

# Analysis On Hanging As Mode Of Execution In India

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## Synopsis

Introduction .....	451
Procedure Followed under Jail Manuals- .....	453
Observations By Judiciary .....	455
Rethinking on Hanging as mode of Execution .....	456
Looking Ahead .....	458
Conclusion .....	462

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*We must always begin again.*

*-Andre Gide*

## Introduction

Indian society has its own unique character and the phenomenon of crime needs to be seen in terms of its peculiar nature. India has gone through various socio-economic changes since independence. A society is formed by the people living in it. If any incident happens in neighbour, along with the victim, society also gets horrified. Thus crime and society are thus connected with each other. The factors which hinder the adjustment process also explain the causes and consequences of crime. As stated socialisation and crime are correlated. A person learns both good and bad roles as being a member of society. According to police research and development Bureau has reported murder, homicide, adulteration of medicines, abduction, rape, dacoity, loot, burglary, theft, rioting, forgery, embezzlement and breach of trust as the major criminal activities<sup>3</sup>. Every criminal is punished for the crime done for. The degree of punishment must be in par with crime committed. One such form of punishment is capital punishment i.e. death penalty. Death penalty is given around the world since many decades. In India, time and again there have been arguments that death penalty is violative of Article 21 of Constitution of India. Article 21 states that *No person shall be deprived of his life or personal liberty except according to procedure established by law*. Supreme Court of India has laid down that Death Penalty is not violative of Article 21<sup>4</sup>. Doctrine of “Rarest of Rare case” is being followed in India as established in Bachan Singh case. Nor the researchers intent to abolish the death penalty. Death Penalty is awarded by different statutes in India. Death Penalty in India can be studied in 5 different phases which are as follows

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<sup>3</sup> <http://ncrb.gov.in/> last accessed 26-10-2017

<sup>4</sup> Bachan Singh v. State of Punjab, AIR 1980 SC 898

- **PHASE I** - When Death Penalty was a rule (1950-1955)
- **PHASE II**- Age of judicial Discretion (1953- 1973)
- **PHASE III**- When Life Imprisonment was a Rule (1973-1980)
- **PHASE IV**- Birth of the Doctrine: “Rarest of Rare case” ( 1980-1983)
- **PHASE V**- Post Bachan Singh’s Case Era (1980 onwards)

Hanging, guillotine, lethal injection, electrocution, gas chamber, shooting, burning at stake are some of the ways of execution used in different countries to execute criminals. What so ever mode of execution is used to execute a criminal it should involve least pain, should be humane, should not be cruel. In India hanging is used to execute the criminals for death penalty in Indian Penal Code. Section 354(5) of IPC states that *“When any person is sentenced to death, the sentence shall direct that he be hanged by neck till he is dead”*. While Army Act 1950<sup>5</sup>, Navy Act 1957<sup>6</sup> and Air force Act 1950<sup>7</sup> prescribe for death by shooting or hanged till death.

**Sec. 163 of Army Act, 1950 -**

*“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 he be dead or shall suffer death by being shot to death.”*

**Sec. 147 of Navy Act, 1957 -**

*“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 he be dead or shall suffer death by being shot to death.”*

**Sec. 163 of Air Force Act, 1950-**

*“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 he be dead or shall suffer death by being shot to death.”*

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<sup>5</sup> Sec 166, Army Act 1950

<sup>6</sup> Sec 147, Navy Act, 1957

<sup>7</sup> Sec 163, Air Force Act, 1950

In *Deena v. Union of India*<sup>8</sup> the constitutional validity of section 354(5) IPC was challenged on the ground that by rope as prescribed by this section was barbarous, inhumane and degrading thus violative of Article 21. Various Law Commission Reports have been focused on capital punishment and hanging till death while few of them have considered hanging as a inhumane mode of capital punishment. It is correctly pointed out by the Constitution Bench in case of *Gian Kaur's* as Right to Life includes Right to a dignified life upto the point of death including a dignified procedure of death. The Section 354(5) thus in this case is to be considered ultravires to the Constitution and especially in contravention to Article 21 of the Constitution.

