶

Dr Chandrakant, lecturer at All India Institute of Medical Sciences, New Delhi, who holds MBBS, MD in Forensic medicines and Toxicology, Diploma in Oto-rhino-laryngology and degree course of LLB and claims to have conducted 1100 medico-legal autopsies, according to him hanging is the best method of executing death sentence as death is ensues instantaneously due to combination of shock, *asphyxia*¹⁷, crushing of Spinal Medulla. Dr Chandrakant describes the human anatomy and claims that whenever in hanging there is injury to Medulla Oblongata, to Pons or to Medulla, all these centers are called 'Tripods of

¹³1992 SC 395.

¹⁴*Bachan Singh v. State of Punjab*, 1983(1) SCR 145.

¹⁵Mamta Mahajan and Nisha Dhanraj, 'Judicial Discretion in Awarding Capital Punishment', *Punjabi University Law Journal*, vol. – V, 2011, p. 115.

¹⁶*Deena. v. Union of India*, 1992 SC 395.

¹⁷*Bodily condition when oxygen to brain is reduced due to choking and ultimately resulting in death out of suffocation.*

Life' are affected which causes the instantaneous death.¹⁸ But no one can guarantee pin pointed injury in execution by hanging; failure would cause painful and lingering death of the convict.

Hanging as an execution mode to some extent has also shown intolerance towards the humanity, as per Punjab jail manual the dead body must remained hanging for half hour after death, which has later been declared as unconstitutional and violates dignity of human, by the Supreme Court in the case of *Parmanand Katara v. Union of India*¹⁹.

In 1992, research of two British forensic pathologists targeted the working of hanging as a mode of execution by analyzing thirty four judicial hangings and observed that traditional fracture occurred in only six cases, while documented cervical fracture in 48 percent cases. The research report was published in the journal *Forensic Science international*, which clearly sight that strangulation or asphyxia played important role in 48 percent of the judicial hangings but were main reason for deaths caused in 10 percent.²⁰ Hence there are not accurate results of this method, apart from accuracy dignified death for convict is not ensured.

B. Art of Hanging and Skills of Hangman

It would be justified to say that modern hanging has evolved through ages. Now, it is not just mere use of rope for suffocating someone to death, it involves skills, technicalities and calculations making it more efficient than the traditional methodology of hanging. The modern method of judicial hanging is called the long drop. In the long drop, those planning the execution calculate the drop distance required to break the convict's neck based on his weight, height and build. They typically aim to get the body moving quickly enough after the trap door opens to produce between 1,000 and 1,250 foot pounds of torque on the neck when the noose placed at the left side of the convict's neck, under the jaw, the jolt to the neck at the end of the drop is enough to break or dislocate a neck bone called the axis, which in turn should serve the spinal cord. In all cases major role is played by the hangman or executioner.

¹⁸ *Deena v. Union of India*, 1992 SC 395.

¹⁹ 1995(3) SCC 248.

²⁰ G.S. Mudur, 'Death by Hanging Takes Minutes', available at – <https://telegraphindia.com/india/death-by-hanging-takes-minutes/cid/362335>, visited on 23rd October, 2018.

When the neck breaks severs the spine, the blood pressure immediately drops and within a second or two the convict loses the consciousness resulting in brain death with span of few minutes eventually the complete death occurs this entire procedure may occupy 15 to 20 minutes.²¹

The technicalities and calculations involved in the hanging, as discussed earlier, may vary from case to case which need to be ascertained after considering the advice of medical officer and the following scale of drop proportioned to the weight²²:

Weight of the prisoner (in lbs)	Height of the drop (in feet)
100	7
120	6
140	5-1/2
160	5

If the distance is miscalculated or some other factors are not up to the mark, the convict will die of strangulation. Strangulation may take far more time and life of convict ends in enormous pain leading to tormenting experience.²³ The carotid arteries in the neck, which supply the blood to the brain are compressed and the brain swell so much that it ends up plugging the top of spinal column, further, the vagal nerve is pinched, leading to something called vagal reflex, which stops the heart, and the lack of oxygen getting to the lungs due to compression of trachea eventually causes loss of consciousness due to suffocation.

