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MODES OF EXECUTION OF DEATH SENTENCE IN INDIA-AN ANALYSIS

**VIJAY. A. N[1] & PROF. C. BASAVARAJU[2]

Introduction

An appraisal of the administration of criminal justice of ancient times reveals that death penalty was commonly used in cases of heinous crimes. However, there was great divergence as to the modes of execution. In ancient time, the common modes of inflicting death sentence on the offender were fructification, drowning, boiling, beheading, throwing before wild beasts, flaying or skinning off alive, Hurling the offender from rock stoning strangling, amputating, shooting by gun or starving him to death . Hanging the offender till death in public places has been a common mode of putting to an end to the life of an offender. These draconic and barbarous methods of punishing criminals to death were justified on the ground that they were the quickest and easiest modes of punishment and at the same time carried with them an element of deterrent and retribution. They have however, fallen into disuse with the advance of time and modern humanitarian approach to penology.

Mode of Execution

At present, the common modes of execution of death sentence which are in vogue in different parts of the world the electrocution, guillotine, shooting, gas chamber, hanging, lethal injunction etc.

Hanging by Rope

The British Royal commission on capital Punishment 1948-53 found that hanging is the most humane method of the execution. In the case of ***Furman vs. Georgia***[3], Justice Brennan implied disagreement, but neither he nor any other judge has challenged the conclusion that hanging is constitutionally permissible. The constitutionality of hanging was accepted in case of ***Vikerson vs. Utah***[4]. In the case of ***Dina vs. Union of India***[5] the constitutional validity of the mode of execution of death sentence provided under section 354(5) Criminal Procedure Code was

[1] *Research Scholar, Department of Law, University of Mysore, Mysore.
[2] Dean and Chairman, Department of Law, University of Mysore, Mysore.
[3]408 US238
[4]99 U.S. 130 (1978)
[5](1983) 4 SCC 645

challenged on the ground that hanging a convict by rope is cruel and unusual (Barbarous) method of executing a death sentence, which is volatile of Article 21 of the constitution. The Supreme Court, however, rejected the contention and held that hanging the condemned person by neck till he is dead was perhaps the only convenient and relatively less painful mode of executing the death sentence. Even in ***Smt. Shashi Nayer vs. Union of India***[6] it was held that hanging the person by neck till he is dead is the only convenient mode of execution of death sentence.

Electrocution

Electrocution has been held to be constitutionally acceptable method of carrying out the death sentence. In the case of ***Mallay Vs. South Caroline***[7] the American Supreme Court held that because of a well-grounded belief that electrocution is less painful and more humane than hanging, it was not the implementation of an 'ex post facto law' contrary to Article, of the constitution to sentence a man to death by electrocution under the law existing at the date of his commission o the offence, specified that execution should be by hanging.

Moreover, if the electric chair fails to operate, presumably because of some mechanical difficulty, and the intended victim is led back to the cell, it is not cruel and unusual punishment to return him to execution chamber for a second attempt some months later.

In the case of Louisiana Ex.Ed ***Francis Vs. Reswebei***[8], the judgment of the American Supreme Court in that case emphasized the absence of a deliberate intention to inflict unnecessary pain, it further asserted that, the situation of the unfortunate victim of this accident is just as though he had suffered the identical amount of mental anguish and physical pain in any other occurrence, such as, a fire in the cell block[9]. The fact that the pain was inflicted accidentally is surely irrelevant if the degree of pain exceeded unconstitutional limits. State action is unconstitutional if its consequence is to inflict unacceptable levels of cruelty, albeit, that is not the intention of the organizers of the state action. It is also not a constitutionally relevant factor that the pain 'could' have been suffered in another context. The applicant is complaining about 'this' pain and about 'this 'state action which, he says infringes his constitutional rights'. It is not usually a valid

[6]AIR 1992 SC 395
[7]237 U.S. 180 (1925)
[8] Louisiana Ex Ed Frances v Reswebei 329 U.S. 459
[9]David Panic " judicial review of Death penalty 1982 page 72

response to such a claim that the damage complained of 'could' have been or 'could' be inflicted by a third party or by an accident. Such defiance would abrogate the responsibility of the author of the action complained of the state.