### **Procedure Followed under Jail Manuals-**

In India the various procedures to hang a person till death is given in distinct Jail Manuals of the respective States. In India, the fact which cannot be denied that most of the cases regarding capital punishment are from northern region of India. Thus researchers have looked into chapter XXXI of Punjab and Haryana Jail Manual which provides for procedure leading to the execution of the Death sentences. Paragraphs 868 to 873 of the jail manual has been dealt ahead in paper and also points out the agony and fear in the mind of a condemned prisoner who is waiting for his death sentence to be executed. The procedure which is followed is stated as follows -

- The Superintendent and Medical Officer of the Jail and the District Magistrate are required to be present at the time of execution.
- The execution is to be carried out by the Public Executioner.
- The important factor in deciding the regulation of the death sentence to be executed is the Regulation of the drop. The slightest error in deciding the length of the drop may lead to the lingering death of the condemned man. The drop is regulated according to the height, weight and physique of the prisoner.

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<sup>8</sup> (1983) 4 SCC 645

- The Superintendent would reach to the cell of the condemned prisoner and would read over to him the warrant of death and get his signatures on the various documents. Then the Superintendent will move towards the scaffold and in the presence of the Deputy Superintendent, the condemned prisoner will be pinioned behind his back and his legs irons (if any) will be stuck of.
- The condemned prisoner then shall be marched to the scaffold under the charge of Deputy Superintendent. He will be guarded by the Head warden and six wardens, two in front, two in behind and one holding either arm.
- After reaching the scaffold, the warrant should be read in vernacular to the convict and he would be handed over to the executioner.
- The wardens holding the arm of the convict shall also mount the scaffold with the convict and placing under the direct beam to which rope is attached.
- The executioner shall next strap his legs tightly together, place the cap over his head and face and adjust the rope tightly around his leg. The noose should be placed 1½ inches to the right or left of the middle line and free from the flap of the cap.
- The wardens holding the condemned man's hand to withdraw at that time and at the signal from the Superintendent, the executioner shall draw the bold.
- The body of such condemned prisoner should remain suspended half an hour and shall not be taken down till the Medical Officer declares the life extinct. The superintendent is required to return the warrant with the endorsement to the effect that the sentence has been carried out.

It is very well established from the above mentioned procedure which is followed the prisoner goes through a mental and physical torture of the mode of execution. The Third procedure deals with regulation of drop, the prisoner height, weight is being measured. This procedure causes a lot of mental torture and agony in the mind of the prisoner that he or she will be executed in few days. The preparations for execution in which prisoner is involved will cause a mental torture to him. Secondly reading of the death warrant just before the prisoner causes mental agony to the prisoner. Thirdly, when a prisoner reaches to scaffold his legs and hands are

tied and place cap over his head and face which is more grievous. Next if the drop is not perfect which happens in most of the cases the prisoner suffers a very painful death and as per procedure he has to suspended half an hour and not taken down until medical officer declares the prisoner death. Thus from the following observation of the procedure as provided in Jail Manual of Punjab and Haryana it can be concluded that hanging causes a Mental Agony, which leads to physical pain while the person is hanged. Thus Article 21 of the Constitution is being violated and against the decision of the court in case of Gian Kaur.

### **Observations By Judiciary**

Indian Judiciary has very well observed matters regarding capital punishment and as well as dealt with section 354(5) of code of criminal procedure 1973. In the case of Bachan Singh v. State of Punjab<sup>9</sup> Justice Bhagwati in his dissenting opinion is of the view that electrocution or lethal gas has not taken place in India. Thus with references to execution by hanging whether the sentence of death is barbaric and inhuman as it involves physical pain and agony. According to him if mental and physical conditions of the prisoner are affected to cause mental anguish and suffering, then it would be considered to be cruel and inhuman. He also pointed out that justificatory reason cannot commend itself to any civilised society because it is based on the theory of retribution or retaliation and at the bottom of it lies the desire of the society to avenge itself against the wrong doer. That is not a permissible penological goal.<sup>10</sup> Observation also points out that in most of the developed as well as developing countries have replaced hanging with lethal injection or by shooting. Death penalty involves immense pain and suffering. In most of the cases death by hanging causes due to asphyxia or strangulation which causes the lingering and painful death of the condemned person.

