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187" REPORT  
  
ON  
  
MODE OF EXECUTION OF DEATH  
  
SENTENCE AND INCIDENTAL MATTERS  
  
LAW COMMISSION OF INDIA  
  
OCTOBER, 2003  
  
  
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‘DO No.6(3)/85/2003-LC(LS) 17 October, 2003  
  
Dear Sri Arun Jaitley,  
  
I have the pleasure of forwarding the 187" Report of the Law  
Commission of India on ‘Mode of Execution of Death Sentence and  
Incidental Matters’. The subject was taken up by the Commission suo motu,  
At present, as per section 354(5) of the Code of Criminal Procedure, 1973,  
the mode of execution of death sentence is “hanging till death’  
  
The Supreme Court in Bachan Singh vs. State of Punjab (1982) 3  
SCC 25, has observed that physical pain and suffering which the execution  
of the sentence of death entails is also no less cruel and inhuman. The  
Commission therefore undertook a study to provide a humane mode of  
execution of death sentence. Accordingly, it circulated a Consultation  
Paper on this issue. ‘The Commission considered various modes of  
execution of death sentence prevailing world wide. Many responses were  
received to this Consultation Paper. A seminar was also organized on this  
subject at New Delhi. On the basis of the various responses and also the  
deliberations held at the seminar, the Commission has prepared this Report.  
  
The Commission has recommended that sec. 354(5) of the CrP.C.,  
1973 be amended by providing an alternative mode of execution of death  
sentence by lethal injection until the accused is dead. It will be in the  
discretion of the Judge to pass an appropriate order regarding the mode of  
execution of death sentence. The convict shall, of course, be heard on the  
question of mode of execution of death sentence before such discretion is  
exercised.  
  
Further, at present, there is no statutory right of appeal to the Supreme  
Court in cases where High Court confirms the death sentence passed by a  
Session Judge or where the High Court enhances the sentence passed by the  
Session Judge and awards sentence of death. ‘The Com  
  
  
  
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consideration of the various responses and views, recommends for  
providing a statutory right of appeal against the judgment of the High Court  
confirming or awarding the death sentence. Accordingly, the Commission  
has recommended that the Supreme Court (Enlargement of Criminal  
Jurisdiction) Act, 1970 be suitably amended for providing right to appeal to  
the Supreme Court  
  
Yet another aspect is important vis-i-vis the armed forces. As of  
now, there is no provision of right of appeal against the sentence of death  
passed by Court Martial under the Army Act, 1950, the Navy Act, 1957 and  
the Air Force Act, 1950. ‘The Commission has, after considering the  
responses and views, recommended that there should be an appeal to the  
Supreme Court against the order of death sentence passed by Court Martial  
mentioned above. It is also recommended that one of the present mode of  
execution of death sentence in the statutes above referred to i.e. ‘hanging by  
neck’, should be replaced by ‘administering lethal injection until accused is,  
dead’. There should be a further provision that lethal injection should be an  
alternative mode of execution of death sentence passed by Court Martial.  
The Commission has therefore recommended that suitable amendments in  
these Acts may be made for these purposes.  
  
Finally, the Commission also recommends that death sentence matters  
should be heard by a five-Judge Bench of the Supreme Court. It also  
recommends that the Supreme Court Rules may be suitably amended to  
bring into effect these objectives.  
  
With regards  
  
Yours sincerely,  
(M. Jagannadha Rao)  
  
Sri Arun Jaitley  
Union Minister for Law and Justice  
Government of India.  
  
Shastri Bhawan  
  
NEW DELHL  
  
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of Death Sentence and Ancillary Matters (With Questionnaire).  
  
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CHAPTER 1  
  
INTRODUCTION  
  
\*State should not punish with vengeance". Emperor Ashoka  
  
Death penalty has been a mode of punishment since time immemorial. The  
‘arguments for and against have not changed much over the years. Crime as well as the  
mode of punishment correlate to the culture and form of civilization from which they  
‘emerge. With the march of ciilzation, the modes of death punishment have witnessed  
signfcant humanized changes. However, in India not much has been debated on the  
  
issue of mode of execution of death sentence.  
  
The Law Commission of India has taken up the subject suo moto due to the  
technological advances in the field of science, technology, medicine, anaesthetics and  
‘since more than three decades have passed by after the 35° Report of the Law  
‘Commission on Capital Punishment, 1967 with reference to the mode of executing  
death penalty. The various modes of execution of death sentence as prevalent at that  
time in 1967 were studied by the Law Commission. The Commission in Topic 88(c)  
paragraph 1149, concluded ;  
  
"We find that there is a considerable body of opinion which would Ike hanging  
  
tobe replaced by something more humane and more paintoss...."  
  
  
Page 6:  
However, the Commission was not able to arrive at any frm conclusion on this  
point as explained in Paras 1150 and 1151  
  
"1180. The mattar is, to a certain extont, one of medical opinion. That a method  
  
whichis cortain, humane, quick and decent should be adopted, isthe general  
  
viow, with which fow can quarrel. It is tue thatthe really agonizing partis the  
  
“anticipation of impending death. But socity owes to itself that the agony atthe  
  
‘exact point of execution bo kept to the minimum. It is, howover, dificult to  
  
‘express an opinion positively as to which of the three methods satisiod these  
  
tosts most, particularly when the two other methods are stil untied. We are not,  
  
‘at present, in a postion to come to a frm conclusion on this point. Progress in  
  
the science of anaesthetics and futher study ofthe various methods, as wall as  
  
the 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.  
  
1151. We do not, therefore, recommend a change in the law on this point. We  
  
Should, however, state here that we do not subscribe to the viow that the  
  
‘substitution of any other method will reduce the deterrent effect of the penalty of  
  
oath.”  
  
{Aso the Royal Commission in its Roport on Capital Punishment 1949-1953 dealt  
with prevalent modes of execution of death punishment and stated that three coneitions  
should be full in exacuting the death sentence (a) it should be as less painful as  
possible; () it should be as quick as possible; and (6) there should be least mutiitation  
of the body. It observed at pages 256-61 as follows:  
  
“in carving out this task the Commission did not confine ise to the four main  
methods of execution, (lethal gas, shooting, electrocution, guilotine). It persuaded  
fenquiry whether thore was any method sill untied that would inflict death as  
  
painless and certain as hanging but "with greater decency and without the degrading  
‘and barbarous association with which hanging i tainted,  
  
  
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‘The Commission decided for various reasons that if lethal injection were to be  
constituted as method of judicial execution in the same case.....The question should  
  
ly examined especially in ight of progress made in the science of  
(9261)  
  
It is now accepted that death punishment is qualitatively diferent from any other  
punishment in as much as itis ireversible and ifan error is commited, there is no way  
to rectify the error. However, in Bachan Singh's caso (AIR 1982 SC 1325), the  
constitutional vaiity of death sentonce was upheld by the Constitutional Bench of the  
Supreme Court of India by majorty of 4:1 with Honble Justice P.N. Bhagwat  
  
dissenting  
  
Nevertheless, the Indian society, being one of the oldest civilizations inthe world  
‘owes to itself that the agony at the exact point of execution should be kept to the  
minimum. This is more so when execution is the result of a judicial verdict. The  
  
‘execution of death sentence in Inca is discussed in Chapter 4 of this Report.  
  
‘The Law Commission, in pursuance of the observations made in the 35" Report,  
decided to conduct study of various modes of execution of death sentence and to  
‘suggest any reforms if needed in the present system of execution of death sentence in  
India. The Law Commission prepared 2 Consultation Paper alongwith a questionnaire,  
the purpose of which was NOT whether the death punishment should be abolished or be  
retained but this is strictly confined to three issues, namely,: (a) the method of  
‘execution of death sentence, (b) the process of elimination of diference in judicial  
‘opinions among Judges of the apex Court in passing sentence of death penalty, and (c)  
the need to provide a right of appeal to the accused to the Supreme Court in death  
‘sentence matters. In this paper, the Commission had referred to the cases decided by  
  
the Hon'ble Supreme Court of India, various enactments, the reports of various  
  
  
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Commissions, history of various modes of execution, various books, artcies,  
newspaper reports, contemporary developments and concerned web sites on these  
  
aspeets.  
  
The Consultan Paper was also made avaliable on the Law Commission's  
‘website lawcommissionof incia.nic.in\* and it was requested that responses should be  
  
‘sont by email or by post to the Member-Secretary, Law Commission of India, New Delhi  
  
The Law Commission also made a summary of the Consultation Paper along  
  
with the Questionnaire for the press and this was also made available on the website  
  
‘Tho Law Commission received many responses to the Questionnaire. On the  
basis of this, the Law Commission propared statistics which are roferred to in the latter  
par of this Report. On August 9, 2008 the Law Commission also held a seminar at  
Indian institute of Public Administration, New Delhi, which was inaugurated by Shri Arun  
  
Jaitley, Hon'ble Minister for Law & Justice and Commerce and Industry.  
  
The Law Commission is encouraged to note that there was wide public interest  
fon this issue. Not only the press gave wide publicly but some newspapers and  
magazines also wrote editorials and articles (for example, see India Today, Apri 28,  
  
2003, and The Times of India, July 25, 2003}  
  
The people, including women, who responded to the questionnaire came from  
various walks of life such as Judges, Advocates, Medical Practitioners, Armed Forces,  
  
Central Police Organizations. The responses by email were ftom India as well as  
  
  
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‘abroad. This report is based on the Consultation Paper and public rasponses to the  
  
‘Questionnaire and the discussions at the Seminar.  
  
‘At the Seminar the Law Commission also gave a power point presentation  
  
‘The recommendations of the Law Commission are given at the end. The  
‘Summary of the Consultation Paper on the Execution of Death Punishment along with  
  
the questionnaire is annexed as Annexure - Io this Report  
  
  
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CHAPTER2  
  
METHODS OF EXECUTION THROUGH AGES  
  
Various modes and methods of infcting death sentence upon the convict as  
practiced in ifferent societies are examined in this chapter. This study isnot  
‘exhaustive of all the modes of execution but covers some of the important practices  
  
followed.  
  
Since Middle Ages death sentence was the common practice throughout the  
World and was inflicted in the case of conviction for large number of crimes, including  
petty offences involving property. In England, during the 18th century, death was the  
punishment for several specific offences which were about a hundred. The death  
penally was executed in various ways. Several methods of execution of death  
sentences involved torture, burning at the stake, breaking on the wheel, slow  
strangulation, crushing under elephants feet, throwing from aiff, boing in the ol,  
stoning to death etc. With the emergence of various principles relating to fair procedure  
contained in the Constitutions of several democratic counties and with the strong,  
Growth of human rights movement, such severe death punishments involving torture  
began to die out since the 18th century. The number of offences punishable by death  
was also reduced in ll leading counties. Also, penalties involving torture disappeared  
withthe idea that punishment by way of death sentence should be swift and humane,  
whether by guilt, hanging, the garotte, or the headman's axe. Some of the  
  
important practices of death penalty are as follows!’ =  
  
"The source of the present description is based on the secondary source of data. The  
Law Commission owes the origin of present information from the various reports of the  
studies conducted by various Commissions, e.g. the New York Commission of Inquiry,  
11888, Royal Commission on Capital Punishment 1949 - 1953. The reliance is also  
  
  
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(a) CRUCIFICATION  
  
Nailing a person to a wooden cross and leaving him there til he died was the  
torturous and popular method of executing death sentence during the years in B.C.  
Jesus Christ was crucified inthis manner. This is the most rial method of death  
punishment and order of this mode of execution of death punishment is found even  
today in several counties all over the world in the symbol of the cross over every  
  
Christian Church,  
  
(b) BURNING AT THE STAKE  
  
"Burning’ dates back to the Christian era. Buming at the stake was a popular  
death sentence and means of torture, which was used mostly for heretics, witches, and  
‘suspicious women. It was in the year 643 AD, an Edict issued by Pope dectared it  
ilegal to bum witches. However, the increased persecution of witches throughout the  
Cconturies resulted in milions of women being burned at the stake. The first major witch  
  
placed on newspaper reports, articles, books. For more information, please find  
reference as follows  
  
(1) Scott - Story of Capital Punishment, Oxford University Press (SC Judges  
Library, classification No.343.253),  
  
(2) The Library of Criminology, Elizabeth Orman Tuttle, London  
Stevenes,Soursiut, Chicago Querd, Books 1961  
  
(3) Administration of Death Penalty in U.S. Intemational Commission of Jurist,  
Report of Mission, June 1986  
  
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hunt occurred in Switzerland in the year 1427 AD. Throughout the 16th and 17\*  
CConturies, witch tals became common throughout Germany, Austia, Switzriand,  
England, Scotland, and Spain during the Inquistion. Soon after, witch tials began to  
cline in paris of Europe, and in England and the death penalty for witches was  
abolished. The last legal execution by buming at the stake took place at end of the  
  
Spanish Inquisition in 1834,  
  
(c) THE WHEEL,  
  
‘The wheel as a method of torture and execution could be used in a number of  
ways. A person could be attached to the outor fim of the whee! and then rolled over  
sharp spikes, or down a hil, to his death, Also, the wheel could be laid on its side, tke a  
turtable, withthe person tied to it. The wheel would tum, and people would take tums  
beating the victim with ron bars, breaking his bones and eventually causing his death  
  
This method was used throughout Europe, especially during the Middle Ages.  
  
(d) GUILLOTINE  
  
‘The guillotine became a popular form of exacuton in France in the year 1769,  
when Dr. Joseph Guillotine proposed that all criminals be executed by the same method  
‘and that torture should be kopt to @ minimum. Decapitation was thought to be the least  
painful and most humane method of execution at that time. Guillotine suggested that a  
capitation machine be bul, Subsequently, the decapitation machine came to be  
named after him. The machine was fist tested on sheap and calves, and then on  
human corpses. Finally, after many improvements and tials, the blade was perfected,  
  
land the first execution by guillotine took place in the year 1792. It was widely used  
  
  
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uring the French Revolution, where many ofthe executions were held publily outside  
the prison of Versailles. King Charles | was also executed inthe same way in England.  
‘Tho last public execution by guiltine was held in France, in June 1939. The last use of  
the guilotine came in 1977 in France, and the device has not officially been used since  
then. Though the guilotine is less painful, itis not acceptable today a i's primitive and  
involves the mutilation of the condemned person. After France was admitted to the  
  
European Union, death sentence itself has since been abolished in France.  
  
(e) HANGING AND THE GAROTTE  
  
Hanging was a very common method adopted for execution among the various  
methods available. The prisoner could simply be hanged with a noose, which could lead  
to death by fracturing the neck. However, if torture was also intended, there could be  
  
methods other than hanging with a noose.  
  
In meciaval times, if torture was intended, a person would be drawn and  
quartered before being hanged. For extremely serious cximes such as high treason,  
hanging alone was not considered enough. Therefore, a prisoner would be carved into  
pieces while stl alive before being hanged. The Garotte was also a popular method of  
torture, and was similar to hanging. A mechanical device such as a rack or a gag would  
be tightened around the person's neck, causing slow strangulation, stretching, and  
‘obstruction of blood vessels. A device could also be placed in a prisoner's mouth and  
  
kept in place by tying and locking a chain around his or her neck.  
  
Hanging is one of the oldest methods of execution and today itis used in some  
  
‘counties as a form of execution. Delaware, New Hampshire and Washington authorize  
  
  
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hanging as a form of execution; depending on the convict's sentencing date he or she  
may be allowed to choose between hanging or lethal injection. Since 1976, three  
prisoners have been hanged in the Urited States. Prior to the execution the prisoner  
must be weighed. The "drop" must be based on the prisoners weight, o deliver 1260  
foot-pounds of fore tothe neck. The prisoner's weight in pounds is divided into 1260 to  
rive atthe drop in feet. The noose is then placed around the convict's neck, behing his  
Cr her loft ear, which will cause the neck to snap. The trap door then opens, and the  
convict drops. If properly done, death is caused by dislocation of the third and fourth  
cervical vertebrae, or by asphyxiation. This lengthy measuring process is to assure  
‘almost instant death and a minimum of bruising. if careful measuring and planning is not  
done, strangulation, obstructed blood flow, or beheading often result. The death by  
hanging however according to most of the medico-urisprudential writs is result of  
‘asphysia or strangulation and fracture of the neck is an exception (oath in judicial as  
  
well as suicidal hanging).  
  