The majority judgment assumes that the pain suffered in the unsuccessful attempt at execution was 'identical' to that which would result from a fire in the cell block. This method was first used in Auburn State prison, New York and now being extensively used in USA, UK, USSR, Japan and most European countries[10].

Guilloting

The device of guillotine for execution of criminals was introduced if France in 1792. It was a kind of machine erected for execution of criminals in Western countries particularly in France, Scotland and England[11].

Lethal Intravenous Injections

Chaina, Philippines Oklahoma, New Mexico, Idaho and Texas provide for a lethal intravenous injection as a method of execution. The Royal Commission on Capital punishment submitted that intravenous injection were as impracticable manner of carrying out the sentence of death.

Firstly, it is impossible to give an intravenous injection to any one with certain physical abnormalities. Secondly, it is never easy to give one except with the co-operation of the subject. Thirdly, the operation demands physical skills, which the medical profession would be unwilling to use for such a purpose, because the main object of doctors is to save the life and not to kill them. An intramuscular method if injections, however, might be painful and it works comparatively slows. The Royal commission, therefore, concluded that it could not be recommended as the substitution of lethal injection for hanging as the method of execution in Britain.

Gas Chamber

The Gas Chamber still has its clients in USA and was extensively used by Nazi Germany in Killing Jews. In the case of ***State vs. Gee Josh***[12] that supreme court of the Nevada held

[10]P.N.Pranjapee,Penaplogy and Criminology
[11]ibid
[12]State v Gee Johns 211 page 676 1923)

unconvincingly that an execution by the use of lethal gas did not violate federal and state constitutional prescription of cruel and unusual punishments.

Utah, China, Russia and East European countries authorized execution by Firing squad. The (1949-1953) Royal commission concluded the Electrocution, gashing and shooting as mode of carrying out the death penalty, are defective in terms of the criteria of decency, humanity and certainty, when compared with hanging[13].

Role of Delay in the Execution of Death Penalty

Delay is regarded is an obnoxious feature of the judicial system as Justice delayed in justice denied. Any delay in providing justice to the individuals makes justice a meaningless and empty word to them. Prompt justice has been regarded as a basic human right. In the United States of America the right to speedy trial is guaranteed by IV amendment to the constitution[14]. The Indian constitution does not specifically provide for the right to speedy trial. However this right has been implicitly recognized under Article 21 of the constitution[15].

Delay in the execution of death sentence may be on two counts i.e. delaying in the disposal of the judicial proceedings and delay in the disposal of the mercy petitioners by the executive authorities. Inordinate delay in the execution of death sentence has been justified as a ground to reduce death penalty in life imprisonment for a number of reasons. It is forcefully stated that such delay has a dehumanizing and demoralizing effect on the condemned person. He suffers immense mental pain and torture, even though he is not physically mistreated. In this respect it is pointed out that mental worry is more devastating than the funeral fire. While the latter burns only the dead body, the former burns the living one[16]. Mental agony of the condemned person is largely due to the fact that he is faced with constant dilemma regarding his life and is not sure whether he is to live or die. He nurtures the desire to live and is unable to accept the idea of imminent death.

A part from causing mental agony to the condemned person living under the shadow of death, inordinate delay is also regarded as a serious obstacle in the administration of justice condemning the delay in the disposal of mercy petition by the Executive Chief Justice

[13]Danda panick, judicial review of death penalty
[14]Prith chett, Cheman, American constitution New delhi,tata McGraw Hill publishing co.Ltd. 1977, page 577
[15]Husainara Khatoon V State of Bihar, AIR 1979 SC 1360
[16]AIR 1983 SC1335,1358

Chandrachud observed:Long and interminable delays in the disposal of this petition are a serious hurdle in the dispensation of justice and indeed, such delays tend to shake the confidence of the people in the very system of justice[17].