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<sup>9</sup> AIR 1980 SC 898

<sup>10</sup> [http://www.supremecourtfindia.nic.in/supremecourt/2017/29088/29088\\_2017\\_Order\\_06-Oct-2017.pdf](http://www.supremecourtfindia.nic.in/supremecourt/2017/29088/29088_2017_Order_06-Oct-2017.pdf)

“Right to life” also includes existence of right up to the end of natural life. Justice Verma in *Gian Kaur v. State of Punjab*<sup>11</sup> opined that protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of “sanctity of life” or the “right to live with dignity” is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of “right to life” therein includes the “right to die”. The “right to life” including the right to live with human dignity would mean the existence of such a right up 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 include the right of a dying man to also die with dignity when his life is ebbing out. But the “right to die” with dignity at the end of life is not to be confused or equated with the “right to die” an unnatural death curtailing the natural span of life.<sup>12</sup>

In *Deena v. Union of India*<sup>13</sup> constitutional validity of section 354(5) IPC 1973 was challenged on the ground that by rope as prescribed by the section was barbarous, inhuman and degrading thus violative of Article 21 of the Constitution of India. It was contented that court should look into the matter and suggest the State to provide a more humane and dignified manner. The court relied upon the U.K. Royal Commission 1949, opinion of the Prison Advisers and forensic medicine; the court held that hanging by rope is the best and least painful method of carrying the death penalty. The court opined that neither shooting or lethal gas or electrocution or lethal injection would give advantage over the system of hanging by rope.

### **Rethinking on Hanging as mode of Execution**

As law is dynamic so the technology is dynamic. We have to be updated about our surroundings and must update ourselves by giving new law or amending the existing laws. It is very evident that Constitution of India is organic, living and recognises the sanctity of progress with efflux of time. Everything changes in due

<sup>11</sup> (1996) 2 SCC 648

<sup>12</sup> Para 24, *Gian Kaur v. State of Punjab* (1996) 2 SCC 648

<sup>13</sup> (1983) 4 SCC 645

course of time. The provisions which were held to be valid, with the passage of time they may become invalid with the fast changing science every day. The case of *Deena v. Union of India*, was decided way back in 1983, which is 34 years down the line, held that hanging by rope is not in contravention to Article 21 as well as it is most humane, civilized form of execution than any other form of execution. As per the researchers, when a person is hanged, his dignity is destroyed. When a person is hanged, he should not be deprived of the dignity as stated in the *Gian Kaur* case. When dignity is lost while a person is hanged, then living life with dignity is also detained. At this point it will be crucial to note the statement made by Warden Duffy of Sa Quentin, a high security prison in the United States of America described the hanging process is brutal, inhumane and nasty. He described the process as follows-

“The day before an execution the prisoner goes through a harrowing experience of being weighed, measured for length of drop to assure the breaking of the neck, the size of the neck, body measurement at criteria. When the trap springs he dangles at the end of the rope. There are times when the neck has not been broken and prisoner strangles to death. His eyes pop almost out of his head, his tongue swells and protrudes from his mouth, his neck may be broken and the rope many times takes large portions of skin and flesh from the side of the face and that the noose is on. He urinates, he defecates, and droppings fall to the floor while witnesses look on, and at almost all executions one or more faint or have to be helped out of the witness room. The prisoner remains dangling from the end of the rope for from 8 to 14 minutes before the doctor, who has climbed up a small ladder and listens to his heart beat with a stethoscope, pronounces him dead. A prison guard stands at the feet of the hanged person and holds the body steady, because during the first few minutes there is usually considerable struggling in an effort to breathe. The bodies were cut down after fifteen minutes and placed in an antechamber, when I was horrified to hear one of the supposed corpses give a gasp and find him making respiratory efforts, evidently a prelude to revival. The two bodies were quickly suspended again for a quarter of an hour longer...Dislocation of the neck is the ideal aimed at, but, out of all my post-mortem findings, that has proved rather an exception, which in the

majority of instances the cause of death was strangulation and asphyxia.” If the drop is too short, there will be a slow and agonising death by strangulation. While on the other hand if the drop is too long, the head will be torn off. United Nations Economic and Social Council in its 9<sup>th</sup> safeguard guaranteeing protection of the rights of those facing the death penalty states that “Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering”<sup>14</sup> Even International Covenant on Civil and Political Rights (ICCPR) is also one of the key documents and its Article 6 lays down the guarantees regarding the right to life and important safeguards which are to be followed by signatories who retain the death penalty.

