

Hanging In India – Supreme court Review

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Abstract: *In Colonial India ,death was prescribed as one of the punishments in the Indian Penal code,1860,which listed a number of capital crimes . The first hanging in independent India was that of Nadhuram Gadse and Narayan Apte in the Mahatma Gandhi assassination case on 15th Nov 1949.The code of criminal procedure 1898 called for the method of execution to be Hanging. The concept of curative Petition was evolved by The Supreme court of India in the matter of Rupa Ashok Hurra vs Arur (2002).According to the constitution of India ,The President and the Governors of state are bound to act on the advice of the union council of ministers while deciding on the mercy petitions.*

Key words: *Hanging, Capital Punishment, Mercy Petition, Death sentence, Death Penalty,warrant,Judicial Review.*

I. Introduction:

India retains capital punishment for a number of serious offences, The supreme court of India has allowed the death penalty to be carried out in five instances since 1995,which a total of 26 executions have taken place in India since 1991.

In December 2007, India voted against a united nations general assembly resolution calling for a moratorium on the death penalty on 31st August 2015,the commission of India submitted a report to the government which recommended the abolition of capital punishment for all crimes in India, excepting the crime of washing war against the nation or for terrorism related offences . The report cited several factors to justify abolishing the death penalty, including its abolition by 140 other nations its arbitrary and flamed application and its lack of any proven deterring effect on criminals .

II. Hanging In India:

In colonial India, death was prescribed as one of the punishments in the Indian penal code, 1860, which listed a number of capital crimes. It remained in effect after independence in 1947.The first hanging in independent India was that of Nathuram Gadse and Narayan Apte in the Mahatma Gandhi assassination case on 15th Nov 1949.Under article 21 of the constitution of India no person can be deprived of his life except according to procedure established by law.

In addition to the Indian penal code series of legislation enacted by the parliament of India have provision for the death penalty. Under the commission of Sati (prevention)act, 1987 part II,section 4 (I) ,if any person commits sati, who ever abets the commission of such sati, either directly or indirectly, shall be punishable with death. The code of criminal procedure (1898) called for the method of execution to be hanging. The same method was adopted in the code of criminal procedure (1973).The Army act and Air force act also provide for the execution of the death sentence section 34 of the Air force Act ,1950 empowers the court material to impose the death sentence for the offences mentioned in section 34 (a) to (o) of the air force act provides for the form of the sentence of death as convicted of conspiracy in connection with the 2001 Indian Parliament attack and was sentenced to death. The supreme court of up held the sentences ruling that the attack .shocked the conscience of the society at large Afzal was scheduled to be executed on 20th oct 2006,but the sentence was stayed Guru was hanged on 9th Feb. 2013 at Delhi's Thihar jail.

2.1. Curative Petition:

The concept of curative petition was evolved by the supreme court of India in the matter of Rupa Ashok Hurra vs Arrur (2002) Where the Question was whether an aggrieved person is entitled to any relief against the final Judgment /order of the supreme court in the said case held that in order to prevent abuse of its process and to cure gross mischarge of Justice, it may reconsider its judgments in exercised of its inherent powers. ‘awarding a sentence of death, a court material shall in its description, direct that be odd ender shall suffer death by being hanged by the neck until he be dead or shall suffer death by being shot to death ‘ This provides for the discretion of the court material to either provide for the execution of the death sentence by hanging or by being shot to

death. In recent heats, the death penalty has been imposed under new anti terrorism legislation for people convicted of terrorist activities on 3 Feb. 2013, in response to public outcry over a brutal gang rape in Delhi.

2.2. Death Penalty In Independent India:

At least 100 people in 2007, 40 in 2006, 77 in 2005, 23 in 2002 and 33 in 2001 were sentenced to death, according to Amnesty International figures. About 26 mercy petitions are pending before the President, some of them from 1992. Seema Gasit and Renuka Shinde are the only two women in India on death row, whose mercy pleas were rejected by president after Supreme court of India confirmed their death sentence . As of July 2015, President Pranab Mukharjee has rejected 24 mercy plans including that of Yakub Memon, Ajmal Kasbah, Afzal Guru on 27 April 1995.

III. Clemency In The Indian Constitution:

After the award of the death sentence by a session Trial court, the sentence must be confirmed by a High court to make it final. Once confirmed, the condemned convict has the option of appealing to the Supreme Court. The Indian constitution grants clemency powers to the President and the Governors of states, respectively through articles 72 and 161 of the constitution of India; respectively .The purpose was to add a human approach by means of a reprieve or mercy. The Constitution of India permits any convict who is sentenced to death to appeal for mercy. However, the president and the Governors are not obliged to accept every mercy plea. They are supposed to take their decisions on the basis of the advice given by the cabinet.