Thus, delay in the execution of death sentence seems to be a significant factor which should be considered in determining the fate of death sentence. But there is another aspect of this problem. Delay is an inherent feature of our judicial system. The law makes several provisions to ensure a fair trial to a person accused of an offence. Additional safeguards are provided for a person convicted for a capital offence and sentenced to death as a consequence thereof[18]. These additional safeguards are necessary to ensure that no mistake is committed in the award of death penalty. But at the same time, it is very clear that all these processes are bound to consume some time.

In view of formulation of the doctrine of just, fair and reasonable for depriving life and liberty in ***Maneka Gandhi case***[19], it has been argued that the prolonged detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death. In order to appreciate the merit of this argument and hence the constitutional importance of prolonged delay, it's also becomes necessary to refer briefly to the role of delay in the final determination of death sentence by the court.

Role of Delay in Judicial Determination of Death Sentence

At the outset it may be made clear that inordinate delay plays an important role in deterring the punishment of life imprisonment or death sentence for the accused. The time consumed by the judicial process is always taken into account by the court before deciding the punishment finally.

Cases Where Delay Is Enough to Justify Commutation of Death Sentence

The importance of delay in the death sentence was acknowledged given by the Supreme Court. In ***Nawab vs. State of UP***[20]Justice Mukherjee clearly stated: It is true that in proper cases an inordinate delay in the execution of the death sentence may be regarded as a ground for commuting it, but we desire to point out that this is no rule of law and is a matter primarily for

[17]Sher sing v state of Punjab AIR 1983 SC 465,473.
[18]See section 363 (4),366(1), 369,432 Cr,P.C, Article 72 and 161 of Constitution
[19]AIR 1978 SC 597.
[20]AIR 1954 SC 278

consideration of the Local Govt. If the court has to exercise discretion in such matter, the other facts of each case would have to be taken into consideration.

The court refused to reduce death sentence to life imprisonment in this case as the murder was cruel and deliberate and there was no mitigating circumstances.

1. Laps of considerable time since the date of occurrence

As regard the sentence, however, their Lordships of the Supreme Court felt that having regard to the considerable time that has elapsed since the date of the occurrence and having regard to the fact that the High Court's decision of acquittal in favor of the accused was being set aside by their Lordships, the extreme penalty of death was considered to be not appropriate[21].

2. Death penalty brooding over the head for an agonizingly long period.

The another factor to be taken into account in prescribing the punishment was that death penalty has been brooding over the heads of the young men for an agonizingly long period. They were committed for trial two years in February, 1972, and were condemned to death by the trial Court in April, 1972. The Court opined. By cold logic, this circumstance, as a mitigating factor, more often than not being the unwanted work of Law's delays is vulnerable. But humane considerations of administering justice tempered with mercy have impelled the Courts to recognize it as an ameliorating circumstance. In the last half a century, the science of criminology has taken great strides.

There has been rethinking about crime and punishment. The process is continuing. Winds of compassion for the criminal blowing the world over, are affecting law and logic, and the judge and the legislature alike, Draconian notions and retributive relics of lex talionis are yielding to "Mankind's concern for Charity". In every creature, "born but to die". It is "blindness to the future, kindly given". That keeps life gong. But in a condemned man, the Book of Fate open before him constantly telling of the doom prescribed, the life-stream of hopes on aspirations rapidly starts drying under the excruciating heat of the mental distress. With passage time the prisoner painfully awaiting execution, becomes on better that a "lifeless" mummy. It was in this perspective that this Court in (AIR 1973 Supreme Court 2699: 1973 Cr.LJ 1832), ruled that if there has been a long interval between the date of the offence and the consideration of appeal by

[21] State of UP v Sughar Singh and others, 1978 Cr.LJ 141 AIR SC 191

the Supreme Court, the capital sentence for the commission of an offence under Section 302, Penal Code for which the accused has undergone a long period mental agony, the sentence of death may not be exacted similar note was struck by a Bench of this Court constituted by both of us in ***Ediga anamma V. State of Andhra Pradesh***[22]**.**

Inordinate delay also figured prominently in ***Bissu Mahgoo vs. state of UP***[23] in this case, the High Court had enhanced the sentence of life imprisonment imposed by the trial court to death sentence. The application for leave to appeal to the Supreme Court against the enhanced sentence was granted after one year and ten month. However, Supreme Court once again refused to commute the death sentence on this consideration and shifted the burden to the executive.

