

Right to Dying Dignified: An Analysis of the Constitutional Validity and Human Rights Perspective of Hanging by Neck in India

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Abstract: *In India, the death penalty is one of the most contentious punishments known to modern criminal justice. This legal form of capital punishment is still practiced in India and is carried out by hanging in the "rarest of rare cases". However, concerns regarding its effectiveness in meeting constitutional requirements, as supported by relevant court rulings and human rights documents, exist today. In this paper, the issue of whether hanging is appropriate and acceptable concerning the right to life and dignity, the prohibition of inhuman, degrading and cruel treatment, will be addressed with the use of judicial precedents from India, a review of the constitutional provisions and human rights documents, and several current ideas concerning human dignity. The author concludes that despite the previous decisions and judgments of the Indian Supreme Court, the fictive existence of the death penalty in contemporary India may be regarded as a potentially unconstitutional practice based on the modern understanding of human rights being developed worldwide.*

Keywords: Death penalty, Hanging, Dignity of man, Article 21, Constitution of India, Human Rights

I. INTRODUCTION

Discussions of capital punishment have been an essential part of conversations on constitutional law and human rights across the globe. Although numerous countries have done away with the death penalty, India continues to execute it, albeit in rare cases, as provided in the law and upheld by decisions of the Supreme Court.

However, the question of whether or not capital punishment itself is legal is not as important as the question of how it is carried out. According to Section 354(5) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (under Section 354(5) of the Criminal Procedure Code of 1973), "*a person who has been sentenced to death shall be hanged by the neck until dead*". There arises an important question of whether, due to the methods of execution used for capital punishment, the dignity of the individual is violated. It is vital to keep in mind that the Constitution of India does not take away all of a convict's rights. Therefore, the capital convict is still entitled to certain rights including the right to humane treatment.

II. THE EVOLUTION OF HANGING AS A METHOD OF EXECUTION

Hanging has been employed as a method of punishment in many societies for centuries. It was during the time of British colonial authority that hanging of prisoners became a legally sanctioned form of death penalty in India.

While the motivation for this form of execution was the ease of administration, reliability of torment, and cost-effectiveness, current scientific research shows that this method can have different impacts on human body depending on what kind of hanging is used:

- Breakage of cervical vertebra;
- Asphyxia;
- Ischemia of the brain;
- Endless suffering before dying.



Medical experts claim that in all cases, death is not instant, and a person suffers before dying depending on how the drop works out.

The execution of this colonial punishment technique becomes a matter of constitutional significance.

III. THE CONSTITUTIONAL SCHEME

3.1 Article 21 and the Right to Life

Under Article 21 of the Constitution: *“No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

While initially given a narrow meaning in the case of **A.K. Gopalan v. State of Madras (1950)**, the provision came to acquire a broader connotation when the Supreme Court ruled in **Maneka Gandhi v. Union of India (1978)** that:

Any procedure which takes away a person’s life must necessarily be:

A fair procedure;

A just procedure; and

A reasonable procedure.

Article 21 thus came to serve as the depository of the doctrine of substantive due process. Can an execution procedure that results in unnecessary suffering ever be considered reasonable and fair?

3.2 Human dignity is a constitutional value

Human dignity has become an important constitutional principle. In the case of **Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)**, the Supreme Court stated that the right to life is also the right to live with dignity. Similarly, in the case of **Justice K.S. Puttaswamy v. Union of India (2017)**, dignity was reaffirmed as a constitutional value that permeates all the fundamental rights.

Dignity exists even among prisoners. In the case of **Sunil Batra v. Delhi Administration (1978)**, the Court stated that a person's imprisonment does not mean that he has lost his fundamental rights except for the rights he has lost according to law. Hence, a prisoner sentenced to death can enjoy the right to dignity till his last moment of life.

IV. JUDICIAL REVIEW OF USE OF DEATH PENALTY BY HANGING IN INDIA

4.1 Deena v Union of India (1983) Hanging was directly challenged on the basis of constitutionality in the case of **Deena v. Union of India**. The petitioner claimed that hanging amounted to a cruel, inhuman and barbarous punishment which violates Article 21. The Supreme Court dismissed the challenge and stated that: Hanging was a traditional method of execution; It inflicts minimal suffering on the person; It is not unconstitutional. The Court relied heavily on the then available medical evidence.

However, critics claim that the judgments reflect constitutional understanding typical of early 1980s and predate the development of the contemporary dignity jurisprudence.

4.2 Attorney General of India v. Lachma Devi (1986)

In this case, the Supreme Court of India was faced with the issue of public executions. The Court held that public executions were unconstitutional due to their violation of human dignity and punishment practices in a civilized society. The importance of this case lies in the fact that it shows how the process of assessing the constitutionality of something is not limited only to the issue of execution itself but also to the issue of the method of execution.