### Looking Ahead

The 35<sup>th</sup> Report of the Law Commission on Capital Punishment of 1967 it is stated that “*We find that there is a considerable body of opinion which would like hanging to be replaced by something more humane and more painless...*” That a method which is certain, humane, quick and decent should be adopted in the general view. Society owes to itself that the agony at the exact point of execution is kept minimum. Progress in the science of anesthetics and further study of the various methods, as well as experience gathered in other countries and development and refinement of the existing methods, would perhaps in future, furnish a firm basis for conclusion on this controversial subject. During that time Law Commission took the increasing scope of science in a positive way. Though they were not able to reach any conclusion to it but it is appreciated that during that time they started realising that countries needs an alternative mode of execution. Thus they retained the hanging as mode of execution. Atleast an attempt was made to look into it. Further in the year 1949- 1953 the Royal Commission Report on Capital Punishment contemplated the that execution should be-

- Less painful as possible

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<sup>14</sup> <http://www.un.org/documents/ecosoc/docs/2000/e2000-3.pdf> Pg. No 25, last accessed 08.11.2017

- As quick as possible
- Least mutilation of the body

It also observed that the question of judicial execution should be periodically examined especially in light of progress made in the science of anesthetics. The Supreme Court of India in *Deena v. Union of India* provided that the execution of death punishment to satisfy the following four test-

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

As highlighted above the procedure for the execution in Punjab and Haryana Jail manual it can be easily concluded that the mental trauma, agony through which a prisoner goes. As before few days of execution his/her weight is checked along with the height and so as to calculate the length of the drop. It is possible that length of the drop might get short or long, even inch of wrong calculation or measurement, the prisoner suffers a painful death. Before the hanging warrant is being spoken out to the condemned prisoner. Very common observation can be made here as someone is reading out that tomorrow you are going to die and you cannot do anything and one has to sign that paper. Now imagine the trauma and agony which the prisoner goes through. It is unimaginable the intense pain or suffering of the condemned prisoner. After the public executioner pulls the liver, the prisoner is hanged for 20 minutes and when medical officer confirms that prisoner is dead only then is taken off. In those 20 minutes prisoner urinates, strangulates, eyes pop out, tongue comes out etc. from this it can be observed the pain and suffering of the prisoner. More even the statement given by the Warden Duffy of Sa Quentin clearly states that hanging involves mutation, it is inhumane and cruel mode of execution. Even the dissenting opinion of the Justice Bhagwati in *Bachan Singh* case highlights that if the

procedure of the execution causes mental and physical agony to the prisoner then that mode of execution is to be considered as cruel and inhumane. The process of execution takes around 40 minutes when a person is hanged. There is also dearth of expert hang man in India and Jail Manual provides for Jailor who has no scientific knowledge, to guide hang man. Hanging has been given up in United States of America as it is inhumane and degrading. Which is clearly established by the 35<sup>th</sup> law commission report, statement of warden Duffy of Sa Quentin and as the procedure given in Punjab and Haryana Jail Manual. As per the report analysis of data collected through the questionnaire Law Commission in its 187<sup>th</sup> report stated that 89 percent<sup>15</sup> of the people want that section 354(5) of the Code of Criminal Procedure should be amended. Another question was raised in the similar report which is core theme of this paper that *"if you consider Death by hanging cruel what alternative method do you suggest for execution of death sentence?"*<sup>16</sup> 5% prefer shooting by firing squad, 10% prefer electric chair, 12% prefer any other mode of execution, while 73 percent of the people are of belief that lethal injection should be used as mode of execution. Hence hanging should be considered as cruel, inhumane and unjust form of execution.