However, there was a change in the judicial approach in 1971, as delay was considered to be a good circumstance for reducing death sentence to life imprisonment by the Supreme Court in ***Vivian Roderick vs. State of West Bengal***[24], in this case delay of six years was considered a sufficient ground for imposing lesser sentence for imprisonment for life. Chief Justice Sikri observed that.The appellant has been for more than 6 years under the fear of sentence of death. This must have caused him unimaginable mental agony. In our opinion, it would be inhuman to make him suffer till the Govt. Decides the matter on a mercy petition. We consider that this is now a fit case for awarding the sentence of imprisonment for life.

The importance of this case lies in the fact that Supreme Court itself commuted the death sentence on the ground of delay instead of leaving the issue for the executive to decide. Secondly, the inordinate delay emerged as a sole criterion for commutation of death sentence.

In ***Swamy shraddananda v state of Karnataka***[25] is a landmark judgment. There are certain reasons as to why it is considered to be a landmark decision. First, it was rendered by a Bench of three judges to resolve a rare deadlock between two judges on whether the accused should be sentenced to life imprisonment or be condemned to death. Secondly, this was the first explicit admission by the Supreme Court that the rarest of rare cases principle nor the *Machhi Singh* categories were followed by it uniformly and consistently. Thirdly, the Court laid down the theoretical foundations of subjecting an accused to 20 or 30 or 35 years of imprisonment

[22]State of Bihar v pasupathi Singh and another, AIR 1973 SC 2699
[23]AIR 1954 SC 714
[24]AIR 1971 SC 1586
[25] (2008) 13 SCC 767

without any remission so that the practical inadequacy of life imprisonment, which roughly works out to be 14 years or so due to remission by the appropriate Government, does not lead to blood-thirsty judges which was frowned upon in *Bachan Singh*.

In Mahindra Nath das v Union of India[26] in this case the court has held that taking note of the fact that there was a delay of 12 years in the disposal of the mercy petition and also considering the fact that the appellants therein were prosecuted and convicted under section 302 of IPC held the rejection of the appellants' mercy petition as illegal and consequently, the sentence of death awarded to them by the trial Court which was confirmed by the High Court, commuted into life imprisonment due to long delay.

In ***Ajay Kumar Paul v Union of India and others***[27] the accused had submitted a mercy petition to the President, pleading for a revision of his death sentence. However, the petition was rejected after a long duration of 3 years and 10 months. The accused then appealed in the Supreme Court for commutation of his sentence on the basis of an inordinate delay in the rejection of his Mercy Petition. The court ruled that there was an inordinate delay in the disposal of his petition, and this delay was solely on the part of the functionaries and authorities, with no fault of the accused. The accused had been kept in solitary confinement for this whole duration and this also acted as a relevant factor. Thus, considering all of these, the court finally commuted the sentence to one of life imprisonment.

In ***Sabnam case***[28] the judiciary has evolved various guidelines and legal check on death penalty. And therefore, abolition of capital punishment should be left to the wisdom of parliament to decide. It has become fashionable to put capital punishment in a pigeon hole of human right violation.

In Ashoka Debbarama v State of Tripura[29] The case is concerned with a tragic incident in which a group of Armed Extremists at Jarulbachai village in the night of 11.2.1997, set fire to twenty houses belonging to a group of linguistic minority community, in which 15 persons lost their lives, which included women and children and causing extensive damage to their