(f) HEADMAN'S AXE  
  
‘This form of execution was quite popular in Germany and England dung the  
‘eth and 17th centuries, where decapitation was thought o be the mast humane form of  
capital punishment, An executioner, usally hooded, would chop off the person's head  
with an axe or sword. The last beheading took place in 1747 in United Kingdom. Later  
con, and before capital punishment was abolished recenty, with a greater interest in  
humantaranism, capt punishment became less gruesome than the beheadings and  
torture that wore commonplace centuries before. Lethal injection and electrocution have  
become the preferred methods of execution in many countries mosty Because these  
  
methods appeared to be less offensive to the public and more humane for the prisoner.  
  
  
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(g) FIRING SQUAD  
  
“Thore is no fixed procedure when it comes to execution by fing squad.  
Usually the convict sted tothe poo, with hands and is blind folded and a cloth patch is  
put on his heart, or he is tied to a chal. in most cases, a team of five executioners is  
used to alm at the convict's hear. In some countries few ofthe rifles are loaded with  
blank bullets and the shooters are not told about itso thatthe true killer is unknown,  
Several countries like Russia and eastern counties like China, Thalland use this  
method. Iti significant to note that shooting by fring squad is also permitted in India  
when a death sentence is given by Court Martial (This is discussed in detail  
‘subsequenty). In some states in United States tke Utah and Oklahoma, choice is given  
to the convict whether he should be shot to death by fring squad or by lethal injection.  
Gary Gilmoze in 1977, and John Taylor in 1996 were executed by ring squad in Utah  
  
It is significant to note that the leaders of the thied Reich of Germany, who  
wore given death punishment by hanging atthe Nuremberg tials, asked for execution of  
<éeath punishment by the fring squad as the former was degrading and they wanted a  
  
military death. This reflects that death by hanging is nota dignified method of execution.  
  
(h) GAS CHAMBER  
  
In an execution by the way of lethal gas, the prisoner is restrained and sealed  
  
in an airtight chamber. When given the signal, the executioner opens a valve, allowing  
hydrochloric acid to flow into a pan. Upon another signal, ether potassium cyanide or  
sodium cyanide crystals are dropped mechanically into the acid, producing hydrocyanic  
gas. The hydro cyanic gas destroys the body’s abilty to process blood hemoglobin, and  
unconsciousness can occur within a few seconds if the prisoner takes a deep breath.  
  
However, if he or she holds their breath, death can take much longer, and the prisoner  
  
  
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usually goes into wild convulsions. Death usually occurs within six to 18 minutes. After  
the pronouncement of death, the chamber is evacuated through the use of carbon and  
neutralizing fiters. Crews wearing gas masks decontaminate the body with bleach  
solution, and itis out gassed before being released. If this process was nat done, the  
undertaker or anyone handling the body would be killed. Nevada was the first stato to  
sanction the use of the gas chamber, and the fist execution by lethal gas took place in  
February, 1924. Since then it remained a means of carrying out the death sentence 31  
times. Five States inthe U.S.A. authorize the use of the gas chamber as an altomative  
to lethal injection, viz. Arizona, California, Maryland, Missour, and Wyoming. In most  
‘cas08 the prisoner is allowed to choose the method of execution, depending on his or  
her date of sentencing. Eleven people have been executed by lethal gas in the United  
States since 1976. This method however is expensive and cumbersome. It also brings  
back to the mind the sad fact that hundreds of thousands of Jows wore killed in gas  
  
‘chamber by the Nazi Germany.  
  
(i) ELECTROCUTION  
  
In a typical execution using the electic chair, a prisoner is strapped to a  
‘specially built chair, his head and body shaved to provide better contact with the  
moistened copper electrodes that the executioner attaches. Usually three or more  
‘executioners push buttons, but only one is connected to the actual electrical source and  
therefore the real executioner is not known. The jolt varies in power from state to state,  
and is also determined by the convicts body weight. The first jolts followed by several  
more in a lower voltage. In Georgia, executioners apply 2,000 volts for four seconds,  
41,000 volts for the next seven seconds and then 208 volts for two minutes. Electrocution  
produces visibly destructive effects on the body, as the internal organs are burned. The  
  
prisoner usually leaps forward against the restraints when the switch is turned on. The  
  
  
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body changes color, swells, and may even catch fre. The prisoner may also defecate,  
urinate, and vomit blood. The frst electric chai designed for an execution was created  
by George Westinghouse atthe turn ofthe century. Westinghouse was propostioned by  
the New York City Correctional institution to design an electric chair, because many felt  
tat the present form of execution, hanging, had become too inhumane and out-dated.  
Westinghouse told the correctional institution that the chalés power source was so  
<eadly that it would only take five seconds of 1,000 volts to cause death. However, the  
fist man executed did not dio after five seconds, but instead took four minutes of a  
steady stream of power to be finally pronounced dead. During these four minutes the  
body ofthe convict started to smoke, the hair on his arms and head ignited in lames,  
‘and blood spilled from every orifice on his face. After this display, the electric chair was  
considered a failure. Today the electric chair is modernized and is used in eleven States  
of USA. But, Arkansas, Kentucky, Ohio, Oklahoma, South Caralina, Tennessee, and  
Virginia States of U.S.A. authorize both lethal injection and electrocution, allowing the  
inmates to choose one of these methods. Alabama, Florida, Georgia, and Nebraska,  
however, use electrocution as the sole means of execution. Since 1976, 144 people  
  
have been executed by electric chair.  
  
(j) LETHAL INJECTION  
  
Death by lethal injection involves the continuous intravenous injection of a  
lethal quantity of three different drugs. The prisoner is secured on a gumey with lined  
ankle and wrist restraints. A cardiac monitor and a stethoscope are atached, and two  
‘saline intravenous lines are started, one in each arm. The inmate is then covered with a  
‘sheet. The saline intravenous lines are tured off, and Sodium Thiopental is injected,  
‘causing the inmate to fall nto a deep sleep. The second chemical agent, Pancuronium  
  
Bromide, a muscle relaxer, follows. This causes the inmate to stop breathing due to  
  
  
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paralysis of the diaphragm and lungs. Finally, Potassium Chloride is injected, stopping  
  
the heart.  
  
Since 1976, many prisoners have been executed by lethal injection in the  
United States. Lethal injection is now the most common method of execution in the  
United States in ragard to all the 66 executions caried out during 2001 being by this  
method. OF the 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 was frst considered as a means of execution in 1888 when  
Now York's J. Mount Bleyer MD put i forward in an article inthe Medico-Legal Journal  
‘suggesting thatthe intravenous injection of six grains of Morphine should be used for  
‘execution of death sontonce. The idea did not catch on and New York introduced the  
‘lectic chair instead ( Based on the findings of the New York Commission of Inquiry  
41888). it was again put forward in 1977 by Dr. Stanley Deutsch, who at the time chaired  
the Anaasthesiology Department of Oklahoma University Medical School. In response to  
2 call by an Oklahoma State senator Bil Dawson for a cheaper alternative to repairing  
the State's darelict electric chair, Deutsch desorbed a way to administer drugs through  
an intravenous drip so as to cause death rapidly and without pain. Deutsch wrote to the  
Senator Bill Dawson “Having beon anaesthetised on several ocoasions with ultra short  
‘acting barbiturates and having administored these drugs for approximately 20 years, |  
‘can assure you that this is @ rapid, pleasant way of producing unconsciousness”. And  
‘Oklahoma thus became the fist Stato in the U.S.A. to legislate for it in 1977. Texas  
introduced similar legislation later in the same year to replace its electic chair and  
  
carried out the first execution by the method of lethal injection on December 7, 1982  
  
  
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when Charles Brooks was put to death for the murder. It ill be relevant here to mention  
the observation of this execution procedure. The procedure began at 12.07 am. He was  
certified dead at 12.16 am. There was no apparent problem and Brooks seemed to die  
quite easily At fst he raised his head, clenched his fist and saemed to yawn or gasp  
before passing into unconsciousness. 36 American States now use lthal injection either  
  
4a their sole method or as an option to one of the traditional methods.  
  
These are Arizona, Arkansas, Califomia, Colorado, Connecticut, Delaware,  
Florida, Idaho, lino, Indiana, Kansas, Kentucky, Louisiana, Mayland, Mississipp  
‘Missouri, Montana, Nebraska, Nevada, New Hampshire, Now Jersey, New Mexico, Now  
York, North Carolin, Ohio, Oklahoma, Oregon, Pennsyivania, South Carolina, South  
Dakota, Tennessee, Texas, Utah, Virginia, Washington and Wyoming  
  
‘Tho Philippines has also decided to use lethal injection fr future executions to  
replace the electric chair and carried out its frst execution since 1976 when Leo  
Echegaray was put to death for child rape on February 4, 1999 and 6 more men have  
been executed by this method by the end of 2000. Guatemala has also switched to  
lethal injection after a botched firing squad execution in 1996 and carried out three  
‘executions since then, China also has been experimenting with lethal injection although  
most executions continue to be by shooting. The present trend thus seems to be that of  
  
favoring execution by lethal injection.  
  
  
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CHAPTER 3  
FEDERAL EXECUTIONS AND TYPICAL  
EXECUTION PROCEDURE IN DIFFERENT  
STATES IN THE U.S.A,  
  
‘THE FEDERAL EXECUTION  
  
‘The American Federal Bureau of Prisons has lethal injection facility at the  
{federal prison in Terre Haute, Indiana. The death house is located inside a non-descript  
brick building outside the main penitentiary compound, and consists of fve viewing  
rooms surrounding the execution chamber. The chamber is a stark, hospitalike room  
  
lined with green tiles and bare except fort  
  
large gumey equipped with five Velcro  
restraints and a sink in one comer. The intravenous tubes pass through a smal  
‘pening in the wall and into the executioners room nearby. All but one room, the  
‘executioners, are equipped with large two-way windows with curtains. The executioners  
‘00m is fited with one-way glass. During an execution, prison officials will maintain an  
  
‘open telephone line to t  
  
Justice Department in Washington as the President ofthe  
U.S.A has sole authorty to grant last minute clemency. Overhead, a camera linked to a  
monitor inside the executioners room will watch the process to note whether the  
prisoner suffers any pain during the procedure. On the June ‘1th 2001 Timothy  
MeVeigh, the Oklahoma City bomber became the first parson to be executed under  
Fedoral law since 1963. He had placed a bomb outside the Aled P Muah Federal  
Building, kiling 168 people and injuring 850. The intravenous drip that delivered the  
  
lethal chemicals went to a catheter in McVeigh's ight leg. The first drug was  
  
  
Page 21:  
‘administered at 8.10 arm., withthe second being given at 8.11 and the final one at 8.13  
‘and he was pronounced dead at 8.14 am. The whole process took only four minutes.  
‘On June 19, Juan Raul Garza, a Mexican-American drug lord, who was also fond of  
murder, was executed on the same gumey. The American miltary has also moved to  
lethal injection (from hanging) and now has a facility in the basement of the miltary  
  
prison at Ft. Leavenworth, Kansas which is currently housing shx or seven inmates.  
  
EXECUTION IN DIFFERENT STATES  
  
Lethal injection protocols ( which ara confidential in nature ) vary from Stato to  
State. Typically the prisoner is strapped to @ gumey (which is a wheeled hospital style  
trolley bed) ora fixed execution table rather lke an operating theatre table by leather or  
\obbing staps over the body and legs. His bare arms are strapped to boards projecting  
{rom the sides of the guimey. Trained technicians then insert a catheter into a vein in  
‘each arm, a process that sounds much simpler than it often is. Once the catheters are in  
place tubes carrying saline solution are connected to the catheter ends and the prisoner  
is either wheeled into the execution chamber or the curtains surrounding it aro drawn  
back to allow the witnesses to see the procedure. When the condemned person has  
made any final statement the prison warden gives the signal for the execution to begin  
‘and the technician(s), hidden from view behind a two way miror begins to manually  
inject the three chemicals comprising typically 15 ~ 50 ce of Sodium thiopental, 15 - 50  
‘cof Pavulon (the generic name for Pancuronium bromide) and 15 - 50 cc of Potassium  
Chloride. There isa shor interval between each chemical during which saline solution is  
injected to clean the vein and prevent any chemical reaction which could block it.  
“Typically the actual injections wil ake from three to five minutes to compete.  
Sodium thiopental is @ short acting barbiturate which causes unconsciousness quite  
  
Quickly. Pavulon is a muscle retaxant that paralyses the diaphragm and thus arrests  
  
  
Page 22:  
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breathing whilst Potassium chloride finishes the job by causing cardiac ares. In most  
‘cases the prisoner is unconscious in about a minute aftr the Sodium thiopental has  
been injected and is dead in around eight minutes, with no obvious signs of physical  
sutforing. In somo States, a fully automate lethal injection machine is used that runs off,  
‘2 12 volt batiory. It injects the chemicals in the right order and amount once the  
catheters are in place. The machine has six syringes activated by mechanical plunger.  
“Throe syringes hold the lethal drugs; the other three contain harmless saline solution.  
“Two buttons control the machine, one forthe lethal syringes and one for the identical  
looking harmless ones. The two executioners each press a button and the syringes  
release the drugs into the vein. The condemned prisoner thus is put to death while in  
  
sleep by this swift and painless method.  
  
  
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CHAPTER 4  
EXECUTION OF DEATH SENTENCE IN INDIA  
  
‘Tho execution of death sentonce in India is cariod out by two modes namely  
hanging by neck til death and being shot to death. The jail manuals of various States  
provide for the method of execution of death sentence in India. Once death santance is  
awarded and is confirmed after exhausting all the possible available remedies the  
‘execution is cariod out in accordance with section 354(5) of the Code of Criminal  
Procedure1973 i.e. hanging by neck til death. I is also provided under The Air Force  
‘Act, 1960, The Army Act 1950 and The Navy Act 1957 that the execution has to be  
carted out either by hanging by neck til death or by being shot to death (as has been  
  
‘explained in detail herein below).  
A. Code of Criminal Procedure, 1973, and the Prison  
  
Manual  
  
Section 368(1) of the Code of Criminal Procedure, 1898 provided for hanging by  
neck til death. This has been amended by the Code of Criminal Procedure, 1973.  
  
Section 354(5) reads as under:-  
  
"Chapter VI of The Air Fore Act, 1980 in Section 34 provides for the offences in elation to the enemy  
‘which ate punishable with death. Section 37 provides forthe infliction of death sentence in case the acused  
Js convicted Chapter VIE provides forthe various punshmons and the competent cour-martals te  
‘mpowtred to resommend sich punishments. Section 73 provides forthe punishments awadable by Court  
‘ara Chater XII provides fr the Canfimation and Revision provisions. Chaper XII provides forthe  
Execution of Sentences, section 163 dels with the form af the sentence of Death The provisions eating  
tw awarding the Death penaly in The Amy Act, 1980 are enunciated in Chapter VI Seation 34 (a) 1 ()  
‘elates 1 offences in elation to the enemy and punishable with eat, Seton 37 relates to Mutiny ad  
‘ovides fr the infliction of death sentence in case the acused i convicted. Chapter VIL deals with  
punishments awardable by cour-martals, Chapier XII lates o Contiamation and Revision, Chapter XI  
Than Exccution of Sestences, Secon 166 deals with fom of Sentence of Death, Section 147 of The Navy  
‘Act 1987 roves for the Form of Death Sentence  
  
  
  
Page 24:  
Ba  
  
"When any person is sentenced to death, the sentence shall direct that he be  
  
‘hanged by the neck til he is dead.”  
  