A Police Official told The Telegraph that Mohammed Ajmal Amir Kasab was hung at 7:30am and was dead by 7:40am. The authorities calculated Kasab, who was 60kg, would require the drop of seven feet. The length of the drop is critical; a drop too short may result in slow strangulation while a too long drop may result in the head being wrenched off.²⁴

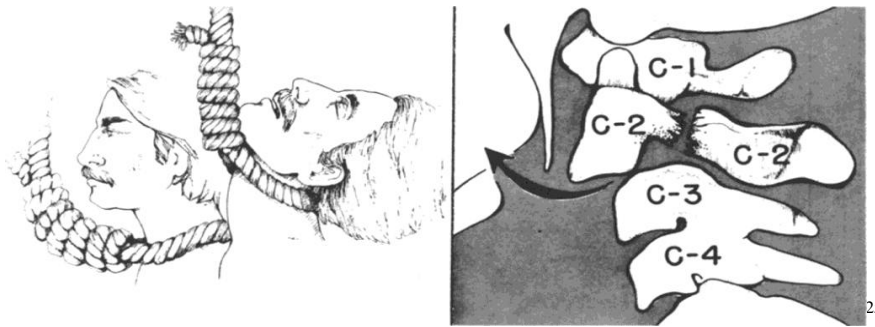
²¹ Available at – <https://health.howstuffworks.com/disease>, visited on 4th October 2018.

²² 187th report, 2003, Law Commission of India, available at – <https://lawcommissionofindia.nic.in/reports/187th%20.pdf>, visited on 4th October, 2018.

²³ Keith Simpson, *Forensic Medicine*, Edward Arnold Publication, 7th edition, 1977, p. 101.

²⁴ G.S. Mudur, 'Death by Hanging Takes Minutes', available at – <https://telegraphindia.com/india/death-by-hanging-takes-minutes/cid/362335>, visited on 23rd October, 2018.

Following is the daigrammatical presentation of placement of hangman noose and hangman fracture respectively.



The hangman jerks up on the rope at the precise moment when the drop is ending in the order to facilitate the breakage of the neck bone also known as *Hangman's Fracture*²⁶, which is an ideal situation in the long drop.

Nata Mallick, an 84 years old Indian executioner, served for six decades, experienced hanging of 24 convicts, in his interview published on a website shared his experience and notable skills of an executioner. According to Mallick before any execution he used to wax the special rope (usually manila), apply soap and ripped banana to make it slide smoothly on the convict's neck. It is the duty of the hangman to inspect the gallows, lever and noose. When the convict is handed to hangman he had to tie convict's hands and his legs. Before putting the hood on the head of convict he is allowed to recite a little prayer to free himself from sense of guilt. Then it's the hangman who has to abruptly and skillfully jerk the lever to ensure the desire methodological outcomes.²⁷

²⁵ Available at -

<https://www.google.co.in/url?sa=i&source=images&cd=&cad=rja&uact=8&ved=2ahUKEwjoheaxhdfgAhUU9bwKHef3De0QjRx6BAGBEAU&url=https%3A%2F%2Fthejns.org%2Fview%2Fjournals%2Fj-neurosurg%2F45%2F1%2Farticle->

[p3.xml&psig=AOvVaw0I21PgNRrcr_FohQFnNvkx&ust=1551189476073390](https://www.google.co.in/url?sa=i&source=images&cd=&cad=rja&uact=8&ved=2ahUKEwjoheaxhdfgAhUU9bwKHef3De0QjRx6BAGBEAU&url=https%3A%2F%2Fthejns.org%2Fview%2Fjournals%2Fj-neurosurg%2F45%2F1%2Farticle-p3.xml&psig=AOvVaw0I21PgNRrcr_FohQFnNvkx&ust=1551189476073390), visited on 25th October, 2018.

²⁶ G.S. Mudur, 'Death by Hanging Takes Minutes', available at – <https://telegraphindia.com/india/death-by-hanging-takes-minutes/cid/362335>, visited on 23rd October, 2018.

²⁷ Available at – <https://rediff.com/news/2004/aug/12spec.htm>, accessed on 25th October, 2018.

III. LETHAL INJECTION A NEW ALTERNATIVE

In 1888, lethal injection was proposed for the first time as a means of execution in New York, but at that time New York accepted *Electrocution*²⁸ as a method of execution, then in 1977, Oklahoma became the first state to adopt the lethal injection legislation and five years later, the first execution via lethal injection was performed in Texas. It was 1982 when finally United States became the first country to introduce lethal injection as a mode of executing capital punishment which is now world's newest method for executing death sentence and it is becoming common.²⁹

America being the first country to adopt lethal injection has gone way ahead in discovering new folds of forensic medicines; it was in August, 2018 when Synthetic Opioid Fentanyl was used for the first time in a lethal injection execution. This is four-drug cocktail containing Diazepam (C₁₆H₁₃ClN₂O) a tranquilizer; Fentanyl Citrate (C₂₂H₂₈N₂O) a powerful synthetic opioid that blocks breathing and knock out consciousness; Cisatracurium Besytale (C₆₅H₈₂N₂O₁₈S₂) neuromuscular-blocking drug; and Potassium Chloride (KCL) to stop heart.³⁰