[26] (2013) 6 SCC 253
[27] (2014) 12 SC 193
[28] 2015 (7) SCC 12
[29] (2014) 4 SCC 747

properties. More than 15 persons were died. Looking at the serious nature of the evidence, investigation was handed over to the Criminal Investigation Department (CID) and PW20 (a DSP) was entrusted with the investigation. PW20 filed a charge-sheet against 11 persons. The Additional Sessions Judge in terms of provisions contained in Section 366 (1) CrPC referred the matter to the High Court for confirmation of death sentence awarded to the Appellant. The Appeals as well as the Reference were heard by the High Court. The High Court vide its judgment and order dated 5.9.2012 set aside the conviction of the Appellant under Section 27(3) of the Arms Act, 1959. However, the death sentence under Section 302 IPC read with Section 34 IPC, in addition to the sentence passed for offence under Sections 326 and 436 read with Section 34 IPC, was sustained, against which these Appeals have been preferred. Consequently, the SC gave the verdict that, while altering the death sentence to that of imprisonment for life. We are inclined to fix the term of imprisonment as 20 years without remission, over and above the period of sentence already undergone, which, in our view, would meet the ends of justice.

In Vyasa v State of Bihar[30] this case court has suggested that the degree of evidence for conviction and sentence is different. If conviction for murder has been reached by a court on certain evidence for capital punishment greater evidence is required. In this case the offenders were found guilty of a retaliatory killing of 35 persons of upper caste in village Bara, gaya district, Bihar on 12.02.1992. They were given death sentence under section 3(1) of the terrorist and Disruptive Activities (prevention) Act 1987 etc. and the life imprisonment under section 302, read with sec 149,307 etc. of Indian penal code. This being a death reference case, the Supreme Court has decided the validity of the conviction and sentence. The court tested the evidence on the basis of FIR, eye witness and role played by the accused. Regarding Naresh paswan the finding of the court was that his name was not mentioned on the FIR. Out of two injured witness, one Lawlesh Singh, could not attribute any role to accused. Another injured witness Birendra sing states in the dock that he had seen the appellant slitting the throats of various persons but failed to identify Naresh paswan in the court. Similarly other witness could not attribute any particular role to Vyasa Ram. The conviction of both for murder was upheld. The capital punishment, however awarded under TADA was reduced to life imprisonment.

[30] 2013(11)SC 349

In ***C. Muniappan v State of Tamilnadu***[31] the full bench held that the case is not fit for extreme capital punishment, because of Physical aspects, mental aspects and victims, the three were considered. Neither physical aspect nor mental aspects satisfy the strict test of rarest of rare case.

In Kumar v Inspector of Police[32] The issue is whether cruel and heinous manner of committing crime is sufficient to attract death sentence? Decision: Appeal is allowed the Appellant thus This Court must remain mindful of the two fundamental objectives of penology which apply even in such grotesque cases: i.e. (a) deterrence and (b) reformation. Other factors such as seriousness of the crime, the criminal history of the Appellant and also his propensity to remorselessly commit similar dastardly crimes in the future, must be considered. In the present case, having assessed the aforesaid mitigating factors including the Appellant's conduct after the commission of the crime, we observe that this case does not fall into the category of rarest of the rare. Consequently, the conviction and other sentences except the death sentence are hereby upheld.

In Sangeetha v State of Haryana[33] In these appeals, this Court issued notice limited to the question of the sentence awarded to the appellants. They were awarded the death penalty, which was confirmed by the High Court. In our opinion, the appellants in these appeals against the order of the High Court should be awarded a life sentence, subject to the faithful implementation of the provisions of the Code of Criminal Code, 1973. Therefore, the court was allowing the appeals to the extent that the death penalty awarded to the appellants is converted into a sentence of life imprisonment.

In birju v state of M.P[34] The issue is whether it is a rarest of rare case to award death sentence in view that the accused is having a criminal record and his age is 45 yrs as on the date of the appeal? The appeal is allowed and death sentence is commuted with life imprisonment with 20 ears of rigorous imprisonment, without remission, to the Appellant, over the period which he has already undergone, would be an adequate sentence and will render substantial justice

[31] 2016 (3) 406
[32] (2015) 2 SCC 346
[33] (2013) 2 SCC 452
[34] AIR 2004 SC 1504

'India becomes 14th country to introduce death penalty for child rape'