‘Tho execution of the death penalty in India, under the Code of Criminal Procedure, is  
thus carted out by hanging by neck til death during the last over hundred years. The  
‘execution of the death penalty is carried out in accordance with section 354(5) of the  
Code of the Criminal Procedure, 1973, and Jail Manuals of the respective States. For  
‘example, Chapter XXX), Jail Manual of Punjab and Haryana provides for the various  
‘steps leading tothe execution ofthe death sentonce:-  
  
"Paragraph 847(1) Every prisoner under the sentence of the death shall  
Jmmeciatoly on his arzval in the prison after sentence, be searched by, or by order of  
the Deputy Superintendent, and all articles shall bo takan from him which the Deputy  
‘Superintendent deoms it dangerous or inexpediont to leave in his possession”  
  
“Paragraph 847(2) Every such prisoner shall be confined in a cell apart trom  
all other prisoners, and shall be placed by day and by night under the charge of a  
‘quard.”  
  
‘ter such admission ofthe prisoner in the jai, the Deputy Superintandent is  
required to examine the cell and has to satisfy himself that tis secure and has no article  
Which can be used as a weapon or instrument with which the prisoner can commit  
‘suicide. The said Deputy Superintendent also has to ensure that there is nothing in the  
call which in his opinion i inexpedient to permit its remaining in such cal  
  
Paragraph 848 Coll fo be examined - Every cell in which any convict who is  
under sentence of death, is at any timo t0 be confined shal, before such convict is  
placed in it, be examined by the Deputy Superintendent, or other officer appointed in  
tat behalf, who shall satisty himself that it is secure and contains no article of any kind  
  
which the prisoner could by any possibilty use as a weapon of offence or as an  
  
  
Page 25:  
instrument with which to commit suicide, or which it is, in the opinion of the  
  
‘Superintendent, inexpedtent to permit to remain in such coll."  
  
The Manual also describes various restrictions pertaining to the use of the apparels etc.  
Paragraph 851 provides that the condemned prisoner shall not be provided Munj mat or  
bhabbar mat. This clause Is intended to avoid presence of any substance which can be  
  
used by the prisoner as instrument for committing suicide.  
  
“Paragraph 851 Mun) mat not to be issued - Prison clothing, bedding and necessaries  
‘shall be issued to condemned as to other convicts, with the exception of the Mun) or  
  
‘bhabbar mat which shall be withheld and an extra blanket substituted."  
  
‘The para 854 provides that such prisoner shall be under the constant  
survellance of the guard, and further that he should not be allowed to mest or  
‘communicate with any person except those persons authorized by the Superintendent.  
Paragraph 855 provides for raising of the alarm in case the prisoner tes to commit  
  
suicide,  
  
Paragraph 855 : Management of keys, Conditions under which the door may be  
  
opened  
(1) The keys of the callin which a condemned prisoner is confined shall be  
kept by the head warder on duty who, on hearing the alarm, shall proceed  
{0 such cell which, in case of emergency such as attempt by the prisoner  
  
{0 commit suicide, he shall enter and with the help of the sentry fregrate it.  
(2) At-no other time shail the door of the cell in which a condemned prisoner  
  
Js confined, be opened without first handcuffing the prisoner and so  
  
  
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26  
  
‘securing him against the possibilty of using violence or, ithe declines to be  
handcuffed, unless at least three members of the establishment are  
present.  
  
(3) The locks in use in a condemned coll shall be such as cannot be opened  
  
by any keys in use inthe jail, other than these properly belonging to them.  
  
The condemned prisoner and the call in which he is residing are required to be  
searched twice a day by Deputy Superintendent. The paragraph also provides for  
maintenance of ajoumal of such searches and results thereot  
  
Paragraph 858 Condemned prisoners to be searched twice dally -  
‘Moming and evening daly, the Deputy Superintendent or, under his directions, the  
Assistant Superintendent, shall carefully search every condemned prisoner and the call  
hho occupies, with his own hands and make @ note of his having done so and of the  
  
result in his Journal  
  
Paragraph 859 casts duty on Deputy Superintendent and other officers to  
‘examine the food given to such condemned prisoner. I is enunciated thatthe ordinary  
<letof a labouring convict should be provided tothe condemned prisoner  
  
Para 859 - Diet. Precautions to be taken - (1) A prisoner under sentence of  
‘death shall be allowed the ordinary diet ofa labouring convict.  
(2) All food intended for consumption by a condemned prisoners shall be  
‘examined by the Deputy Superintendent, Assistant Superintendent or Medical  
Subordinate, who may withhold any article he regards with suspicion and report the  
‘cumstances tothe Superintondent. The food shall be delved tothe prisoner in tho  
  
presence of one or other of these officers.  
  
  
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”  
  
‘The provisions regarding the execution of a pregnant woman, exceptions in  
cases of female, allowing the prisoner to make use of books etc, are elaborately  
discussed in Paragraphs 859 to 864. The elaborate description of the rope to be used  
  
{or the purpose of hanging, its testing etc. is provided in Paragraph 866,  
  
Paragraph 866 Description and testing of rope. (1) A Manila rope one inch in  
«lametor shall bo used for executions. At least two such ropes in serviceable condition  
‘shall be maintained at evory jal where executions are lable to take place  
[Noto - The rope should be 19 feet in length, woll twisted, and uly strotched. It should  
bo of equal thicknoss, capable of passing readly through the noose-ring and sufficionty  
‘strong to boar a strain of 280 Ibs. with a7 foot drop.  
2) The ropes shall be tested in the presence of Superintendent, atleast a  
ook befor the date fixed for tho execution and it they fall to pass the tot  
‘others shall be obtained at once and tested when received.  
(9) Ropes that have been tested shall be locked up ina placo of safety  
(4) On the evening botore the execution isto take place, the galows and rope  
should be examined to ascertain that they have received no injury since  
boing tested.  
[Note - The rope shal be tested by attaching to one end a sack of sand or clay equal  
fo one and a hal times the weight of the prisoner to be executed and dropping this  
  
weight the distance ofthe drop fo be given to the prisoner.  
  
‘The above provision provides for the testing of the rape to be used for the  
‘execution at two occasions firstly at least before a week form the date of the execution  
‘and secondly on the evening before such execution is to take place. It provides for the  
  
maintaining at least two Manilla ropes of one inch diameter in serviceable condition. The  
  
  
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28  
  
method for testing such rope is by attaching the sack of clay or sand to one end which is  
  
‘equivalent to one and hatf times of the weight of such prisoner. The length ofthe drop to  
  
be kept same as required for the condemned prisoner.  
  
‘The actual execution process with such background of preparations ete. made  
  
has to be carried out in accordance with Paragraphs 868 to 873. It's briefly as follows:~  
  
1  
  
Tho officers required to be present at the execution are, The  
‘Superintendent and Medica officer ofthe all and Magistrate of the District  
ora first class Magistrate deputed by him. (Paragraph 867)  
  
The execution is to be carried out by the public executioner, whenever  
service of such executioner aro available. If such services are nat  
avaliable then some trustworthy individual who is locally tained is to be  
assigned this job. The duty is entrusted to the Superintendent to satisy  
himsolf that the person so assigned is competent to fuls the job.  
(Paragraph 868)  
  
Regulation ofthe drop: itis most important factor in deciding the regulation  
of the death sentence to be executed. The slightest eror in deciding the  
length of the drop may lead tothe ingering death ofthe condemned man.  
The drop is regulated according to the height, weight and physical  
Corsltion of the prisoner. The Superintendent may also take the advice of  
the Medical Officer in this regard. Paragraph 871 provides for the  
  
‘comparative chart for general guidance of the Superintendent as follows:  
  
Paragraph 871. Regulation of the “drop” - The foliowing scale of drop proportioned  
  
to the weight of the prisoner, is given for general guidance, the Superintendent must  
  
  
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use his discretion and be guided by the advice of the Medical Officer and the physical  
‘condition ofthe prisoner =  
Fora prisoner under 100 lbs woight 7  
Fora prisoner under 120 lbs woight 6  
Fora prisoner under 140 Ibs woight 5-1/2  
Fora prisoner under 160 los woight 5  
‘Noto: Tho last figures namely 7,6, 6-1/2, § denote the height of the drop in terms  
of foo.  
Note: Tho “drop” is the length of the rope from a point on the rope  
‘opposite the angle of tho lower jaw ofthe criminal as he stands on the scaffold,  
to the point where the rope is embraced in the noose ater allowing for tho  
  
‘constriction ofthe neck that takes place in hanging.  
  
‘Time ofthe execution: The time of the execution is provided in the early hours  
of the day. However the time varies as per the chart in the Paragraph 872.  
Paragraph 872. Time of executions. Procedure to be adopted - (1) Executions  
‘hall ake place atthe folowing hours:-  
  
‘November to February aM  
  
‘March, Apr, Soptomber and October 7 AM  
  
May to August 6AM  
  
4, The Superintendent, Deputy Superintendent will reach to the coll of the  
condemned prisoner and will ensure that the identity of such condemned  
prisoner. The warrant of death will be read over to him and the signatures  
  
required on the various documents such as will etc. may be placed by the  
  
  
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prisoner in the presence of the Superintendent. Then the Superintendent  
wil move towards the scaffold. In the presence of the Deputy  
‘Superintendent the convict willbe pinioned behind his back and his legs  
irons (if any) will be struck off  
  
5. Marching towards death: The condemned prisoner shall be marched to the  
scaffold under the charge of the Deputy Superintendent. He will be  
quarded by Head warder and six warders, two proceeding in font, two  
bbohind and one holding ether arm,  
  
6. After reaching at the scaffold {where the Superintendent, District  
Magistrate, Medical Officer already at their respective places} the warrant  
should be readin the vernacular to the convict and he be made over to the  
executioner  
  
7. The warders holding the arm of the convict also shall also mount the  
scaffold with the convict and place him under the direct beam to which rope  
isattached  
  
8. The executioner shall next strap his legs tightly together, place the cap  
cover his head and face and adjust the rope tightly around his neck. The  
noose should be placed one and half inches to the right or left of the  
‘middle line and free from the flap of the cap.  
  
9. The warders holding the condemned man's arms to withdraw at that time  
nd atthe signal from the Superintendent the executioner shall draw the  
bot  
  
410. The body of such condemned prisoner should remain suspended half an  
hour and shall not be taken down til the medical officar decares the ite  
extinct. The Superintondent is required to retum the warrant with the  
  
‘endorsement tothe effect that the sentence has been carried out.  
  
  
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Executions in Accordance with Army Act, Air Force Act and  
  
Navy Act  
  
‘The Amy Act and Air Force Act also provide forthe execution of the death  
sentence. The procedure of execution of death sentence are though not explained in  
<otails but the relevant provisions as has been mentioned in this Report are important  
{rom the view of provisions pertaining to the confirmation and revision petition too. The  
  
various provisions under these Acts can be stated here as under,  
  
The Air Force Act, 1950  
  
‘Tho Air Force Act, 1950 also provides for the awarding of the death sentence  
‘and its executions relating to some offences provided there under explained in deal  
  
‘Tho Death Sentence as provided under The Air Force Act, 1950 will be relevant  
for the purpose of studying the execution ofthe death penalty awarded according to the  
provisions of the Act. Section 34 of the Act provides for the various offences  
contemplated for which the death penalty can be awarded. It provides as,  
  
“shal on the conviction by court-martial, be labo to suffer death or such loss  
punishment as is inthis Act mentioned  
  
‘This section empowers the court martial to award the death sentence for the  
foffences mentioned in section 34 (a) to (0) of The Air Force Act, 1950. These  
  
punishments however are subject to provisions as enunciated in Chapter XII which  
  
¥ Chapter VI of The Air Force Act, 1950 in Section 34 provides for the offences in elation to the enemy  
and punishable with death, Saction 37 i on mutiny and provides Yr the infton of deat sentence in ease  
the accused is convicted. Chapter VII provides fr the various punishments and the competent cour  
‘ata 1 pass i, section 73 provides forthe punishments awardable by Cour mati Chapter XI  
ovides Tor the Confirmation ‘and Revision provisions Chapter XII provides forthe Execution of  
Sentences, section 163 deals wih the form of the sentence of Death  
  
  
  
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contains procedure for the Confimation and Revision provisions. The provision in  
‘Chapter Xill provide for the Execution of sentences.  
  
SECTION 163 provides for tho form ofthe sentence of death as:-  
  
“In awarding a sentence of death, a court-martial shal in its discretion, direct  
that the offender shall suffer death by being hanged by the neck unt he be dead or  
‘shall sufler death by being shot to death’  
  
‘This provides for the discretion of the Court Martial to ether provide for the  
‘execution of the death sentence by hanging or by being shot to death. This section  
provides for the procedure and method in which death sentence isto be cartid out in  
‘accordance with the provisions under the Act. It is important to note that The Air Force  
‘Act, 1950 provides for the execution of tho death by being “shot to death.” This method  
though not being prescribed under the Code of Criminal Procedure, is provided in The  
‘Air Force Act, 1950 for the execution of the Death sentence. This moans that the  
‘execution procedure in Inala also permits the execution of the Death sentence up to  
certain extent by another method namely by being shot to death. This is with the  
‘objective to provide forthe easy simple method ofthe execution in case ofthe convicted  
offender of the offences mentioned in the Act  
  
itis worth mentioning that unless the punishment is confirmed by the concerned  
authorties under the Act” convict will nat be executed. The Act provides forthe findings  
‘and the order to be confirmed by the Central Government or any officer empowered by  
the same in this behalf. This provides for the mandatory reviow of the all the decisions  
cof the Court Marial by the Central Government. Tis enables the Central Goverment to  
  
‘scrutinize the irregularity pertaining to the procedure or the finding ofthe Court Martial  
  
Section 4 (a) 10 (@) of Te At Fore Act, 1980  
Caper XIFof The Ai Force Act, 1950.  
Section 183 of The Air Fore Act, 1950  
  
  
  
Page 33:  
BS  
  
The Army Act, 1950, The Navy Act 1957 also provide for similar provisions tke  
The Air Force Act, 1950. The provisions of The Army Act, 1950, The Navy Act 1957  
‘are similar in nature to that of in The Ar Force Act, 1950 providing forthe option of the  
  
‘execution ofthe death penalty by being shot at death’  
  
[ter referring to these relovant provisions in these Acts inference can be drawn  
thatthe method of shooting as one of the methods provided for execution of the death  
penalty under the Act aims to make it simple and easy to be executed withthe weapons  
‘and equipments avaliable with these forces. The form of shooting @ condemned man  
necessarily involves lass agony as compared to that in the case of the hanging in which  
there isan elaborate procedure as to weighting, measuring of the height, etc. in order to  
<otermine the length ofthe drop specific restrictions are also put as to wearing certain  
  
kinds of apparels, et.  
  
It may be pointed out here that during the Nuremberg tials after the Second  
World War executions, the members of the German High Command who were  
condemned to death opted for the execution of the death sentence by being shot to  
death as against the method of hanging. They wanted soldiers’ death by shooting  
instead ofthe degrading death by hanging. This is sufficient to objectively asser that the  
‘execution by being shot to death is simpler and less painful tothe hanging by neck til  
«ath. The practice ofthis method both in various developing and developed counties  
  
is apparently because this method is simple, easy to execute and less painful  
  
"The provisions relating to avatding the Death penalty in The Amny Act, 1950 are enunciated ia Chapter  
‘i Section 34 (a) to () elas to offences in relation tothe enemy and punishable with death, Section 37  
eas with Mutiny and provides forthe infliction of death sentence in case the accused is convicted. Chaplet  
YIU porns to Punishents swardable by Court Martial, Chapter XII on Confination and Revision,  
(Chager XIII son Excoution of Sentences, Section 166 dcals wi fem af Sentence of Death. Section 147  
(of The Navy Act 1957 provides fr the Foam of Death Sentence.  
  