4.3 Shatrughan Chauhan v. Union of India (2014) The High Court highlighted the issue of the death penalty and pointed out that:

Mental illness;

Unusual delay;

Isolation;



Can form grounds for commutation of the death sentence.

The ruling affirmed that constitutional rights do not cease to exist after a death sentence has been pronounced.

V. HUMAN RIGHTS VIEWPOINT

5.1 Universal Declaration of Human Rights (UDHR)

Article 3 says: Every person has the right to life, freedom and safety of person.

Article 5 states: Nobody shall be subjected to torture, cruel, inhumane or degrading treatment or punishment.

Despite the fact that the UDHR does not clearly ban capital punishment, the document strongly insists on the importance of human dignity.

5.2 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was ratified by India as a member-state. Article 6 describes the innate right to life. Article 7 states that: Cruel, inhuman or degrading treatment or punishment is forbidden.

The Human Rights Committee of the UN has been interpreting the provisions in such a way that the executions which are still legal will be performed in such a way that the condemned person suffers the least.

5.3 The United Nations Stand

The tendency around the world is against the death penalty. Only one third of countries in the world have the death penalty by law or in practice. UN resolutions call upon countries to decline executions and aim for abolition.

VI. COMPARATIVE STUDY OF CONSTITUTIONS

United Kingdom

The death penalty in the United Kingdom was completely abolished in 1965 (for homicide) and later on for all other crimes. The country that instituted capital punishment during colonial times in India stopped using it altogether.

South Africa

The Constitutional Court ruled in **S v Makwanyane (1995)** that capital punishment was in breach of:

Human dignity;

Equality;

Freedom from cruel punishment.

The Court pointed out that constitutional democracy should respect human dignity even in relation to very serious offenders.

Canada

Canada abolished capital punishment, recognizing that state-sanctioned killing is contrary to contemporary human rights principles.

European Union

The European Union totally prohibits the death penalty and views abolishing it as a basic human rights obligation.

VII. THE CRITIQUE OF HANGING FROM THE DIGNITY STANDPOINT

There are several reasons for reconsidering the application of hanging.

7.1 Potential Suffering

Studies indicate that hanging is not necessarily painless. In some cases, the process may cause:

Delayed strangulation;

Awareness of suffering;



Physical harm.

The above scenarios give rise to constitutional implications under Article 21.

7.2 Changing Standards of Morality

The Constitution has to be interpreted based on the advances of society. The actions that were allowed years ago may become unconstitutional with the new outlook on human dignity.

The Constitution has been interpreted contextually by the Supreme Court.

7.3 The Meaning of Constitutional Morality

The doctrine of constitutional morality presupposes the movement of the state's acts towards the principles enshrined in the Constitution and not the traditions of the past.

VIII. ARGUMENTS IN FAVOR OF HANGING

Proponents of hanging put forth the following arguments:

The Supreme Court has ruled that hanging is constitutional.

It can be carried out quickly as compared to other means of execution.

Other execution methods such as lethal injection could raise certain challenges, which may be practical or ethical in nature.

Capital punishment can only be employed given the “rarest of rare” principle.

The above arguments imply that the issue of constitutionality should be investigated with regard to capital punishment itself and not the method of execution.

IX. A RE-ASSESSMENT OF DEENA IN CONTEMPORARY CONSTITUTIONAL JURISPRUDENCE

The constitutional context has developed since the year of 1983.

The key developments consist of:

The development of Article 21.

The establishment of dignity as a value under the Constitution.

The development of the jurisprudence of privacy as described in the Puttaswamy case.

The emergence of prisoners' rights jurisprudence.

The influence of international human rights development.

These developments imply the need for a re-evaluation of Deena.

A modern constitutional court could ask the following questions:

Does the practice of hanging cause pain that could be avoided?

Is hanging in line with dignity-based constitutionalism?

Do the states have any justification of continuing to use the colonial system of execution in a democratic society?

X. CONCLUSION

When it comes to examining the constitutionality of hanging by the neck, the concepts of dignity, humanity, and changes in constitutional values have to be addressed. Despite the Supreme Court's ruling, a lot of transformations in the field of constitutional law have happened and broadened Article 21's understanding of the right guaranteeing human dignity. The deadline for the right to dignity is not the prison gate, as it does not cease to exist with the fact of the conviction. The individual is still a constitutional individual and deserves to be treated humanely. As a result, the use of the execution should abide by the dictates of constitutional morality. The global tendency against capital punishment must be taken into account along with modern dignity laws. Whether India will stop practicing capital punishment or will reform its method of execution, the question of human dignity is still the key question concerning the issue.



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