The gang rape and murder of an eight-year-old girl in January 2018 in Kathua, Jammu & Kashmir, and the 2017 rape of a 17-year-old girl in Unnao, Uttar Pradesh, had led to calls for more severe punishment for such crimes. Three months later, the government passed the ordinance. "India has become the 14th country now to have introduced death penalty for rape of child (without murder). The primary argument, especially in popular discourse initiated by political rhetoric, has been that death penalty has a certain deterrent effect on potential offenders and hence it should continue to be a practice of punishment for heinous crimes,"

86% Death sentences in 2017 for murder/murder involving sexual offence

Of the 109 prisoners awarded death sentence in 2017, 43 persons (39%) were sentenced to death for murder involving sexual violence–where the main offence along with the murder charge was rape. This was up 79% from 24 persons who were awarded the death sentence for similar crimes in 2016.Most death sentences–to 51 persons (47%)–were awarded to prisoners convicted only for murder, termed as 'murder simpliciter' in 2017. Other offences leading to death sentences are 'rioting and murder' (5), 'terror' (5), 'kidnapping and murder' (3), and drug offence (2).

Death sentences under murder simpliciter and murder involving sexual violence accounted for 86% of all death sentences awarded in 2017.In 2017, the most death sentences–to 23 people (21%)–were awarded in Maharashtra, followed by Uttar Pradesh (19) and Tamil Nadu (13).

The most death sentences were awarded in 2007 (186), followed by 164 in 2005, India Spend reported in July 2015, based on the analysis of government data between 2004 and 2013. Ninety five prisoners were awarded death sentence in 2014, and one executed in 2015 with 101 granted death sentences. As many as 720 prisoners have been executed in India since 1947, Centre on the Death Penalty data show. Uttar Pradesh accounts for nearly half (354) of all executions in India since 1947, followed by Haryana (90) and Madhya Pradesh (73).

India among 56 countries to retain death penalty

Death sentence has been abolished in 142 countries in law or practice across the world while 56 have retained it, according to this March 2018 report by Amnesty International, a global human rights advocacy. Apart from India, other prominent countries that have retained death penalty are United States of America, China, Japan, Bangladesh, Indonesia, Malaysia, Pakistan, Saudi Arabia, Singapore, Thailand and United Arab Emirates.

Total number of prisoners under the sentence of death in 2017

With 371 death row prisoners, 2017 saw a downward trend in the total number of death row prisoners, as well. 2017 not only saw fewer instances of imposition of the death sentence but also more acquittals and commutations by the various High Courts. There were 53 commutations by the High Court, as opposed to 44 commutations in 2016, and 35 acquittals which is significantly higher than the 14 High Court acquittals in the previous year.

Nature of crime in 2017

The data on the nature of crime of those sentenced to death in 2017 has been categorized into murder simpliciter (includes cases where the prisoners were convicted only for murder), murder involving sexual violence, terror offences, dacoit and murder, robbery and murder, kidnapping and murder, rioting and murder, and drug offences. An analysis of the nature of crimes for which persons were sentenced to death reveals that murder simpliciter and murder involving sexual violence constituted 74% of the total crimes for which the death penalty was imposed in 2016, and 86% of the total crimes for which the death penalty was imposed in 2017.

Conclusion

Capital punishment jurisprudence in India is full of inconsistency and controversies. Executive delay in mercy petition without any convincing arguments is a routine matter for which no one is made accountable. Judiciary from 1980 inaugurated forming mandatory guidelines with rarest of rare cases doctrine. Lord denning rightly said that the judge has not been born who has never committed a mistake; indeed the free of ideas and intervention by legal authorities should be encouraged. Justice Katju deserves appreciation for showing his concern and appearing the Supreme Court. If the practice of pointing mistake of law, correcting mistake of law and innovating new ways to correct mistake continues in positive spirit we will find a more mature judicial decision with negligible chance of human error.

In the last, we can conclude it in a few words that, if a prisoner is sentenced to death, it is lawful to execute that punishment and that only. He cannot be subjected to humiliation, torture or degradation before the execution of the sentence not even as necessary steps in the execution of that sentence. That would amount to inflicting a punishment on the prisoner which does not have the authority of law. Therefore, torture, brutality barbarity, humiliation, degradation of any kind is impermissible in the execution of any sentence.