  
  
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CHAPTER 5  
  
MODE OF EXECUTION OF DEATH SENTENCE  
  
The Commission in this background proposes to comparatively analyse  
various modes of execution of death sentence and suggest the most humane, least  
painful modo, with no mutilation of body and easy to execute. This chapter aims at a  
comparative analysis of the Hanging, Intravenous Lethal Injection and Shooting  
‘This analysis is founded on some basic and widely accepted norms. These are drawn  
{rom the cases decided by Hon'ble Supreme Cout of India, ndings ofthe Commissions  
‘and resolutions adopted by the United Nations Economic and Social CounciECOSOC  
resolution as to standards and safeguards guaranteeing protection of the rights of those  
facing the death penalty viz; Economic and Social Council Resolution 1984/50, annex  
General Assembly Resolution 29/118, 1984.)  
  
‘The tes laid down in Deena v. Union of India (1989}4 SCC 645 provides that  
the execution of death punishment should satisfy the threefold tst vi  
1. It should be quick and simpla as possible, the act of execution should be as quick and  
simple as possible and tree from anything that unnecessarly sharpens the poignancy of  
the prisoner's apprehension.  
2. The act of the execution should produce immediate unconsciousness of the person  
passing quickly into the death  
3. should be decent.  
4. It should net involve mutilation.  
  
The ECOSOC describes one of the important standards and safeguards  
  
against the death penalty and this is enunciated in safeguard No 9 as,  
  
  
Page 35:  
3s  
  
“Where capital punishment occurs it shall be carried out so as to infict  
  
minimum possible suffering”  
  
‘The execution ofthe death sentence by hanging by ope has to be judged with  
reference to the objective factors such as the Intemational standards oF norms or the  
climate ofthe international opinion, modem penologcal theories and evolving standards  
‘of human decency. The standard of human decency wih reference to death punishment  
is requied to be judged with reference to various aspects which vary from socialy to  
society depending on the cultural and spiritual tradition of the socoty, its history and  
philosophy and its sense of moral and ethical values. To take an example, ita sentence  
Cf cutting off the arm forthe offence of thett or a sentonce of stoning to death for the  
offence of aduitery wore prescribed by law, as practiced in South Aca, there can be no  
doubt that such punishment would be condemned as barbaric and eruel in our county,  
‘even though it may be regarded as proportionate to the offence and hence reasonable  
‘and justin some other countries. So also the standards of human decency vary from  
time to time even within the same society. In an evolutionary society, the standards of  
human decency are progressively evolving to higher levels and what was regarded as  
legitimate and reasonable punishment proportionate to the offence at one time, may  
ow according to the evolving standards of human decency, be regarded as barbaric  
  
and inhuman punishment wholly disproportionate to the offence,  
  
It may be observed that even when a dog is to be killed, shooting itis. no  
longer a norm but it is kiled by intravenous injection. Therefore the question arises as  
  
to why man should be executed through archaic method of extinguishing a Ife?  
  
  
Page 36:  
36  
  
Inlight of the above safeguards and views, itis important to note here the  
view taken by Justice Bhagwati (in dissenting Judgment) in Bachan Singh v.  
‘State of Punjab (1982) 3 SCC 25). The said view is as folows:-  
  
"29. The physical pain and suffering which the execution of the sentence  
(of death involves is also no less cruel and inhuman. In Indi, the method  
Cf execution followed is hanging by the rope. Electrocution or application  
of lethal gas has not yet taken Its place as in some of the western  
countries. It is, therefore, with reference to execution by hanging that |  
must consider whether the sentence of death is barbaric and inhuman as  
centaling physical pain and agony. It is no doubt true that the Royal  
‘Commission on Capital Punishment 1949-53 found that hanging is the  
most humane method of execution and so also in Ichikawa v. Japan  
(Vide David Pannick on Judicial Review of Death Penalty, p. 73), the  
Japanese Supreme Court held that execution by hanging does not  
‘correspond to ‘eruel punishment’ inhibited by Article 36 of the Japanese  
‘Constitution. But whether amongst all the methods of execution, hanging  
is the most humane or in the view of the Japanese Supreme Cour,  
hanging is not cruel punishment within the meaning of Article 36, one  
thing is clear that hanging is undoubtedly accompanied by intense  
physical torture and pain. Warden Duffy of San Quentin, a high securty  
prison in the United States of America, describes the hanging process  
  
with brutal frankness in lurid details  
  
The day before an execution the prisoner goes through a  
  
harrowing experience of being weighed, measured for length of  
  
  
Page 37:  
”  
  
{r0p to assure breaking of the neck, the size of the neck, body  
measurements et cetera. When the trap springs he dangles atthe  
fend of the rope. There are times when the neck has not been  
broken and the prisoner strangles to death. His eyes pop almost  
Cut 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 ofthe face that the noose  
is on. He urinates, he defecates, and droppings fall to the floor  
while witnasses 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 from 8 to 14 minutes,  
before the doctor, who has climbed up a small ladder and lstons  
to his heartbeat 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 fist few minutes there is  
  
usually considerable struggling in an effort to breathe.  
  
If the drop is too short, there will be a slow and agonising  
cath by strangulation. On the other hand, ithe drop i too long,  
the head will be tor off. In England centuries of practice have  
produced a detaled chat relating a man's weight and physical  
Condition tothe proper length of drop, but even there mistakes  
have been made. In 1927, a surgeon who witnessed a double,  
  
‘execution wrote  
  
  
Page 38:  
8  
  
‘Tho bodies wore cut down after fiteen minutes and placed in an  
‘antechamber, when | was hortfied 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... Disiocation of  
the neck is the ideal aimed at, but, out of all my postmortem  
findings, that has proved rather an exception, which in the  
majority of instances the cause of death was strangulation and  
  
asphyaia  
  
‘These passages clearly establish beyond doubt thatthe execution of  
‘sentence of death by hanging does involve intense physical pain and suffering,  
though it may be regarded by some as more humane than electrocution or  
application of lethal gas."  
  
‘These observations of Bhagwat, J., are clear in ight ofthe fact that most of  
the developed as well as daveloping counties have replaced the mode of execution by  
hanging by the modes of intravenous lethal injection or by shooting. The description of  
these methods of executions prove that the death penalty by hanging involves immense  
pain and suffering. itis wth these views and the observations made in relation to the  
various other modes of execution that the lethal injection becomes acceptable as the  
most humane method of execution of the death sentonce. This mode involves less pain  
‘and suffering tothe convict undergoing the death sentence. The death as a result ofthe  
hanging in most of the cases is because of the asphyxia or strangulation which causes  
the lingering and painful death of the condemned person. We may here again quote  
  
{rom justice Bhagwat’ (supra) judgment:  
  
  
Page 39:  
»  
  
"30. If tis be the true mental and physical effect of death sentence on the  
‘condemned prisoner and if it causes such mental anguish, psychological strain  
‘and physical agony and suierng, i is ificult to see how it can be regarded as  
‘anything but cruel and inhuman. The only answer which can be given for  
Justiying this infliction of mental and physical pain and suffering is that the  
‘condemned prisoner having kiled a human being doos not mort any sympathy  
‘and must suffer this punishment because he ‘deserves’ it. No mercy can be  
‘shown to one who did not show any mercy to others. But, as | shall presently  
point out, this justiicatory reason cannot commend itself to any civilized socity  
because itis based on the theory of retribution o retaliation and atthe bottom of  
it ies the desire of the society to avenge itsetf against the wrong-doer. That is  
  
not a permissible penoiogical goal”  
  
itis important to stato here thatthe Law Commission of India is aware thatthe  
viows expressed by the leamed judge in the above mentioned case are not a result of  
‘any special bias as is clear from what is stated inthe Para 38 ofthe judgment:  
  
“1 may make it clear thatthe question to which | am addressing myself is only  
in regard to the proportionality of death sentence to the offence of murder and  
nothing that | say hare may be taken as an expression of opinion on the question  
whether a sentence of death can be said to be proportionate to the offence of  
treason or any other offence involving the secunty ofthe State.”  
  
It is also important to mention here the viewpoint adopted by the Supreme  
  
Court in the case of Deena v. Union of India, 1983 (4) S.C.C. 645 with regard to the  
lethal injection based on the information and practice of the use of lethal injection  
prevalent more than two decades ago. It was observed as follows,  
  
"76. What remains now to consider isthe systom of lethal injaction  
  
‘The Royal Commission has discussed that method in paragraphs 735 to 749 of,  
  
  
Page 40:  
0  
  
its Report. Lethal injection is by and large an untried method. But that is not its  
most serious defect. The injection is required to be administered intravenously,  
which is a delicate and skiled operation. The Prison Medical Officers who were  
interviewed by the Royal Commission, doubted whether the system of lethal  
injection was more humane than hanging (see paragraph 739 of the Report)  
‘The British Medical Association told the Commission that no medical practitioner  
‘should be asked to take part in bringing about the death of a convicted murderer  
land that the Association would be most strongly opposed to any proposal to  
introduce a method of execution which would require the services of a medical  
practitioner, either in carrying out the actual process of killing or in instructing  
cothers in the technique of that process. The Commission expressed its  
‘conclusions in paragraph 749 by saying that it could not recommend that, in the  
present circumstances, lethal injection should be substituted for hanging since  
they were not satisfied that executions carried out by the administration of lethal  
injections would bring about death more quickly, painlessly and decently in all  
cases. The Commission, however, recommended, unanimously and  
‘emphatically, that the question should be periodically examined, specially in the  
  
light ofthe progress made in the science of anaesthetics."  
  
‘This was also, as mentioned eater, the opinion of the Law Commission of  
India expressed in its 35" Report of 1967.  
  
In light of these observations it is important to note that the process of  
‘administering lethal injection is not regarded as a practice of medicine and most of the  
statos in the U.S.A. are\_ablo to overcome this issue and ouside the scope of mecical  
  
‘ethics. One ofthe solutions to this problem isto train persons having knowledge of the  
  
‘Tissue fom Law Commission’ 38° Report On Capital Punishment 1967 hasbeen alveady been dealt  
inthe inrdution to this report.  
  
  
Page 41:  
a  
  
medicine and related field specifically for this purpose, and to see that such persons are  
designated by the appropriate authority in this behalf (similar practice adopted in various,  
States of U.S.A. 0.9. New Jersey, Montana, Idaho etc.)  
New Jersey  
Doctors are however, excluded in the New Jersey statute from administering the  
lethal dose. " The statute provides that the Commissioner of Depariment of  
Corrections, " shall designate persons who are qualified to administer injections and  
who are familar with medical procedure other than licensed physician ..... To  
assist in carrying out of executions, but the procedure and equipments shall be  
  
designed to ensure that the identity of the person actualy inflicting the lethal  
‘substance is unknown even to the person himself.....NJ. Statute Ann.# 20; 49-2  
  
Montana  
  
In Montana doctors are nat prohibited from carrying out executions according to the  
statute, "An execution carried out by lethal injection must be performed by person  
Selected by warden and tained to administer the injection. The person  
‘administering the injection need not be physician, registered nurse, or licensed  
Practical nurse or registered under the laws ofthis or any other state.  
  
Idaho  
  
In Idaho State prescribes that any infction of punishment of death by administration  
‘of the required lathal substance or substances in the manner required by this section  
‘should not be construed to be practice of medicine  
  
It may be mentioned here that in Deena's case (supra) the Supreme Court  
upheld the constitutional validity of Section 354(5) of Code of Criminal Procedure of  
1873 for carrying out of death sentence by hanging by neck til he is dead as the best  
‘available method in Incia as compared to electric chair, shooting or lethal injection. As  
mentioned eater by reference tothe Punjab and Haryana Jall Manual, the procedure of  
hanging starts a day earlier as the condemned person is weighed. Furthermore, his  
hands and logs are tied and the black mask is put on his head before he is hanged.  
  
This causes further punishment although the judgment holds that no further agony  
  
  
Page 42:  
should be caused. It may be noted that hands and lags are tied and the mask is kept  
not for the benaft of the condamned person but for the beneft of people who are  
present for carrying out the death punishment by hanging as they cannot bear the last  
Sight of restlessness of the condemned person. Furthermore, because many times,  
tongue and eyes protrude, a black mask is placed on the convict's head. As the person  
is kept hanging and as there is no provision for postmortem, itis not known whether  
oath was caused by painful strangulation or instantaneously by breaking of the spinal  
cord  
  
It may also be mentioned that the Supreme Court observed that method of  
‘hooting to death was practiced in dictatorships. But this isnot fully correct. In fact the  
‘Army, Navy and Air Force Acts in India give discretion to the Court Martial trbunal to  
hold that the condemned person be hanged to death or be shot to death, as mentioned  
‘earlier. It may be futher noticed that since hanging has been given up in several statos  
in the United States of America and has been substituted by electrocution, o° lethal  
injection. In thty four Stats, the execution is cari by lethal injection. These methods  
‘are adopted as they are more civilzed and hanging has been abolished by most of  
these statos inthe USA  
  
‘hore is also significant increase in the number of countries which have  
‘adopted the method of execution by lethal injection and today thirty five States use this,  
method.  
  
‘The following able gives comparative analysis of diferent modes of executing  
  
death sentence:  
  
Hanging By Neck Shooting Intravenous Lethal  
  
Death Injection  
4. Simple to execute 1Simple to execute 1. Simple to execute  
  
  
Page 43:  
2. Execution process takes  
more than 40 minutes to  
  
declare prisoner to be dead  
  
3. Less scientific  
  
equipments are required.  
  
4. Uncertainty as to time  
requited for the prisoner to  
  
become unconscious  
  
5 May cause lingering  
  
death  
6. Most of the time may  
  
involve enormous pain  
7. Has been abandoned by  
  
most of the counties  
considering it not to be a  
civilized mode  
  
8, Mutiation involved.  
  
9 Not a controled way of  
‘execution. It depends on  
  
various factors.  
  
410. Not generally swift  
  
8  
  
2. Execution process takes  
rot more than few minutes  
to declare prisoner to be  
  
dead  
3. Less scientific  
  
equipments are required  
  
4. Instant death,  
  
6. Instant death  
  
& Pain may hardly be  
  
involved,  
7. Most of the countries  
  
provide for the option of  
either lethal injection or  
shooting,  
  
8. Mutlation involved  
  
9. Itis always under control  
‘and does not depend on  
the factors tke physique  
  
te. of the convict.  
  
10. itis comparatively swift  
  
and painiess  
  
2. Execution process takes  
5 to 9 minutes to deciare  
  
prisoner to be dead  
  
3. More scientific  
equipments are required,  
  
they are easily available.  
4. Unconsciousness takes  
  
place immediately after the  
application of anaesthesia  
‘and dies in sleep.  
  
'5. Nota lingering death.  
Pain only as result of  
  
needle prick  
7. It Is being accepted now  
  
to be most civilized mode of  
execution of -— death  
sentence.  
  
88. No mutilation involved.  
  
9. Itls the best controlled  
  
way of execution.  
  
