

SELECTED SUMMARY

Law commission report proposes lethal injection for the death penalty

VIJAY HIREMATH

India Centre for Human Rights and Law, CVOD Jain High School, 4th floor, 84, Samuel Street, Pala Galli, Dongri, Mumbai 400009, India.
e-mail: cji_mumbai@justice.com

India is currently one of only 83 countries retaining the death penalty. In India, the death penalty is imposed by way of hanging or shooting. Recently, the Law Commission of India circulated a document entitled 'Consultation Paper on Mode of Execution of Death Sentence and Incidental Matter'. This document contained a questionnaire polling opinions on methods of execution. The questionnaire however, neither questions the use of the death penalty itself nor whether this method of punishment is necessary and justified.

The 'Consultation Paper' has been confined mainly to the following three issues: the method of execution in the death sentence; the process of elimination of difference in judicial opinion among judges of the apex court in passing the sentence of death penalty; and the need to provide to the accused a right of appeal to the Supreme Court in such cases.

Method of execution

In India, the death sentence is currently executed through hanging or shooting. The Criminal Procedure Code dictates that hanging should be the mode of execution and the Army Act, Navy Act, and Air Force Act dictate that the mode of execution for all persons sentenced to death should be shooting.

In *Deena V. Union of India* (1983)4 SCC 645, the apex court held that the execution of death should satisfy the following criteria:

1. It should be as quick and simple as possible.
2. The act of execution should produce immediate unconsciousness passing quickly into death.
3. It should be decent.
4. It should not involve mutilation.

Execution by hanging does not meet any of these requirements. There have been several cases reported where hanging has not immediately resulted in a broken neck and thus the convict is left to slowly strangle to death. This strangling results in the convict's eyes popping almost out of his head, his tongue swelling up and protruding from his mouth. In cases where the neck is in fact

broken, the rope often tears large portions of the convict's flesh and muscle from that side of the face where the noose is. In many cases, the convict will end up urinating on himself and defaecating before death. The prisoner remains dangling from the end of the rope for 8–14 minutes before a doctor climbs up a small ladder and listens to his heartbeat with a stethoscope and pronounces him dead. Given these facts, it is clear that hanging is neither a quick and simple nor a decent method of execution as it involves mutilation of the body and, in some cases, prolonged suffering and torture before death.

Lethal injection is the method of execution currently being contemplated by the Law Commission. The proposition for using this method was first introduced in a medico-legal journal in New York, USA in 1888. In 1977, this proposition was re-introduced by Dr Stanley Deutsch, of the Oklahoma Medical School. Lethal injection is the primary method of execution used in the USA. As per the description provided in the Consultation Paper of the Law Commission, this method of execution involves the prisoner being secured on a gurney with lined ankle and wrist restraints. A cardiac monitor and a stethoscope are attached to the prisoner, and two saline intravenous lines are started, one in each arm. The saline intravenous lines are turned off, and sodium thiopental is injected, causing the inmate to fall into a deep sleep. The second chemical agent, pancuronium bromide, a muscle relaxant, follows. This causes the inmate to stop breathing due to paralysis of the diaphragm and lungs. Finally, potassium chloride is injected, stopping the heart.

This method, of all those available, appears to be the quickest and least painful. However, the reality is that even this method can result in cruel and unusual suffering. Amnesty International has documented numerous 'botched' executions involving lethal injection. The case of Scott Carpenter, who was executed in Oklahoma on May 18, 1997 serves as a prime example of this. Two minutes after the injection was administered, Carpenter started making noises; his stomach and chest had 'palpitations', and his body suffered 26 violent convulsions in the process. He was officially declared dead only 11 minutes after the injections were first administered.

The role of doctors in all methods of execution is very important. In cases where execution is by hanging, the doctors only check whether the person is actually dead or not. In cases of lethal injection, a medical expert is required to administer the injection and as such the doctor is directly involved in the execution. In these cases, the line between a medical practitioner and an executioner is crossed. Internationally, there have been many medical associations that have taken a stand that no medical practitioner should be asked to take part in bringing about the death of a convict. The British Medical Association held that it was opposed to any proposal to introduce a method of execution that would require the services of a medical practitioner.

The principle behind this reasoning is that the medical profession is intended to save lives, not to bring an end to them. It seems only appropriate that the Indian Medical Association and all other Indian organizations responsible for the practice of medicine in this country should state their position on this issue and convey their sentiments to the Law Commission of India. Our medical practitioners, sworn to protect lives, should not be participating in the execution of any individual, whatever the circumstances. A statement of this kind on the part of medical associations would greatly advance the move for complete abolition of the death penalty in India.

It has been proven through research that the death penalty does not functionally act as a deterrent to violent crime. The crime rate in Canada, where the death penalty was abolished in 1998, has substantially reduced since the abolition. At the same time, in the USA, a country where the socioeconomic climate is very similar to that of Canada but which has retained the death penalty, the crime rate has been consistently on the rise for a number of years.

Unanimity in decision

It is essential, in cases where the penalty is so severe, that there be unanimity among the judges awarding the death penalty. However, there are often differences of opinion among apex court judges in such hearings. Even if only a minority of the judges differ in their opinion, in these cases it is not reasonable to impose the death penalty. Rather, such convicts should be granted life imprisonment. However small the voice of opposition may be among the judges, such convicts should be granted some form of mercy.

Right to appeal

It is of utmost importance that in all cases where the death sentence is imposed or confirmed by the High Court there must be an automatic appeal made directly to the Supreme Court. Every convict who is facing a death sentence is entitled to a chance to appeal his conviction and save himself from the gallows. There are many mitigating circumstances that may have resulted in a person being wrongly convicted and sentenced to death. The accused may be poor and may not have received competent representation at the time of the trial. In any case where the state is electing to execute and thus terminate the life of one of its citizens the decision must be confirmed, as a matter of prudence, by the highest court of the land, and that too, unanimously.

The death penalty has existed since the beginning of recorded history. In all this time, it has never proven to be effective as a deterrent to crime in the way that popular perception would have it. No method of executing a human being can be termed as decent and humane because killing, whether it is done by the state or by an individual, constitutes an inhumane act in and by itself. The only humane solution that the Law Commission should offer the Government of India is the complete abolition of the death penalty.

This summary with comments is carried to generate public debate on the subject. Readers are encouraged to write in with their comments on the summary as well as the main report which is available on the internet at <http://lawcommissionofindia.nic.in/cpds1.pdf>