According to the Constitution of India, The President and The Governors of state are bound to act on the advice of the union council of ministers while deciding on mercy petitions. The exercise of these powers can be granted under articles 72 and 161, but they are subject to judicial review. The Constitutional of India mandates that the rule of law is essential for all considerations. When the president or Governor, considers the mercy petition or clemency petition on the basis of caste, religion or political loyalty, it becomes a case of extraneous consideration. The President and the Governors can also exercise their power to pardon on the ground that they do not feel justice was done or the sentence passed by the court is too harsh.

IV. Supreme Court Judgment – A Review

The Supreme court three judge bench has rejected Yakub memons plea against the dismissal of his curative petition and said that the same was disposed of rightly without any Procedural lapse. The apex court also held that there was no lapse in the death warrant issued to Yakub Memon.

The Supreme court Rules, 2013 while dealing with curative petitions, says three senior judges of the Supreme Court should be part of the curative Bench. The Chief Justice of India is never described in any statute of the Constitution as the senior most judge an example for this is found in the Constitution 99 amendment Act 2014, so should the curative process in the Memon petition have included the third senior most Judge in the Supreme Court, Justice J.S. Khehar.

The Supreme Court has a history of deliberating over the death penalty; but, irrespective of its musings on this extreme punishment whose constitutionality it, however, upheld, there has been an agreement among benches that hanging is the least inhuman form of execution. The latest iteration of this declaration came in a 2014 verdict where a bench headed by former Chief Justice of India P Sathasivam declared that based on past decisions of the Supreme Court and "on the basis scientific evidence and opinions of eminent medical persons hanging is the least painful way of ending the life."

Justice Sathasivam authored a verdict where he accepted earlier majority pronouncements that held hanging to as the "most humane" mode of execution of the sentence. But he laid down guidelines requiring a post mortem to be done after the execution to know if the hanging was done properly without inflicting pain due to suffocation as that would be violative of 'due procedure'. The criminal procedure code section 354(5) prescribes the method of hanging in India to execute capital punishment. The predilection using a noose as punishment had led activist Supreme Court judge V R Krishna Iyer to declare way back in 1974 that life sentence should be the rule and death, an exception. Later after the landmark 25-year-old ruling held that death sentence be given in "rarest of rare" cases, in 1983, the Supreme Court had, notwithstanding the criticism about inconsistencies in imposition of death sentence, had tackled the issue of how cruel and barbaric the system of its execution by "hanging till death" was.

"Hanging consists of a mechanism which is easy to assemble. The preliminaries to the act of hanging are quick and simple and they are free from anything that would unnecessarily sharpen the poignancy of the prisoner's apprehension. The chances of an accident during ...can safely be excluded. The method is a quick and...eliminates the possibility of a lingering death." It said. The system of hanging, as now used, avoids to the full extent the chances of strangulation which results on account of too short a drop or of decapitation which results on account of too long a drop. "The system is consistent with the obligation of the State to ensure that the

process of execution is conducted with decency and decorum without involving degradation of brutality of any kind," the Supreme Court held.

The Supreme Court said, in the wake of assertions that there is a dearth of hangman in prisons, a PM is obligatory to find that the cause of death is dislocation of vertebrae, not strangulation. "Constitution permits the execution of death sentence only through procedure established by law and conducting a PM would ensure that this procedure is just, fair and reasonable," A 1962 UN report said: "Hanging remains the most frequent method in use". It lists over 25 countries of the world in which the method of hanging is used for executing the death sentence. In the US, only hanging is an option only in two states, one of which is Washington; most states execute through lethal injections.

V. Comments on Hanging

"Hanging does not operate now through suffocation, but by a 'long drop', invented by Prof. Haughton of Dublin, which dislocates the vertebrae and is calculated to produce an instantaneous and painless death."

In 1983 the Supreme Court said: "Humaneness is the hall-mark of civilised laws. Therefore, torture, brutality, barbarity, humiliation and degradation of any kind is impermissible in the execution of any sentence. The process of hanging does not have any of these, directly, indirectly or incidentally." Justice Sathasivam had said last year.

After the award of the death sentence by a sessions (trial) court, the sentence must be confirmed by a High Court to make it final. Once confirmed, the condemned convict has the option of appealing to the Supreme Court. If this is not possible, or if the Supreme Court turns down the appeal or refuses to hear the petition, the condemned person can submit a 'mercy petition' to the President of India and the Governor of the State.

The present day constitutional clemency powers of the President and Governors originate from the Government of India Act 1935 but, unlike the Governor-General, the President and Governors in independent India do not have any prerogative clemency powers.

VI. Conclusion

Hanging is a big and final punishment not only in India but also in the world. But Majority of the Intellectuals, Constitutional eminent, Humanitarians opinioned that Hanging is not a correct to control the crime rate and to bring the situation on the trap. Recently Supreme Court of India also commented that these Hanging have to implement for extraordinary terrorist cases, and should not implement the rest of crimes. Sometimes the President of India also may face dilemma towards the mercy Petitions. Finally we can conclude that except the major terrorism cases, these Hanging should not applicable to the common and majority of the crimes also. courts should give the punishments to the criminals accordingly their crime level .

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