10. It is the painless and  
  
‘swift method of execution  
  
  
Page 44:  
“  
  
-CHAPTER 6  
RIGHT OF APPEAL TO THE APEX COURT IN CASES  
WHERE DEATH SENTENCE HAS BEEN AFFIRMED OR  
AWARDED BY THE HIGH COURT AND THE PROCEDURE IN THE  
  
APEX COURT RELATING TO PASSING OF DEATH SENTENCE  
  
‘After examining this issue of the appropriate mode of execution, what  
remains tobe examined isthe process of the confirming the death penalty applicable to  
Courts or other authorities,  
  
[As has been provided in ECOSOC resolution a to safeguard No. 6 as,  
  
\* Anyone sentenced to death shall have the right to appeal to a court of higher  
  
jurisdiction and steps should be taken to ensure that such appeals shal become  
  
mandatory”  
  
‘Tho similar view has also been expressed by Justice Bhagwati, in Para 82 in  
  
Bachan Singh v. State of Punjab (supra) of dissenting judgment as,  
"82, Before | part with this topic | may point out thatthe only way in which the  
vie of arbitrariness inthe imposition of death penalty can be removed is by the  
law providing that in every case where the death sentence is confined by the  
High Court there shall be an automatic review of the death sentence by the  
Supreme Cout siting as a whole and the daath sentence shall not be affirmed  
fF imposed by the Supreme Court unless it is approved unanimously by the  
  
centre court sitting en banc and the only exceptional cases in which death  
  
  
Page 45:  
4s  
  
sentence may be affirmed or imposed should be legislatively imited to those  
where the offender is found to be s0 depraved that it is not possible to reform  
him by any curative or rehabilitative therapy and even ater his release he would  
be a serious menace tothe society and therefor inthe intorest of the society he  
is required to bo eliminated. Of course, for reasons | have already discussed  
‘such exceptional cases would be practically nil Because iis almost impossibie to  
predicate of any person that he is beyond reformation or redemption and  
therefore, from a practical point of view death penalty would be almost non-  
fexistont. But theoretically it may be possible to say that if the State is in a  
postion to establish positively that the offender is such a social monster that  
‘even after suffering life imprisonment and undergoing reformative and  
rohabiltatve therapy, he can never be claimed for the socity, then he may be  
‘awarded death penalty. i this test is legislatively adopted and applied by  
following the procedure mentioned above, the imposiion of death penalty may  
be rescued from the vice of arbitrariness and caprice. But that is not so under  
  
the law as it stands today.”  
  
The Law Commission is quite aware of the difficulties in formulating standard  
‘uidalines for channelizing the discretion of the Courts as observed by Mr. Justice  
  
Harlan in McGautha Vs. California (402 US 183) at Page 3. He observed:  
  
‘Those who have come to grips withthe hard task of actually attempting to draft  
means of channeling capital sentencing discretion have confirmed the lesson  
taught by... history. To identify before the fact those characteristics of criminal  
homicides and their perpetrators which call forthe death penalty, and to express  
  
these characteristics in language which can be fairly understood and applied by  
  
  
Page 46:  
46  
  
the sentencing authority, appear to be tasks which are beyond present human  
  
billy"  
  
Justice Bhagwati in Bachan Singh case (supra) has made the folowing  
  
‘observations pertinent tothe arbitrariness involved in awarding the death sentence:-  
  
"70. Now this conclusion reached by me is not based merely on theoretical or a  
priori considerations. On an analysis of decision given ever a period of years we  
find that in fact there is no uniform pattor of judicial behaviour inthe imposition  
ff death penalty and the judicial practice does not disclose any coherent  
{uidelins for the award of capital punishment. The judges have bean awarding  
<eath penalty or refusing to award it according to ther own scale of values and  
social philosophy and it is nt possible to discan any consistant approach tothe  
problem in the judicial decisions. It is apparent from a study of the judicial  
ocisions that some judges are readlly and regularly inctined to sustain death  
‘sentences, other are similarly disinclined and the remaining waver from case to  
cease. Even in the Supreme Court there are divergent attitudes and opinions in  
regard to the imposition of capital punishment. It a case comes before one  
Bench consisting of Judges who believe in the social efficacy of capital  
punishment, the death sentence would in al probabilty be confirmed but if the  
‘same case comes before ancther Bench consisting of Judges who are morally  
‘and ethically against the death penalty, the death sentence would most likely be  
‘commuted to life imprisonment. The former would find and | say this notin any  
orogatory or disparaging sense, but as a consequence of psychological and  
  
attitudinal factors operating on the minds of the Judges constituting the Bench -  
  
  
Page 47:  
”  
  
“special reasons’ in the case to justify award of death penalty while the latter  
Would reject any such reasons as special reasons. It is also quite possibie that  
fone Bench may, having regard to its perceptions, think that there are special  
reasons in the case for which death penalty should be awarded while another  
Bench may bona fide and conscientiously take a different view and hold that  
there are no special reasons and that only life sentence should be imposed and  
it may not be possible to assert objectively and logically as to who is right and  
who is weong, because the exercise of discretion ina case ofthis kind, where no  
broad standards or guidelines are supplied by the legislature, is bound to be  
influenced by the subjective attude and approach of the judges constituting the  
Bench, their value system, the individual tone of their mind, the color of their  
‘experience and the character and varity of their interests and their  
predispositions. This arbitrariness in the imposiion of death penalty is  
considerably accentuated by the fragmented Bench structure of our courts where  
Benches aro inevitably formed with diferent permutations and combinations  
{rom time to time and cases relating to the offence of murder come up for  
hearing sometimes before one Bench, some times before another sometimes  
before a thid and so on. Professor Blackshiald has in his alice on "Capital  
Punishment in Inala" published in Volume 21 of the Journal ofthe Indian Law  
Institute (At pp. 137-226 (Issue of Apri-June, 1979) pointed out how the practice  
‘of Bench formation contributes to arbitrariness in the imposition of death penalty  
itis wall known that so far as the Supreme Cour is concerned, while the number  
of Judges has increased over the years, the number of Judges on Benches  
Which hear capital punishment cases has actually decreased. Most cases are  
now heard by twouudge Benches. Professor Blackshiold has abstracted 70  
  
‘cases in which the Supreme Court had to choose between life and death while  
  
  
Page 48:  
8  
  
‘sentencing an accused forthe offence of murder and analysing these 70 cases  
he has pointed out that during the period Apri 28, 1972 to March 8, 1976 only 11  
Judges of the Supreme Court participated in 10 per cant or more of the cases.  
Ho has listed these 11 Judges in an ascanding order of leniency based on the  
proportion for each Judge of plus votes (.e. votes forthe death sentence) to total  
votes and pointed out that these statistics show how the judicial response tothe  
{question of life and death varios from judge to judge. I is significant to note that  
Cut of 70 cases analysed by Professor Blackshield, 37 related to the period  
‘subsequent to the coming into force of Section 354, sub-section (3) of the Code  
of Criminal Procedure, 1973. ia similar exercise is performed with reference to  
‘cases decided by the Supreme Cout after March 8, 1976, that being the date up  
to which the survey carted out by Professor Blackshield was limited, the analysis  
will reveal the same pattem of incoherence and arbitrariness, the decison to kil  
‘oF nat to kil boing guided to a large extent by the composition of the Bench  
Take for example Rajendra Prasad casa ((1978) 3 SCC 646) decided on  
February 9, 1979. In this case, the daath sentence imposed on Rajendra Prasad  
was commuted to if imprisonment by a majority consisting of Krishna Iyer, J  
‘and Desai, J, AP. Sen, J. dissented and was of the view that the death  
‘sentence should be confirmed. Similarly in one of the cases before us, namely,  
Bachan Singh v, State of Punjab ((1978) 3 SCC 727) when itwas fst heard by  
‘2 Bonch consisting of Kallasam and Sarkaria, JJ, Kalasam, J. was definitely of  
tne view thatthe majorty decision in Rajendra Prasad case ((1978) 3 SCC 646)  
was wrong and that is why he referred that case to the Constitution Bench. So  
‘also in Dalbir Singh v. State of Punjab ((1978) 3 SCC 745), the majority  
consisting of Krishna Iyer, J. and Desai, J took the view that the death sentence  
  
imposed on Dalbir Singh should be commuted to life imprisonment while A.P.  
  
  
Page 49:  
”  
  
Sen, J. struck tothe orginal view taken by him in Rajendra Prasad case ((1979)  
‘3 SCC 646) and was inclined to confirm the death sentence. It will thus be seen  
thatthe exercise of discretion whether to infct death penalty or not depends to a  
considerable extent on the value system and social philosophy of the Judges  
  
constituting the Bench  
  
1. The most striking example of freakishness in imposition of death penalty is  
provided by a recent case (Harbans Singh v. State of U.P., (1982) 2 SCC 101),  
which involved three accused, namely, Jeeta Singh, Kashmira Singh and  
Harbans Singh. These three persons wore sentenced to death by the Allahabad  
High Court by a judgment and order dated October 20, 1975 for playing an equal  
par in jointly murdering a family of four persons. Each of these three persons  
preferred a separate pettion in the Supreme Court for special leave to appeal  
against the common judgment sentencing them all to death penalty. The special  
leave paiition of Jasta Singh came up for heating before a Bench consisting of  
CChandrachud, J. (as he then was), Krishna Wyer, J. and NLL. Untwalia, J. and it  
was dismissed on April 15, 1976. Then came the special leave petition preferred  
by Kashmira Singh fom jail and this pettion was placed for hearing before  
‘another Bench consisting of Fazal All, J. and myself. We granted leave to  
Kashmira Singh limited to the question of sentence and by an Order dated Apri  
10, 1977 we allowed his appeal and commuted his sentence of death into one of  
imprisonment for lf. The result was that while Kashmira Singh's death sentonce  
was commuted to life imprisonment by one Bench, the death sentence imposed  
fon Jeeta Singh was confirmed by another Bench and he was executed on  
‘October 6, 1981, though both had played equal pat in the murder ofthe family  
  
and there was nothing to distinguish the case of one from that of the other. The  
  
  
Page 50:  
0  
  
‘special leave pation of Harbans Singh then came up for hearing and this timo, i  
was sill another Bench which heard his special leave petition. The Bench  
consisted of Sarkaria and Shinghal, JJ. and they rejected the special leave  
peltion of Harbans Singh on October 16, 1978. Harbans Singh applied for  
review of this decision, but the review pation was dismissed by Sarkaria, J. and  
'AP. Sen, J. on May 9, 1980. It appears that though the Registry of this Cour  
had mentioned in its Office Report that Kashmira Singh's death sentence was  
‘already commuted, that fact was not brought to the notice of the Court  
spectcaly when the special leave petition of Harbans Singh and his review  
peition were dismissed. Now since his special leave petition as also his review  
peiition were dismissed by this Court, Harbans Singh would have been executed  
‘on October 6, 1981 along with Jeeta Singh, but fortunately for him he fled a writ  
peiition inthis Court and on that wit petition, the Court passed an Order staying  
the execution of his death sentence. When this writ petton came up for hearing  
before a stil another Bench consisting of Chandrachud, C.J., Desai and AN,  
Sen, Ju, it was pointed out to the Court that the death sentence imposed on  
Kashmira Singh had been commuted by a Bench consisting of Fazal Al, J. and  
myself and when this fact was pointed out, the Bench diraced thatthe case be  
‘sent back to the Prasident for reconsideration of the clemency patton filed by  
  
Harbans Singh. This is a classic case which ilustrates the judicial vagaries in the  
  
Bench, even in cases governed by Section 354, sub-section (3) of the Code of  
  
Criminal Procedure, 1973. The question may well be asked by the accused : Am  
  
| to live oF die depending upon the way in which the Benches are constituted  
  
  
Page 51:  
st  
  
from time to time ? Is that not clearly violative of the fundamental guarantees,  
  
‘enshrined in Articles 14 and 21 7  
  
72. If we study the judicial decisions given by the courts over a number of years,  
We find judges resorting to a wide variety of factors in justification of confirmation  
‘oF commutation of death sentence and these factors when analysed fail to reveal  
‘any coherent pattern. This is the inevitable consequence of the failure of the  
legislature to supply broad standards or guidelines which would structure and the  
Cchannelize the discretion ofthe cour in the matter of imposition of death penalty.  
Of course, | may make it clear that when | say this | do not wish to suggest that if  
broad standards or guidelines are supplied by the legislature, they would  
necessarily cure death penalty of the vice of arbitrariness or freakishness.  
  
But whether adequate standards or guidelines can be formulated or not which  
‘would cure the aspects of arbitrariness and capriciousness, the fact remains that  
no such standards or guidelines are provided by the legislature in the present  
‘case, with the result that the court has unguided and untrammeled discretion in  
choosing between death and life imprisonment as penalty for the crime of  
murder and this has led to considerable arbitrariness and uncertainty. This is  
‘evident from a study of the decided cases which clearly shows that the reasons  
{or confirmation or commutation of death sentence relied upon by the Court in  
different cases defy coherent analysis. Dr. Raizada has, in his monumental  
doctoral study entitled "Trends in sentencing; a Study of the Important Penal  
Statutes and Judicial Pronouncements of the High Courts and the Supreme  
Court” identified a large number of decisions of this Court where inconsistent  
awards of punishment have been made and the judges have frequently  
  
arliculated their inabilty to prescribe or follow consistently any standards or  
  
  
Page 52:  
2  
  
{uidelines. He has classified cases up to 1976 in terms of the reasons given by  
the Court for awarding or refusing to award death sentence. The analysis made  
  
by him is quite rewarding and illuminating,  
  
(0 One of the reasons given by the Courts in a number of cases  
for imposing death penalty is that the murder is ‘brutal, ‘cold-  
blooded’, ‘deliberate’, unprovoked’, fatal, ‘gruesome’, wicked!  
‘callous’, heinous’ or ‘violent’. But the use of these labels for  
describing the nature of the murder is indicative only of the degree  
fof the Court's aversion for the nature or the manner of  
‘commission of the crime and it is possible that different judges  
may react differently to these situations and moreover, some  
Judges may not regard this factor as having any relevance to the  
imposition of death penalty and may therefore dectine to accord to  
it the status of ‘special reasons’ In fact, there are numerous  
cases, where despite the murder being one faling within these  
categories, the Court has refused to award death sentence. For  
‘example, Janardharan whose appeal was decided along with the  
appeal of Rajendra Prasad had killed his innocent wife and  
children in the secrecy of night and the murder was deliberate and  
cold-blooded, attended as it was with considerable brutality, and  
yot the majority consisting of Krishna Iyer, J. and Desai, J  
‘commuted his death sentence to life imprisonment. So also Dube  
had committed triple murder and stil his death sentence was  
‘commuted to life imprisonment by the same two leamed Judges,  
  
namely, Krishna Iyer, J. and Desai, J. It is, therefore, clear that  
  
  
Page 53:  
ss  
  
the epithets mentioned above do not indicate any clear-cut well  
ofined categories but are merely expressive of the intensity of  
judicial reaction to the murder, which may not be uniform in all  
judges and even ifthe murder falls within one ofthese catagories,  
tat factor has been regarded by some judges as relevant and by  
others, as ielevant and it has not been uniformly applied as a  
salient factor in determining whether or not death penalty should  
  
be imposed  
  
(i) There have been cases where death sentence has been  
awarded on the basis of constructive or joint lability arising under  
Sections 34 and 149 (vide Babu v. State of U.P. (1965) 2 SCR  
TT), Mukntiar Singh v. State of Punjab (1972) 4 SCC 843),  
Masait v. State of U.P. ((1964)8SCR 133), and Gurcharan Singh  
¥. State of Punjab ((1963) 3 SCR 585). But, there are equally a  
large number of cases where death sentence has not been  
awarded because the criminal liablly of the accused was only  
under Section 34 or Section 149, There are no established criteria  
{or awarding or refusing to award death sentence to an accused  
who himself did not give the fatal blow but was involved in the  
‘commission of murder along with other assailants under Section  
  
34 oF Section 149.  
  