The reasons why civilized nations of today's world are adopting the intravenous lethal injection as the method of execution of death sentence because it is more humane and less cruel than death by hanging. Following is the table of comparative analysis between hanging and intravenous lethal injection as the modes of execution of death sentence³¹:

Hanging by neck till death	Intravenous lethal injection
Trained personnel and heavy calculations required.	Comparatively less demanding, but requires supervision of a medical expert.
Execution process takes more than 40 minutes to declare a convict dead.	Execution process takes 5 – 9 minutes to declare the death of a convict.

²⁸ *Electrocution is execution of death sentence done through an electric chair on which the convict is made to sit and then jolt of 2000 volts is applied by executioner followed by several other of lower voltage are passed through the convict and then smell of burning flesh spreads all around, the prisoner may urine, defecate or vomit blood.*

²⁹ Available at – https://en.m.wikipedia.org/wiki/Lethal_injection, visited on 4th October 2018.

³⁰ Available at – <https://deathpenalty.procon.org>, visited on 16th October, 2018.

³¹ Available at – <https://hdl.handle.net/10603/78599>, visited on 16th October, 2018.

Less scientific equipments involved.	Scientific equipments are involved which are easily available.
May cause lingering death.	No scope for lingering death.
Mutilation involved.	No mutilation.
May involve enormous pain.	Pain equal to needle prick only.
Not a controlled method of execution.	It is the best controlled method.

A. Medico - Legal View

The medico legal view is considered in order to ensure the rigid results or to pacify medical consequences of any methodology, be not that vulnerable which ultimately could fail the main objectives. The law commission of India in its 187th report has said that for execution of death sentence through lethal intravenous injection a definite protocol is followed, firstly Sodium Thiopental ($C_{11}H_{17}N_2NaO_2S$) is injected to make the convict fall into deep sleep, sodium thiopental also known as Sodium Pentothal is generally used in hospitals while doing surgeries to make the patient unconscious, after ensuring the targeted outcomes of first injection then Pancuronium Bromide ($C_{35}H_{60}N_2O_4$) is administered into the body to stop respiratory system by causing paralysis of diaphragm and lungs, subsequently, Potassium Chloride (KCL), commonly used by physicians during bypass surgery, is injected to stop the heart from functioning. The whole process is completed in nine to fourteen minutes and the convict dies in sleep without any pain and there is no mutilation of body.³² Medical experts of international repute have also exerted for lethal injection as alternative for hanging as convict has to face pain equivalent to a needle prickle where hanging involves enormous pain. The only thing that is to be taken care is that entire procedure of administering lethal injection to convict must be done by or under the assistance of a medical expert; he must be equipped to handle the failed outcomes although there are very less chances of failure.³³

³² 187th report, 2003, Law Commission of India, available at - <https://lawcommissionofindia.nic.in/187th%20report.pdf>, visited on 3rd October, 2018.

³³ Keith Simpson, *Forensic Medicine*, Edward Arnold publishers, 7th edition, 1977, p. 268.

B. Required Statutory Amendments for Adopting Lethal Injection

Considering the technological advances in the field of science, technology, medicine and anesthetics, Law Commission of India, in its 187th report³⁴ purposed different modes of executing the death penalty and after soliciting the public opinion and studying the practice of these modes worldwide has recommended that section 354(5)³⁵ of the criminal procedure code, 1973 should be amended to allow lethal injection as a method of execution, in addition to hanging, 'Administering lethal injection till death' are words suggested to be inserted into the Criminal Procedure Code, 1973, for the effect of the same. Moreover it was suggested that all the cases involving death sentence must be heard by at least five judges bench of Supreme Court, in this context, amendment in the Supreme Court (Enlargement of criminal Jurisdiction) Act, 1970 was recommended.³⁶

Further this changed mode of execution would demand some other amendments also as every jail has a prescribed Manual that defines the procedure for executing the death sentence for example, referring to Punjab and Haryana Jail Manual the procedure for hanging starts one day earlier the execution day as the convict person is weighed and physical activity and diet is monitored. Furthermore his legs and hands are tied and the black mask is put on his head before he is hanged.³⁷ Similarly for lethal injection many things would add to the course of the day of execution like appointment of medical expert, arrangement of proper clinical setup within jail premises and supply of authenticated medicines etc.