Now the question arises if not hanging then what can be considered as more humane form of execution. At this point the researchers are of the opinion that lethal injection can be replaced by the Hanging as mode of execution. Lethal injection is used in many western countries. As it provides sudden death, no pain, no suffering by the over dose of anesthetic substances. Lethal injection involves the continuous intravenous injection of a lethal quantity of three different drugs. A cardiac monitor and stethoscope are attached, and two saline intravenous lines are started, one in each arm. The inmate is covered with sheet. The saline intravenous lines are turned off and Sodium thiopental injected, causing the inmate to fall into deep sleep. The

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<sup>15</sup> Page No.66, 187<sup>th</sup> Law Commission Report on mode of execution of death sentence and incidental matters, October 2003

<sup>16</sup> Page No.70, 187<sup>th</sup> Law Commission Report on mode of execution of death sentence and incidental matters, October 2003

second chemical agent is Pancuronium Bromide, a muscle relaxer and causes inmate stop breathing due to paralysis of the diaphragm and lungs. Finally, Potassium Chloride is injected which stops the heart. Since 1976, many prisoners have been executed by lethal injection in the United States. Lethal injection is most common in United States in regard to all the 66 executions carried out during 2001 being by this method. Out of 749 executions in America upto 2000, 586 have been carried out by lethal injection including those of seven women. China also reported 8 executions by lethal injection during 2000.

Lethal injection has certain advantages over the hanging as mode of execution. These advantages can be studied under the following comparative table of Hanging till death and lethal injection.

<b>S.No.</b>	<b>Hanging By Neck Till Death</b>	<b>Lethal Injection</b>
1	Simple to execute	Simple to execute
2	The time of the execution process is generally more than the 40 minutes to declare prisoner dead.	The time of the execution process is usually 5 to 9 minutes to declare prisoner dead.
3	As the person only needs to be hanged, only less scientific equipments are used.	It involves usage of drugs thus to monitor the prisoner, more scientific equipments are required.
4	It is very uncertain to say when a person becomes unconscious when he is hanged	Prisoner gets unconscious takes place immediately as soon as Sodium thiopental is

		injected in his body.
5	It is possible that prisoner causes a lingering death.	In this case, lingering death does not takes place.
6	Mutilation is definitely involved when prisoner is hanged.	No mutilation is involved as prisoner gets in unconscious after the first dose.
7	This mode of execution abandoned by most of the countries considering it not to be a civilized mode.	This mode of execution is now being accepted now to be most civilized mode of execution of death sentence.
8	It is depended upon the various factors	It is most controlled way of execution and not much factors affect the death.
9	It can result a painful death of the prisoner which is most of times is not bearable.	In this case pain is only as result of needle prick which is bearable.
10	This mode of execution is not generally swift	It is generally very painless and swift mode of execution.

## Conclusion

Here researchers have come to the conclusion that Lethal Injection is one of the best alternative mode of execution of death penalty as it is less painful, quick and least humiliating as compared to the hanging . After analysing the mentioned cases above

and statement made by Warden Duffy of Sa Quentin we can simply say lethal injection is far more better option for the execution of death as it also favour the human dignity in which offenders body is least mutilated. "Right to live with dignity" means to live a prestigious life and to die with a dignified procedure of death and hanging in not the one in which these essentials can be found. 35<sup>th</sup> Report of the Law Commission on Capital Punishment of 1967 clearly stated that hanging should be replaced by something more humane and more painless which means there is quite a need of a replacement of hanging that Law Commission realized in 1967 itself and nothing is was been changed but by the dynamic flow of time there is a need for replacement of existing method for death penalty. Modern researchers are also having this opinion that lethal injection can be replaced by the Hanging as a mode of execution. Just by comparing the procedure of respective execution given above we can simply conclude that the lethal injection is less painful than the hanging and prisoners should be given the least painful death by court of law by giving concern to the rights given to them. Another question was raised in the similar report which is core theme of this paper that "*if you consider Death by hanging cruel what alternative method do you suggest for execution of death sentence?*" 5% prefer shooting by firing squad, 10% prefer electric chair, 12% prefer any other mode of execution, while 73 percent of the people are of belief that lethal injection should be used as mode of execution. As India is a Democratic country and government should give preference to the public opinion, what people of the country wants and according to that only law should be made and Lethal Injection as a method of death penalty should prevail in our country rather than the Hanging.