(ii) The position as regards mitigating factors also shows the  
‘same incoherence. One mitigating factor which has often been  
  
relied upon for the purpose of commuting the death sentence to  
  
  
Page 54:  
st  
  
life imprisonment isthe youth of the offender. But this too has  
been quite arbitrary applied by the Supreme Court, There are  
ceases such as State of UP. v. Samman Dass ((1972) 3 SCC  
201), Raghubir Singh v. State of Haryana ((1975) 3 SCC 87) and  
‘Gurudas Singh v. State of Rajasthan ((1975) 4 SCC 490) where  
the Supreme Cour took into account the young age of the  
‘appellant and refused to award death sentence to him. Equally  
there are cases such as Bhagwan Swarup v. State of UP. ((1971)  
3 SOG 758) and Ragho Mani v. State of UP. ((1976) 4 SCC 297)  
where the Supreme Court took the view that youth is no ground  
{for extenuaton of sentence. Moreover there is also divergence of  
Cpinion as to what should be the age at which an offender may be  
regarded as a young man deserving of commutation. The result i  
that as pointed out by Dr. Raizada, in some situations young  
offenders who have committed multiple murders get reduction in  
life sentence whereas in others, ‘where neither the loss of as  
many human lives nor of higher valued property” is involve, tho  
  
accused are awarded death sentence.  
  
(@v) One other mitigating factor which is often taken into account is,  
delay in final sentencing. This factor of delay after sentence  
recelved great emphasis in Ediga Anamma v. State of AP.  
((1974) 4 SCC 443), Chawla v. State of Haryana ((1974) 4 SCC  
'579), Raghubir Singh v. State of Haryana ((1975) 3 SCC 37),  
Bhoor Singh v. State of Punjab (1974) 4 SCC 754), State of  
  
Punjab v. Hari Singh ((1974) 4 SCC 552) and Gurudas Singh v.  
  
  
Page 55:  
ss  
  
State of Rajasthan ((1975) 4 SCC 490) and in those cases delay  
was taken into account for the purpose of awarding the lesser  
punishment of life imprisonment. In fact, in Raghubie Singh v.  
State of Haryana ((1975) 3 SCC 37) the fact that for 20 months  
the spectre of death penalty must have bean tormenting his soul  
was held sufficient to entite the accused to reduction in sentence.  
But equally thera are a large number of cases whore death  
sentences have been confirmed, even whan two or more years  
wore taken in finally disposing of tho appeal (vide Rishiseo Pande  
¥. State of UP. (AIR 1955 SC 331), Bharwad Mepa Dana v. Stato  
(of Bombay ((1960) 2 SCR 172) and other cases given by Dr.  
Raizada in foot-note 186 to Chapter Ill. These decided cases,  
show that there 1s no way of predicting the exact period of  
prolonged proceeding which may favour an accused. Whether  
‘any importance should be given to the factor of delay and if so to  
what extent are mattas ently within the discretion of the Cour  
‘and it is not possible to assert with any defintiveness that a  
paricular period of delay after sentencing wil eam for the  
‘accused immunity from death penalty. It folows as a necessary  
corollary from these vagaries in sentencing arising from the factor  
‘of delay, that the imposition of capital punishments becomes more  
CF less a kind of crual judicial lotor. If the case of the accused is  
handled expeditiously by the prosecution, defense lawyer,  
Sessions Court, High Court and the Supreme Court then this,  
mitigating factor of delay isnot available to him for reduction to life  
  
‘sentence. If, on the other hand, there has been lack of dispatch,  
  
  
Page 56:  
6  
  
‘engineered or natural, then the accused may escape the gallows,  
‘subject of course to the judicial vagaries arising from other  
causes. In other words, the more efficient the proceeding, the  
  
more certain the death sentence and vice versa.  
  
(v) The embroliment of the accused in an immoral relationship has  
been condoned and, in effect, treated as an extenuating factor in  
Raghubir Singh v. State of Haryana ((1975) 3 SCC 37) and  
Vasant Laxman More v. State of Maharashtra (1974) 4 SCC 778)  
while in Lajar Masih v. State of U.P. ((1976) 1 SCC 806), it has  
been condemned and in effect treated as an aggravating factor.  
‘There is thus no uniformity of approach even so far as this factor  
  
is concerned.  
  
73. All these factors singly and cumulatively indicate not merely that there is an  
‘enormous potential of arbitrary award of death penalty by the High Courts and  
  
the Supreme Court but that, in fact, death sentences have been awarded  
  
arbitrarly and freakishly (vide Dr. Upendra Bax's note on “Arbitrariness of  
  
Judicial Imposition of Capital Punishment")  
  
We may have referred to the fact that where death punishment is given by  
General Court Martial consisting of five officers, it can be given only if there is two-third  
  
‘majority and nat simple majority.  
  
Right of appeal to Supreme Court  
  
  
Page 57:  
7  
  
There are many provisions in the Code of Criminal Procedure, 1973, which  
‘enable the High Court to award or confirm the death sentence. Under section 368 of  
the Code, a High Court can confirm the death sentence passed by the Court of  
Session. High Court can withdraw a case pending before a subordinate court and  
can try itself and can pass death sentence (section 407, CrPC). High Court on.  
appeal against an order of acquittal passed by a Court of Session, can convict a  
person and pass sentence of death (section 386(a), CrPC). Apart from this, High  
Court while exercising power of enhancing the sentence can award the sentence of  
death (section 386(c }, Cr.PC) But as of now appeal to the Supreme Court cannot  
be filed as of right in all the cases where the High Court has passed the death  
sentence.  
  
In the following cases where the High Court passes a sentence of death, appeal to  
the Supreme Court can be filed as of right-  
  
1) where High Court convicts a person on a trial held by it in its extra ordinary  
criminal jurisdiction. (Section 374(1), Cr.PC)  
  
il) Where High Court has withdrawn for trial before itself any case from any court  
‘subordinate to it and in such trial convicts the accused person and sentence  
him to death. (Art. 134(1)(b) ofthe Constitution of india).  
  
ii) Where High Court on appeal reversed an order of acquital of an accused  
person and sentence him to death. (Art134(1)(a), of the Constitution,  
section 2 of the Supreme Court (Enlargement of Criminal Appellate  
Jurisdiction) Act, 1970, and sec. 379 of the CPC,  
  
1) Right to appeal to the Supreme Court is also provided where the High Court  
(on appeal reversed an order of acquittal of an accused person and sentence  
him to imprisonment for life or imprisonment for a term of 10 years or more.  
(Section 379 of the CrPC and Sec.2 ofthe aforesaid Act of 1870).  
  
However, in the following cases, a person against whom death sentence is passed  
(or confirmed by the High Court, no appeal to the Supreme Court as of right is  
provided:  
  
  
Page 58:  
Dy  
  
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where the High Court under section 368 of the Cr.PC confirms the sentence  
(of death awarded by the Court of Session, no appeal as of right may be  
preferred to the Supreme Court. In this regard following finding of the full  
bench of the Madras High Court made in K Govindswamy vs. Govt. of  
India, A.LR. Mad. 204 (1990 CrLJ 1326) is also relevant,  
  
“Hence, as against an order of confirmation of death sentence passed  
under section 388 of the Code of Criminal Procedure, 1973 there is and  
there can be no further right of rst appeal on facts to the Supreme  
  
‘Court, unless the High Court in exercise ils power under Article 134(1)  
(c) grants leave to appeal to the Supreme Cour, or, the Supreme Court  
{grant special leave under Art. 136(1) ofthe Constitution for an appeal  
being preferred”  
  
In Chandra Mohan Tiwari vs. State of MP, AIR 1992 SC 891, the Supreme  
‘Court has held that, in cases which are not covered by Art. 134(1)(a) and (b)  
‘or section 2(a) and (b) of the Supreme Court (Enlargement of Criminal  
‘Appollate Jurisdiction) Act, 1970 or by section 379 of the CPC, appeal in  
the Supreme Court will le only either on a certificate granted by the High  
Court under Article 134(1)(c) or by grant of Special Leave to appeal by the  
‘Supreme Court under Art. 136 of the Constitution of Inia,  
  
‘That means that a person whose sentence of death awarded by the Court of  
Session is confirmed by the High Court, no appeal as of right can be  
preferred to the Supreme Court  
  
[As per section 377 of the Cr.PC, the State Govt. or the Central Govt. as the  
case may be, may direct the public prosecutor to present an appeal to the  
High Court against the sentence passed by a trial court on the ground of  
inadequacy. The High Court may enhance the sentence to a sentence of  
death after giving an opportunity of hearing to the convict. (Sec.386\() (i),  
rPC},  
  
High Court can enhance the sentence passed by a trial court not only where  
the State has preferred an appeal against the sentence, but also where no  
appeal has been preferred by the State on the ground of inadequacy of  
‘sentence, in exercise of its suo-motu revisional power vested jn it under  
‘section 397 read with section 401 Cr.PC. The Supreme Court in Nadir Khan  
vs. The State (Delhi Admn.), AIR 1976 SC 2208, has held that High Court  
  
  
Page 59:  
2”  
  
\while exercising its criminal revisional jurisdiction has power to act suo-motu  
to enhance the sentence in appropriate case even in absence of an appeal  
‘against the adequacy of sentence as provided in section 377 of the Cr.PC.  
‘Again in Sahib Singh vs. State of Haryana, AIR 1990 SC 1188, the  
‘Supreme Court has observed that the failure on the part of the State Govt. to  
prefer an appeal does not, however, preclude the High Court from exercising  
‘suo-motu power of the revision under section 397 read with section 401 of  
the CrPC, since High Court itself is empowered to call for the record of  
proceedings of any court subordinate to it. But before enhancing the  
‘sentence the High Court has to give notice and opportunity of hearing on the  
{question of sentence to the convict, either in person or through counsel.  
(see also Surit Singh vs. State of Punjab, AIR 1984 SC 1910(2))  
  
It is evident that High Court can enhance the sentence under its suo-moty  
revisional power, even without an appeal fled by the State. But where the  
High Court enhances the sentence passed by trial Court and passes even  
‘sentence of death, no appeal, as of right can be preferred in the Supreme  
Court against the order of enhancement of sentence.  
  
‘As discussed, in both the circumstances mentioned above, no appeal as of  
right, to the Supreme Court can be preferred against the judgment of the  
High Court where it has awarded the death sentence. Appeal can only be  
filed either when a certificate under Article 134 (1)(¢ ) of the Constitution of  
India has been granted by the High Court thatthe case is fit oe for appeal to  
the Supreme Court, or if the Supreme Court itself grants leave to appeal  
Under Article 136(1) of the Constitution of India, But as of right no appeal  
‘can be preferred to the Supreme Court in such circumstances.  
  
Death sentence can be passed by a Court Martial constituted under the Army  
‘Act, 1950, Air Force Act, 1950, Navy Act, 1957, and this has to be confirmed  
by the Central Government or by other authorities. But as of now, there is no  
provision under which appeal against such order can be filed. Even special  
leave to appeal to Supreme Court against such order of the Court Martial  
does not lie under Article 136(1) of the Constitution in view of the bar  
contained under Article 136(2) of the Constitution of India,  
  
  
Page 60:  
fo  
  
It may be mentioned that the ight of appeal in civil cases was guaranteed ill  
1979 under pro-amended Arico 133 ofthe Constitution when the pecuniary value of the  
‘subject matter was more than RS.20,000/-. Similarly, under the Advocates Act, 1961  
fight of appeal to the Supreme Court is guaranteed against the decision of the Bar  
Council of india as folows:-  
"38. Appeal to the Supreme Court - Any person aggriaved by an order  
made by the disciplinary committee of the Bar Council of India under Section  
36 or section 37 (or the Attorney-General of India or the Advocate General of  
the State concerned, as the case may be) may, within sity days ofthe date  
‘on which the order is communicated to him, prefer an appeal to the Supreme  
Court and the Supreme Court may pass such order (including an order  
varying the punishment awarded by the disciplinary committee of the Bar  
Council of India) thereon as it daems ft  
Provided that no order of the disciplinary committee of the Bar Council of India  
shall be varied by the Supreme court so as to projudicaly affect the person  
  
aggrieved without giving him a reasonable opportunity of being heard.  
  
So also under the Representation of Peoples Act, 1951, the right of appeal is  
  
‘guaranteed as foliows:-  
  
“116A. Appeals to Supreme court - (1) Notwithstanding anything contained in  
any other law for the time being in force, an appeal shall ie to the Supreme  
‘Court on any question (whether of law or fact) from every order made by High  
  
‘Court under section 98 or section 98.  
  
  
Page 61:  
«  
  
(2) Every appeal under this Chapter shall be preferred within a period of thirty  
  
{days from the date ofthe order of the High Court under section 98 or section 99  
  
Provided that the Supreme Court may entertain an appeal ater the expiry  
of the said period of thirty days if tis satisfied that the appellant had sufficient  
  
‘cause for not preferring the appeal within such period”  
  
Similarly, under Section $5 of the Monopolies & Restrictive Trade Practices Act,  
  
11969, the right to appeal to the Supreme Court is quaranted as follows  
  
"55, Appeals. Any person aggrieved by any decision on any question refered  
ton clause (a), clause (b) or clause (o) of section 2A, or any other made by the  
CContral Government under Chapter Ill oF Chapter IV, or, as the case may be, or  
the Commission under section 12A or section 13 or section 36D or section  
‘37,may, within sity days from the date of the order, prefer an appeal to the  
Supreme Court on one or more of the grounds specified in section 100 of the  
  
Code of Civil Procedure, 1908 (5 of 1908).”  
  
Ifthe right of appeal to the Supreme Court is guaranteed in such matters, the  
{question arises as to way appeal as of right should not be granted against death penalty  
imposed by the High Court, when death punishment has more serious consequences  
and is qualitatively diferent from any other punishment and is reversible and there is  
  
‘scope for correcting an error.  
  
Further, the afore quoted observations of Bhagwati J. in Bachan Singh's case  
  
(supra) that in every case where the death sentence is confirmed by the High Court  
  
  
Page 62:  
@  
  
there shall be an automatic review of the death sentence by the Supreme Court sitting  
‘a8. whole and that the death sentence shall not be affirmed or imposed by the  
Supreme Court unless itis approved unanimously by the entire court siting en bane, ae  
‘apposite here. Accordingly in the Consultation Paper a spectic question was mooted as  
to whether in the Supreme Court a Bench of not less than § Judges should decide  
‘cases where death punishment has been awarded to invita the views of all concemed.  
‘This requires the Supreme Court Rules to be amended.  
  
‘Thare may also be cases of acquittal or sentence of imprisonment for a term or  
life sentence given by the High Cour against which the State may appeal to the  
Supreme Cour. In E.K.Chandrasenan v. State of Kerala, AIR 1995 SC 1066, the  
Supreme Court held that it can suo-motu enhance the punishment to death sentence.  
‘There Is therefore also the need to make appropriate provision to deal with situations  
where in case the Supreme Court thnks that the acquittal is wrong and the accused  
should be convicted and sentence to death; or it thinks thatthe sentence for aterm or  
life sentence isto be enhanced to @ death sentence, then the Supreme Court may direct  
the case to be placed before the Hon'ble Chief Justice of India for being heard by a  
Bench of at least fve judges. This also requires the Supreme Cour's rules to be  
  
‘amended  
  
  
Page 63:  
6  
CHAPTER-7  
PROCEEDINGS OF THE SEMINAR AND PUBLIC  
RESPONSES TO THE CONSULTATION PAPER  
  
‘On 9" of August 2003, the Law Commission of india organized a seminar at  
IIPA, Delhi on its consultation paper (prepared by Dr. NM. Ghatate) on "Mode of  
Execution of Death Sentence and Incidental Mattrs”. It was inaugurated by Shri Arun  
Jaitley the Union Minister for Law and Justice, The Minister stressed upon the need for  
‘2 dobato on the Mode of Execution of Death Sentence in the light of changing times,  
needs and technologies. He emphasized the need to change archaic laws which aro of  
no relevance now. He focused on changing the mode of execution of death sentence  
{rom the existing method by hanging to a more humane mode. Further, he said that  
the debate over abolition of capital punishment was losing its sting as “we have been at  
the receiving end of cross border terrorism’. Hanging the convict til death takes time  
‘and is a painful process and has become anachronic. He pointed out thatthe modes  
‘suggested by the Commission viz. civilized methods resulting in instant death by  
lecrc chair, or by lethal injection or by fring squad, do need consideration. He added  
“hanging of a condemned prisoner is becoming anachronic and the altemative methods  
  
having some merits have to be debated.” He assured that the Goverment would take  
  
‘a quick view on the issue after geting the results ofthe debate.  
  