IV. HUMAN RIGHTS AND DEATH SENTENCE

The period of Renaissance emphasized on science and humanism which led to change in society, freeing philosophy from its ties to medieval theology. Secular humanism which reclaimed dignity and a central position for the human being became the ethical basis for civil

³⁴ 187th report, 2003, Law Commission of India, available at – <https://lawcommissionofindia.nic.in/reports/187th%20report.pdf>, visited on 2nd October, 2018.

³⁵ 354(5) say: *When any person is sentenced to death, the sentence shall be directed that he be hanged by neck till he is dead.*

³⁶ 187th Report, 2003, The Law Commission of India, available at – <https://lawcommissionofindia.nic.in/187th%report.pdf>, accessed on 25th October, 2018.

³⁷ Available at – https://chdmodeljail.gov.in/uploads/acts/_1529317899Punjab_Jail_Manual_1996.pdf, visited on 17th October, 2018.

society in the modern era.³⁸ And to through a stringent approach on the society, human rights were begun to be considered as inherent, inalienable and basic fundamental natural rights in the society. Later, the Constitution of India has ensured equal status to all.³⁹ The United Nation Declaration of Human Rights has also ensured the rights of convicts and prisoners to meet the general requirements of democratic society.⁴⁰ Moreover in *Maneka Gandhi v. Union of India*⁴¹, Supreme Court of India introduced the test of reasonableness considering Article 14, 19 and 21 of the Constitution of India; this test of reasonableness has to be passed by every punitive detention law.⁴²

Responding to a Public Interest Litigation seeking the Court's directions to replace the present mode of execution of death sentence by less painful methods, the Center Government through affidavit said that other methods of execution have been considered, concluding, death by hanging is more humane, further contented that making the 'entire process of death penalty overly comfortable, serene and painless for the convict may substantially reduce its effectiveness in acting as a deterrent against abhorrent criminal acts as was intended by the legislature and may not be able to serve the social purpose'.⁴³ Such a sadistic approach from the government is indigestible because the deterrent has already been inflicted by convicting the accused with death penalty and once the death sentence is imposed, the convict should not be deprived of right to dignified death.

V. CONCLUSION

There are extreme variations among Judges themselves on when and why the extreme penalty shall or shall not be inflicted. In this unclear situation and highly unfortunate that there are no penological guidelines in the statue preferring the lesser sentence, it being left to

³⁸ P.M. Katare and B.C. Barik (eds.) *Development, Deprivation and Human Rights Violation*, p. 82, (Rawat Publications, 2002).

³⁹ Sanjay Sindhu, 'Women empowerment in India : A Synoptic view of Legislative provisions and Judicial Attitude', *Law Journal Guru Nanak Dev University*, Vol. XV, 2006, p. 32,

⁴⁰ R.P Singh, 'Ameliorating the Condition of Women Prisoners', *Law Journal, Guru Nanak Dev University*, volume XVIII, 2010, p. 144.

⁴¹ *Maneka Gandhi v. Union of India*, 1978 (2) SCR 621.

⁴² Mukesh Kumar, 'Tight the Noose! If Not, Why? If Not Now, When?', *International Journal of Legal Research and Studies*, volume 2, 2017, p. 198, available at – <https://www.ijlrs.com/papers-vol2-issue4.php>, visited on 25th October, 2018.

⁴³ Available at - <https://timesofindia.indiatimes.com/india/hanging-most-viable-way-of-execution-govt-to-sc/articleshow/63903316.cms>, visited on 23rd October, 2018.

ad hoc forensic impressionism to decide for life or for death.⁴⁴ While deciding the case human nature occupied by judicial mind of the judges plays the most important role in determining the quantum of sentence, so, everything cannot be quantified targeting statutes.

Thus in the end it is concluded that firstly human life is very precious and ending this gift of God is something for which no justification can stand by, but a society cannot completely rely on the nature's law of punishment, so, enforcement of good conduct in a society is to be backed by the sanction also and awarding death sentence by due procedure established by law is deterrent form of such sanction. Hence, whatever be the mode of execution of death sentence, the supreme consideration of law makers must be the core of humanity. There are various reasons why India should adopt lethal injection as alternative of Hanging, firstly, hanging is already at the peak of its most advanced stage but it has failed to give dignified death to the convict. It involves mutilation and enormous pain and such a pain which make convict defecate and urinate, on contrary, the lethal injection is most humane, moreover if we are developing ourselves with new technologies it is because we had indirectly accepted initial technologies were outdated then why not the same scenario with lethal injection and hanging. Medical science had advanced beyond imagination of primitive society that offers execution with just a needle prick.

⁴⁴ *Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646.