‘After the inauguration ceremony, Dr. NIM. Ghatate, Member, Law Commission,  
made a power point presentation showing the summary of the Consultation Paper  
  
followed by Analysis of Empirical Data collected through the Questionnaire. Responses  
  
  
Page 64:  
6  
  
were received, as summarized below, from Judges of the High Courts and subordinate  
‘courts, lawyers, human rights activists, Judge Advocates General of three services, CBI,  
‘general public etc. The analysis of responses by way of graphical presentation as made  
  
at the Seminar is as follows:  
  
  
Page 65:  
Presentation on Consultation on the  
mode of Execution of Death Sentence  
  
Dr.N.M.Ghatate  
Member Law Commission  
Law Commission of India  
  
Analysis of Empirical Data  
collected through the  
Questionnaire  
  
  
Page 66:  
66  
  
Do you want amendment of section 354(5) of the Code of Crimin:  
Procedure which provides "When any person is sentenced to death, the  
sentence shall direct that he be hanged by the neck till he is dead"  
  
11%  
  
mYes  
  
No  
  
89%  
  
  
Page 67:  
@  
  
If you want hanging to remain, do you prefer hanging in Public or in  
Private as a mode of execution  
  
™ Public  
Hanging  
  
Hanging in  
  
499  
% 51% Jail  
  
  
Page 68:  
«  
  
Should the discretion on the mode of execution be given to the convict?  
  
30% Yes MNo  
  
10%  
  
  
Page 69:  
o  
  
‘Should a Right of Appeal to Supreme Court be given ?  
  
17%  
myYes  
  
83%  
  
No  
  
  
Page 70:  
0  
  
If you consider Death by hanging cruel what alternate method do you  
suggest for execution of death sentence ?  
  
12%  
10%  
5%  
573%  
(m Lethat Injection Shooting by fring squad  
  
Electric Chair Any other mode  
  
  
Page 71:  
n  
  
Should the discretion on the mode of execution be given to the Court ?  
  
38% Yes No  
  
62%  
  
  
Page 72:  
n  
  
Decision on Death Sentence should it be by 5 Judge Bench of  
‘Supreme Court ?  
  
1%  
  
mYes  
  
99%  
  
No  
  
  
Page 73:  
n  
  
‘What should be the voting requirement of the Supreme Court Bench  
hearing death sentence cases ?  
  
20%  
  
m47%  
  
33%  
  
Simple Majority —mTwo- thirds Majority © Rule of Unanimity  
  
  
Page 74:  
”  
  
Lethal Injection Participants Type \*  
  
16%  
  
16%  
66% 2%  
  
‘© Legal Profession Ml Judges © CBI/ Armed Forces 5 General Public  
  
  
  
Page 75:  
Category wise breakup of participants in the  
  
questionnaire  
0 responses rueied  
60 only upto 9.8.2003  
50°  
0 m Legal Profession  
30! mJudges  
20. CBI / Armed Forces  
10 |General Public  
0  
thal Shooting Electric Chair Hanging  
  
Injection  
  
  
Page 76:  
Response of the Judges  
  
og] Gruen 30 ayy  
Aofepy Pree IP IML  
  
Aaotepy Jo ay  
  
sofipny aus  
5 £9.29 01  
  
un09  
ymaadng 0} fodde Gowers Jo 148g  
  
apn 0} uogaisstg  
pratios 04 uonssnsicy spows meaq  
  
yuawp usu sasmnbar  
Jados Aq Suibuey (pce 29g somneum,  
  
(e3eyua10g)  
asuodsayy  
  
  
  
Page 77:  
”  
  
Responses and comments:  
  
(A) Analysis of responses from the Judges  
  
‘The Commission received responses from Judges of the different High Court and  
Subordinate courts to the consultation paper issued by the Law Commission. Analysis  
  
of their comments as follows:=  
  
1) Section 354(5) ofthe Code of Criminal Procedure, 1975 provides that when a  
person is sentanced to death, the sentence shal be executed by hanging by neck til he  
is dead. On the question whether this section 354(5) of the Cr.PC is required tobe  
‘amended for providing another mode of execution of death sentence, 80% Judges  
have responded in favour of amending the section. It means they are ofthe view that  
present mode of execution of death sentence should be changed. Only approx. 19%  
Judges are satisfied with present mode of execution of death. All of the 80% Judges  
‘who are in favour of amendment of sec. 354(5) have suggested that administering the  
lethal injection shouldbe the other mode of execution of death sentence. However, 5%  
Judges have suggested that apart from the lethal injection, ‘shooting’ may also be  
  
prescribed as an alternative mode of execution of death sentence.  
  
2) In case another alternative mode of execution of death sentence is provided,  
  
{question arises whether discretion should be given to the Judge or to the convict to  
  
  
Page 78:  
®  
  
‘select the mode of execution of death sentence? 45% Judges have opined that  
lisoretion should be given to the convict and 36% Judges are of the view that discretion  
  
‘should be given to the Judge in choosing the mode of execution of death sentence.  
  
3) As regards the right of appeal to the Supreme Cour, as of now, there is no  
provision inlaw under which a person who has been awarded death sentence which has  
been confirmed by the High Court can as of right prefer an appeal to the Supreme  
Court against such sentence of death. 92% Judges have supported the view that there  
should be a statutory right to appeal to the Supreme Court in cases whore death  
sentence has been confirmed by the High Court. Only one Judge ofa subordinate court  
  
\was not in favour of providing such right to appeal to the Supreme Court.  
  
4) In the Supreme Court, the question is should there be a bench of not less than  
five Judges to hear and decide the cases relating to the death sentence? 51% of the  
Judges have given their answer inthe negative, while 41% Judges are of the view that  
‘casos relating to the death sentence should be heard and decided by a bench of not  
loss than five Judges. Among them, 33% aro of the view tha the rule of majority should  
be applicable. 6% Judges are in favour of applying the rue of 213" majoiy. 39%  
  
Judges have suggested that the rule of unanimity should be applied.  
  
(8) Analysis of the responses from persons other than Judg  
  
  
  
Page 79:  
»  
  
The Commission has also received a large number of responses to the consultation  
  
paper from the general public, persons from the lagal profession, Doctors, officers of the  
  
‘Armed Forces and officers of the CBI etc. Analysis oftheir comments is as follows:-  
  
)  
  
2)  
  
3)  
  
Itis observed that 89% persons are in favour of amendment in section 354  
(6) of the Code of Criminal Procedure, 1973, for providing other modes of  
‘execution of death sentence. However, 11% persons in thelr responses do  
not suggest amendment in section 354(5) of CPC. 73% of among those  
who are in favour of providing other modes of execution of death sentence  
prefer that administering lethal injection should be an alternative mode of  
‘execution of death sentence. While 10% prefer using electic chair, 5%  
prefer shooting by fring squad as an alternative mode of execution death  
sentence. However, 12% persons suggested other modes of execution of  
death sentence.  
  
'51% of among those who are in favour of retaining the present mode of  
‘execution of death sentence Le. hanging by neck til death’ are of the view  
that execution of death sentence by hanging should be done in a public  
place. But 49% persons viewed that hanging should be done at a private  
place like a jail.  
  
‘On the question whether discretion should be given to the court in case  
provision being made for an altemative mode of execution of death sentence,  
62% have given their answer in negative and 38% are in favour of giving  
lisoretion being given to the cour, On the question whether discretion  
‘should be given to the conviet for choosing mode of execution of death  
‘sentence, 70% have given their answer in the positive. However, 30% are  
  
notin favour of such discretion being given to the convict.  
  
  
Page 80:  
so  
  
4) 83% parsons in their responses have opined that there should be a statutory  
fight to appeal to the Supreme Court in cases whore the death sentence  
awarded by the tal court is confirmed by the High Court. However, 17% are  
notin favour of providing a right of appeal to the Supreme Court in such  
  
5) 99% persons aro ofthe vw that inthe Supreme Court, cases relating tothe  
«ath sentonce should be heard and decided by a bench of not less than 5  
Judges. Among them 47% are in favour of applying a rule of simple majority  
‘and 33% are in favour of rule of 23" majority. 20% are in favour of the rule  
  
(of unanimity  
  
(C) Times of India pol  
  
It may be mentioned that the Times of India on July 27, 2003 conducted  
‘an SMS Poll asking the question "Are public execution best punishment for  
heinous crimes?" The response was 69 per cont ‘Yes’ and 31 per cont ‘Not  
Public reaction in india against the trend of humanizing the made of execution of  
«death punishment is peculr.  
  
‘Tho Commission feels that the reason as to why general public is in  
favour of a cruel form of executing death punishment is because ofthe very low  
Conviction rate which is only about 6 per cent and the crime rate is also  
increasing in India. Investigation and judicial agencies are not able to bring the  
‘actual persons who commit crimes before the courts of justice. The general  
public fels that today, the high, the rich and the mighty are able to manipulate  
  
delays, tamper with witnesses and able to abuse the system and they go scot  
  
  
Page 81:  
8  
  
{r99. It may also be mentioned that the Judge Advocates General ofthe Army,  
Navy and the Air Force, who responded, favoured amending of the Army, Navy  
land Air Force Acts to replace hanging by lethal injection but they were of the  
View that there should be no right of appeal to the Supreme Court against the  
  
decision of the Court Martial  
  
‘After the inaugural, the Chairman Law Commission who presided over the said  
Seminar, opened the discussion to the various participants which included mainly  
advocates, senior Police officials, government officials , NGOs, representatives of  
  
Judge Advocates General of the Army, Navy and Ar Force and Jail Officials.  
  
Regarding the questionnaire, the participants were asked to give their comments  
€n issues lke alternative modes of execution of death sentence, ight of appeal to the  
Supreme Court, number of Judges comprising the Bench which should hear such  
matters ete.  
  
Shri Sushil Kumar (Senior Advocate, Supreme Cour) stated that there is no need to  
‘amend section 354 (5) of Cr. PC and he thus favoured execution of death by hanging  
  
‘On the question of ight of appeal, he was ofthe vow that every case of death sentonce  
‘should goto the Supreme Court as a matter of ight. On the question of the  
‘composition ofthe Bench deciding the case of death sentence, he suggested tha it is  
sufficient ia minimum of a SJudges Bench hear it and favoured rule of unanimity in  
such cases. Sh.Ajay Aggarwal, D.G. Tihar Jail favoured execution of death sentence by  
hanging and he was of the view that a 5-Judges Bench should decide the sentence and  
majority decision should preval. Sha U.N.B. Rao, Joint Commissioner, Deh Police  
‘opined mode of death punishment by way of public hanging because of its greater  
  
impact. Further he said thatthe rule of majorty in the Bench should be applicable in  
  
  
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such cases. ShK.P.S. Rajan, Advocate favoured mode of hanging over lthal injection,  
‘and regarding the mode of punishment, he said thatthe choice may be given to the  
Judge or the accused. There should be aright of appeal and a 5-Judges Bench should  
decide case of death sontonce  
  
Ms, Pratibha Ramaswamy, Student of National Law Schoo! of India, Unversity  
Bangalore preferred death sentence by hanging. She was ofthe view that more modes  
may be therefor execution. There should be no right of appeal and minimum 5 Judges  
Bench should decide the cases of death sentence. Sh.S.K Sharma, (Director  
Prosecution, CB) favoured retontion of death sentence. The choice of punishment  
should rest withthe vieim. 3 Judges Bench should hear the matter and majority view  
‘should preval and there should be a right of appeal to the Supreme Court. Sh.  
Balachandra representative of Commonwealth Human Right Intative said that death  
‘sentence should be abolished. Sh.James, Advocate suggested that criminal justice  
‘system requires amendments like improving the system of tial, investigation,  
prosecution ete. Dr. D.P. Sharma, Director, IRAP prefered hanging in public over the  
private hanging in jalls. According to him single Judge Bench is enough to deci the  
  
<death sentence and simple majority rule is better.  
  
Judge Advocates General of the Army, Navy and Air Force wrote letters to the  
Law Commission suggesting that there should not be a right of appeal to the Supreme  
Court against the Court Martial verdict of awarding death punishment. The Law  
  
‘Commission is, however, unable to accept the above suggestion.  
  
  
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‘Tho public response to the questionnaire was widespread and the Commission  
{ot responses from within and outside india. Several persons were of the opinion that  
though the death punishment has been abolished in several countries, however the  
Conditions in India, a country whichis affected by terrorism and by rise in crime, death  
  
punishment should not be abolished.  
  
CHAPTER-8  
  
RECOMMENDATIONS  
  
Inthe light of the study made in eariar chapters on the mode of execution of  
death sentence and the responses which the Law Commission received to its  
‘Consultation Paper and Questionnaire, the Law Commission recommends as follows:-  
  
1. More than 85% persons in their responses have favoured that section 354(5) of  
the Cr.PC 1973 is required to be amended for providing other mode of execution of  
death sentence and approx. 76% persons are in favour that administering the lethal  
injection should be a mode of execution of death sentence.  
  
‘The Commission is ofthe view that administering the lethal injection should be  
provided as an altemative mode of execution of death sentence along with existing  
mode of execution of death sentence by ‘hanging by neck til death’ as provided in  
‘section 354(5) of the Cr-PC, 1973. It may not be appropriate at this juncture to wipe out  
altogether the present mode of execution of death sentence ie. hanging by neck tl  
death’. We are of the view that the present mode of execution be retained and a  
{urther provision be added permiting an alternative mode of execution of death  
‘sentence by lethal injection,  
  
‘Therefore the Commission recommends that,-  
  
Section 354(5) of Cr.PC of 1973 which provides “when any person is  
‘sentenced to death, the sentence shall direct that he be hanged by the neck tll he  
  
  
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ss  
  
Is dead”, needs to be amended by providing an alternative mode of execution of  
death sentence by administering lethal injection until the accused is dead.  
  
2. Whether discretion should be given to the court or to the convict in choosing the  
mode of execution of death sentence, majority of responses suggest that it should be  
<iven to the convict and not tothe court  
  
‘The Commission is ofthe view that discretion should be given to the Court  
Which can decide the mode of execution of death sentence after taking various relevant  
{actors into consideration. Besides, the Commission is of the view that opportunity of  
hearing should be given to the convict on the question of mode of execution of death  
  
‘sentence, now that an alternative mode is recommended. The court shall have to pass  
appropriate orders after hearing the accused on the mode of execution of death  
‘sentence. In this regard, a suitable provision for providing an apportunity of hearing to  
the convict on the question of mode of execution of death sentence needs to be inserted  
in section 354 of the Code of Criminal Procedure, 1973 which is applicable tothe tial  
court as well as all appellate courts.  
  
‘Therefore the Commission recommends that, -  
  
In order to give opportunity of hearing to the accused about  
the mode of execution of death punishment, sub section (5)  
of section 354 of the Code of Criminal Procedure, 1973 needs  
to be amended by insorting a proviso as follows:  
“Provided that the Court shall before passing the final  
‘order as to mode of execution of death sentence, hear  
the accused on that question”.  
  
3) As per section 166 of the Army Act, 1950, section 163 of the Air Force Act, 1950,  
and section 147 of the Navy Act, 1957, death sentence may be executed either by  
hanging by neck til death or by being shot to death  
  
‘The Law Commission is ofthe view that in these Acts, execution of death  
‘sentence by ‘being shot to death’ may be retained and the other mode of execution of  
<death sentence by ‘hanging by neck’ prescribed by these Acts should be substituted by  
the words ‘administering lethal injection  
  
‘Therefore, the Commission recommends that -  
  
  
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ss  
  
The words “administering lethal injection until the accused is dead”  
‘should be substituted in place of “suffer death by being hanged by the  
neck until he be dead” in section 166 of the Army Act, 1950, section 163 of  
the Air Force Act, of 1950 and section 147 of the Navy Act of 1957.  
  
4. Approx. 88% persons in their responses have suggested that in Supreme Court  
‘appeal should lie as of right in cases where High Court awards or confirm death  
‘sentence passed by the Court of Sessions.  
  
‘Therefore, the Commission recommends tha,  
  
There should be a statutory right of appeal to the Supreme Court against,  
the judgment of High Court confirming the death punishment awarded by  
the Court of Session or awarding the death punishment in exercise of its  
power of enhancing the sentence.  
In this regard a suitable amendment needs to be made in the Supreme  
Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 by way of  
addition of clause (c) In section 2 of the Act as follows:  
“(e) has confirmed the death sentence passed by the  
Court of Session or awards the sentence of death in  
‘exercise of its power of enhancing the sentence under  
‘section 386(c) (il) oF sections 397 and 401 of the Code  
of Criminal Procedure, 1973".  
  
5. Judge Advocates General of the Amy, Navy and Air Force wrote letters to the  
Law Commission suggesting that there should not be a right of appeal to the Supreme  
‘Court against the Court Martial verdict of awarding that punishment.  
  
‘The Law Commission js, however, unable to accapt the above suggestion,  
  
‘The Commission, therefore recommends that,  
  
Regarding providing a right of appeal to the Supreme Court under the  
Army Act, 1950; Air Force Act, 1950; and Navy Act, 1987 where the court,  
martial has passed the sentence of death and it has been confirmed by the  
Contral Government or appropriate authority, wherever required, suitable  
  
  
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amendments be made in the above said Acts so as to provide a right to  
appeal to the Supreme Court against the order of confirmation of sentence  
‘of death by the Central Government or by appropriate authority.  
  
6 (A) Majority of the persons expressed the view that in the Supreme Court, a  
Bench of not less than 5 Judges should hear and decide the cases where death  
punishment has been awarded. The Law Commission is also of the same view.  
  
‘The Commission further recommends that,-  
  
‘The Supreme Court bench while hearing the caso where death punishment  
has been awarded, should consist of at least five judges. Accordingly, the  
Supreme Court Rules may be amended.  
  
(8) The Supreme Court while hearing 2 case may think that the acquittal is  
wrong and the accused should be convicted and sentenced to death; or it may\_ think  
that the sentence for a term or life sentance is to be enhanced to a death sentence; in  
‘such situations, the Bench of the Court which has heard the case, must direct the case  
to be placed before the Hon'ble Chief Justice of India for being heard by a Bench of at  
  
least fve judges.  
  
Accordingly, a provision in this regard has to be made in the Supreme  
  
Court Rules and we recommend accordingly.  
  
  
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We acknowledge the extensive contributions made by Dr.S. Muralidhar, Part  
time Member of the Commission in preparation of this report. We also appreciate the  
contribution made by Mr. Girish Naik Thigle, a 5\* year student of National Law School of  
India University, Bangalore in the preparation of the consultation paper on \*Mode of  
‘execution of death sentence and incidental matters”  
  
We recommend accordingly.  
  
(Wustice M. Jagannadha Rao)  
  
Chairman  
  
(Or. NM. Ghatate)  
  
Vice-Chairman  
  
(TK. Vishwanathan)  
  
Member-Secretary  
  
Dated: 17.10.2003,  
  
  
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ANNEXURE - |  
  
‘THE LAW COMMISSION OF INDIA  
  
‘SUMMARY OF THE CONSULTATION PAPER  
  
oN  
  
MODE OF EXECUTION OF DEATH SENTENCE AND  
  
ANCILLARY MATTERS (with Questionnaire)  
‘April 2003  
  
Death penalty has been a mode of punishment since time immemorial. But with  
progress of civilization, death punishment has witnessed humanizing changes.  
In the middle of ages, the barbaric and torturous method of death  
penalty were practiced such as:  
( \_Crusifcation where person was nailed to cross and left to die  
(Burning atthe stake;  
(i) Boling to death in ct  
  
(iv) Tying a person toa spiked wheel which was rolled tl the person died:  
  
  
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(¥) Throwing from the cit,  
(vl) Crushing the skull under elephants foot;  
(vil) Stoning to death stil practiced in some countries of the Middle East,  
(vii) Guillotine  
(&) —Strangulation to death  
‘The prevalent methods of executing the death penalty are:  
(2) Hanging to death by neck;  
(©) Firing squad,  
(6) Gas chamber  
(4) Electrocution:  
(e) Intravenous Lethal injection  
Position in India:  
In India, over a hundred years, the mode of death penalty has remained the same.  
Section 368 (1) of the Code of Criminal Procedure, 1898 provide as under  
“When any person is sentenced to death, the death sentence shall direct that he  
be hanged by the neck til he is dead.”  
  
This provision has been retained in Section 364 (5) of Criminal Procedure Code of 1973.  
  
Earlier Studios:  
‘Tho 35" Roport of the Law Commission on Capital Punishment of 1967 deait with  
various mode of death sentence concluded:  
“We find that there isa considerable body of opinion which would tke hanging to  
be replaced by something more humane and more painless...”  
“That a method which is certain, humane, quick and decent should be adopted,  
isthe general view, with which few can quarrel. Its true thatthe really agonizing partis  
  
the anticipation of impending death. But society owes to itself that the agony at the  
  
  
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‘exact point of execution be 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."  
‘The Law commission then was not able to arrive at any firm conclusion and retained  
hanging.  
  
‘The Royal Commission Report on Capital Punishment 1949-53 dealt  
with prevalent modes of execution of death and sated that three conditions should be  
{ufflled in executing the death sentence - (a) it should be as less painful as possible; (b)  
  
it should be as quick as possible; and (c) there should be least mutlitation of the body.  
  
The Royal Commission also observed that the question of judicial  
‘execution ‘should be periodically examined especially in light of progress made in the  
  
‘science of anesthetics’  
  
‘The United Nations Economic and Social Council (ECOSOC) in its resolution  
1984/50, annex. General Assembly Resolution 29/118, 1984 provides that where  
capital punishment occurs it shall be carried out so as to inflict minimum possible  
  
suffering.  
  
‘The Suprome Court of India in Deena v. Union of India (1883) 4 SCC 845  
provides thatthe 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 ofthe prisoner's apprehension.  
  
  
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(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 mutation.  
‘OBJECTS:  
  
‘The objects of this discussion paper are (a) the method of execution of  
the death sentence; (b) the process of elimination of difference in judicial opinion among  
the Judges of the Supreme Court in passing sentence of death; and (c) to see the need  
to provide the right to appeal to the Supreme Court to the accused and death sentence  
  
‘Comparative study of prosent methods of.  
  
cecuting the death sentence:  
  
Hanging: Hanging by neck is practiced as prevalent of executing death  
‘sentence in some countries. If the length of the drop is correct, the results in breaking  
(of the spinal cord and the death is instantaneous and almost painless, otherwise the  
results in agonising death by strangulation. In India, there Is no provision for post-  
mortem as it was in UK, before the death penalty was abolished, to ascertain whether  
the convict died of breaking ofthe spinal cord or strangulation. Even in UK it was found  
that death was by strangulation occurred in majority of cases.  
  
‘The procedure is prolonged - the person to be executed Is frst kept in isolation  
‘and not allowed to possess any material by which he can kill himself such as shaving  
  
materials, ‘nada’, or even meal utensils are of earthenware.  
  
‘One day before the execution, he is weighed. Before execution his  
hands and legs are led and black hood is put on him (Jail manual). After the scaffold is  
  
removed the body is kept suspended for half an hour. Often his eyes and tongue gorge  
  
  
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‘out and he urinates and defecates. The process of execution takes about forty minutes.  
There is also dearth of expert hang-man in India and Jail Manual provides for Jailor,  
ho has no scientific knowledge, to guide the hang-man. Hanging has been given up in  
  
United States of America (USA) as its inhumane and degrading  
  
Electrocution: The typical method of electrocution is using the electric  
chair, a prisoner is strapped to a specially bul chair, his head and body is shaved for  
bettor contact of electrodes. High voltage current of 200 wt is passed. The prisoner  
usually leaps forward against the restraints when the switch is tumed on. The body  
changes color and swells. The prisoner often defecate, urinate and vomit blood. The  
lecrc chair was fst used in New York as hanging was thought to be inhumane and  
  
outdated.  
  
Shooting by fring stone: The corwict is tied to wooden staff or chair with his  
hands and legs and cloth patch is put on his heart and often is blind folded then five  
persons shoot him. The death is instantaneous but there is some mutilation of body.  
Tho Army, Navy and Air Force Acts of India give dlscration to the  
{tribunals to either execute the convict by hanging or by shooting  
‘This is method used also in Russia besides some European counties.  
[At the Nuremberg trials, the Members ofthe German High Command who were  
‘sentenced to death by hanging wanted that they should be shot to death because they  
  
‘wanted military death to degrading death by hanging  
  
Gas Chamber: The convict is undressed except his short and tied to a  
Chair in an air ight gas chamber. Stethoscope is attached to his chest and tubes taken  
  
‘out of gas-chamber to determine the convict is dead. Hyéro-Choric acid is pumped  
  
  
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through valve into a pan followed by potassium cyanide or sodium cyanide which is,  
«dropped mechanically in the pan producing lethal gas. The death occurs in six to eight  
minutes and there is no mutation of body but there are wild convulsions. The  
‘chamber is then neutralized with chemicals. This method is expensive and complicated.  
Novada is the fist Stato to use gas chamber in 1924. Five States in USA use this  
  
method.  
  
[Lethal Intavenous Injection: Sodium Thiopental is injected causing the  
Convict to fall into deep sleep subsequently Pancuronium Bromide is injected to stop  
breathing, and finally potassium chloride is injecting to stop the heart. The whole  
process is completed in nine to fourteen minutes and the convict des in a slegp without  
pain and there is no mutilation of body. 37 States in USA are using this method besides  
Guatemala, China is also experimenting with this method, Some States in USA give  
  
‘choice to the cont whether he should be executed by lethal injection or by shooting  
  
NOTE: To avoid this agony of quit of kiling a person two people use  
intravenous injection or electric button out of which one is dummy which is as secret.  
Similarly in USA fining squad consisting of five persons and only three have lives bullets  
  
‘and two have dummy bullets so that no one knows who is responsible for the death.  
  
Reducing Arbitrarines:  
  
  
  
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‘The European Union and UK and several countries have abolished death  
penalty howover, in Bachan Singh's case (AIR 1982 SC 1325), the Constitutional Bench  
of the Suprame Court by majority of 4 to 1, Bhagwati J. descending has upheld the  
Constitutional valicty of death sentence. Nevertholess, the death sentence is  
qualitatively diffrent than any other punishment as much as if there is an error which  
  
‘cannot be corrected,  
  
‘At the same time, itis true that there is arbitrariness inerrant in awarding the  
death or life sentence as it depends on the attitude of a judge as the Court has  
  
Unguided discretion in choosing between death sentence and ife imprisonment.  
  
To reduce the arbivariness, Bhagwati J. in his descending judgment has  
‘suggested that "There should be an automatic review of death sentence by the  
Supreme Court siting as a whole and the death sentence shall not be affirmed or  
  
imposed unless itis approved unanimously by the entre Court”.  
  
Under the Army, Navy and Air Force Acts, the General Court Martial consisting  
of fve officers, death punishment can be given only if two.thied members agree and in a  
Summary General Court Martial consisting of three officers, the death sentance can be  
iven only if all the three officers agree. The simple majority rule asin the Supreme  
  
‘Court or in High Court is not applicable in Court Martial  
  
  
  
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Statutory right of appeal is given against the judgment of the High Court in  
lection maters, against the orders of Bar Council of India and orders of the  
  
‘Commission under MRTP Act.  
  
In criminal cases, fight of appeal is given when High Court reversed the  
judgment of trial court and given ten years or more or has given death sentonce or  
where the High Court has withdrawn the case from rial court and given death  
punishment. But no right of appeal is given in case the High Court confirms the death  
  
punishment awarded by the trial cour.  
  
The Consultation Paper raises several controversial questions, the Law  
‘Commission proposes to elicit pubic response and to this and the following  
  
questionnaire is given:  
  
-QUESTIONNAIRE  
  
1. Section 384(5) of Cr.P.C. of 1973 provides as follows =  
  
“When any person is sentenced to death, the sentence shall direct that he  
may be hanged by neck til he is dead."  
  
(a) Does this section be required to be amended Yes ( )  
No ()  
  
(b) and f so what other modes of execution do you suggest ? (Refer to  
Discussion Paper Chapter 4 and Chapter 5).  
  
Lethal) Shooting ( )  
Electric ( )  
  
  
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96  
Injection ( ) Chair 0)  
  
2. Some States in the U.S.A. give the convict the choice whether he  
wants to die by lethal injection or shooting. While in India, the Court Martial  
Tribunal, under the Army Act of 1950, Air Force Act of 1950 and Navy Act of  
1957, has a discretion to give death punishment either by hanging to death or by  
shooting to death,  
  
Should discretion be given to the Judges? Or Yes  
() No()  
Should discretion be given to the Convict Yes () No  
  
O  
  
3. Statutory right of appeal to the Supreme Court is given against judgment  
of the High Court in election matters, against the orders of the Bar Council of  
India and orders of the Commission under MRTP Act, 1969. Right of appeal is  
given under the Supreme Court (Enlargement of Jurisdiction) Act, 1970 in  
criminal cases where High Court has reversed the trial cour’s judgment and has,  
sentenced a person for 10 years or more, or has given death punishment or  
where the High Court has withdrawn the case and given death punishment  
  
But no right of appeal is given in case the High Court confirms the death  
punishment given by the trial court.  
  
Should the person convicted of death penalty be given right of appeal to the  
Supreme Court so that he has the satisfaction that his case is fully heard by the  
highest court of the land, especially when if there is an error, it cannot be  
corrected and death punishment is qualitatively different than any other  
punishment?  
  
Yes () No ()  
  
  
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In trial by Court Martial Tribunal under Army Act, 1950, Air Force Act,  
  
1950 or Navy Act, 1957, when a death punishment is given by the General  
  
‘Court Martial consisting of five officers, death punishment can be implemented  
  
‘only if two-third members give death punishment and in the Summary General  
  
‘Court Martial consisting of three officers death punishment is implemented only if  
  
all the three officers agree.  
  
answer is ‘Yes!  
  
6.  
  
(@)  
  
(o)  
  
©)  
  
Should a Bench of not less than five Judges decide the case  
in the Supreme Court.  
  
Yes () No )  
  
Should the rule of majority, or rule of unanimity, or rule of  
two-third majority be applicable?  
  
Rule of Majority) Rule of Unanimity ( )  
Rule of Tworthird Majority  
  
In case of tworthird majority, should death sentence be not  
awarded because two other Judges did not think it aft case  
  
for death penalty?  
Yes () No ()  
  
Any other suggestion as for the mode of execution or implementation of a  
  
death sentence? (Please do not write more than 100 words)  
  
  
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Note: This Consultation Paper along with the above Questionnai  
  
Law Commission's website "www.lawcommissionofindia@ni  
  
Responses can be sent by email to “ghatate@nic.in" or by post to the  
  
Member-Secretary, Law Commission of India, 7" Floor, Shastri Bhawan,  
  
New Delhi 110 001.