

THE SCIENCE OF EXECUTION: A REVIEW OF CONTEMPORARY METHODS AND THEIR IMPLICATIONS FOR HUMAN DIGNITY

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Abstract

Undoubtedly, the application of Capital Punishment has attracted a torrent of worldwide criticism. Primarily the cause behind this criticism is the excruciating pain caused by ancient outdated and uncivilized method like crucifixion, hanging, beheading, etc., unlike the cotemporary scientific processes and international instruments. In opposition to the backdrop of enumerated counterattacks, most of the developed countries devised/formulated and implemented some contemporary procedures like electrocution, lethal injection, gas chamber, etc. These contemporary procedures were alleged by the formulating nations to be swift and causing minimum pain. In this research paper, each of these modern modes have been critically analysed after reviewing their historical evolution, implementation and challenges faced by each of these methods. The author finds out that these so called modern method do inflict agonizing pain on the convicted offenders. In conclusion the author does suggest that medicalized process of execution may, to some extent, lead to painless killings.

Keywords: Capital Punishment, medicalized, contemporary, execution.

1. Introduction

Courts of competent jurisdiction after adjudication, sentence capital offenders guilty of capital offences to death. While awaiting execution, convicts are usually placed on the death row. The area in a prison where inmates awaiting execution are housed is usually referred to as “death row” and hence considered as an institutionalized hell.¹ Hence, Capital Punishment is a pre-meditated authorised inflection of death upon the capital offender by the state. Accordingly, an offence upon the commission

and conviction of which, the offender attracts capital punishment is a capital offence. Over the years, Capital Punishment has caused much controversy and hence has become a global issue. Attitude of each nation towards capital punishment has been different as their perception towards the same varies from each other. The fact that certain offences which are capitalized by one retentionist country are not capitalised by the other, confirms this variation. Hence, there exists no universal standard to categorize capital offences.²

Although, there exist adequate International safeguards for the death sentence retaining nations to restrict the scope of capitalized offences in the statute books. During recent years, nations with wide scope of Capitalized offences have been highly criticised by the U.N. Human Rights Committee established under the ICCPR.³

Modes of execution which were implemented in early centuries were inhumane and degrading like, boiling, burning at stake, beheading, quartering, hanging, crucifixion, beating to death, impalement, stoning, etc.⁴ However, globally the issue of the death penalty was revisited and execution methods further modified as a consequence of huge public outcry and gradual emergence of the abolitionist groups.

Although, various factors are taken into consideration while carrying out execution, like, fulfilling the last wishes of the condemned prisoner, order to ensure that the execution of death sentence is carried out swiftly, his religious needs to be attended a cleric, appropriate supervision to ensure swift end to the execution and presence of a medical practitioner to certify his death. However, in order to minimize the sufferings of the convict, no attention has been paid over the comparative advantage of one method over the other.⁵

Against the backdrop of the above *lacuna*, various safeguards have been promulgated by United Nations for the sole purpose of minimum sufferings to the condemned prisoner during execution, like, safeguard 9⁶, provides that, wherever capital punishment is implemented, it shall be carried out so as to inflict the minimum possible suffering. In 1996, it was explicitly declared by the Economic and Social Council that the safeguard shall also

¹ Hudson, P., "Does Death Row Phenomenon Violate a Prisoner's Rights Under International Law?" (2000) 11, European

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² Article 6(2) of the International Covenant on Civil and Political Rights

³ *Ibid.*

⁴ Hood, R., The Death Penalty: A Worldwide Perspective (Oxford: Oxford University Press, 2002).

⁵ *Ibid.*

⁶ available at :<http://www.deathpenaltyinformationcentre.org//execution>. (Visited on January 3, 2018). be applied to those under sentence of death awaiting their fates. The Council further advised the member states retaining death sentence to implement minimum standard rules while dealing with the convicts in order to minimise their sufferings.

At this juncture, one might get an impression that the very concept of death penalty in itself is not inhumane and degrading and does not involve any kind of torture, by rushing into the thought process fostered by the illusion that the so called modern methods of execution are humane and painless. In order to correct this perception, in this paper, author would be critically evaluating the modern methods of execution in light of the safeguard No. 9 of the U. N Economic and Social Council. Special emphasis would be placed on electrocution, gas chamber and lethal injection as modern modes of execution.

2. Electrocution

In 1888 in the United States, New York became the first state to adopt electrocution as its method of execution and the first man to be executed by electrocution was William Kemmler in 1890.¹ The origin of execution by electrocution, popularly known as electric chair has a very strange origin, mainly from Alfred Southwick, a New York Dentist, who in 1888 had an unfortunate opportunity of witnessing the death of an elderly hobo. The poor person died of electrocution, when he accidentally tripped on an electric generator. Enthralled by the apparent swiftness and illusionary painlessness of the man's death, consequently Mr. Southwick wrote to New York state legislator about the reduced traumatic results caused by electricity as a mode of execution as compared to judicial hanging. As a result, a special commission was set up by the New York Government to investigate as to how electricity might be used as an alternative to hanging.

Post the execution of William Kemmler in 1890, electrocution as a primary method of execution was rapidly used by many states.² In 1949 in America, a climax stage reached when Electrocution as a method of execution was adopted explicitly by 26 out of the 48 retentionist states. In America, the electric chair, sometimes referred to as "old sparky" was for a long time regarded as a modern, more efficient and humane alternative to the hangman's rope.³ Motivated apparently by concrete belief that electrocution is less painful and more humane than hanging, post 1888 following New York State, several other states adopted electrocution as execution method, like, Ohio in 1896, Massachusetts in 1898, New Jersey and North Carolina in 1907, Virginia in 1908, Kentucky in 1910, while Arkansas, Indiana, Pennsylvania and Nebraska adopted it in 1913.⁴ Apparently everyone was convinced with the well founded belief that as compared to hanging electrocution is less painful and more humane. The legislation in Texas particularly declared hanging to be outdated and being replaced in many states by the more modern and humane system of electrocution.⁵

Nevertheless, the journey of electric chair as the preferred method of execution was curtailed after the revival of capital punishment in the United States,⁶ following the Supreme Court decision in *Gregg v. Georgia*⁷ in 1976. In most jurisdictions, it has been replaced with lethal injection and was then used in only a few states, notably, Florida. Suggestions that electrocution be introduced in United Kingdom as a replacement for hanging was also rejected, however, the commissioners seemed reasonably convinced with the fact that in execution through electric chair "unconsciousness is apparently instantaneous", and that "the leg is sometimes burned but the body is not otherwise marked or mutilated."⁸

In an execution through electric chair, the condemned person is strapped in a wooden chair and the electrodes are connected to his/her body. In order to facilitate attaching the electrodes, the right leg and the head are shaved well in advance. Current between 2000 and 2, 2000 volts is applied at the amperage of 7 – 12, which is further reduced and reapplied a number of times until the condemned person is declared dead.⁹ Nevertheless, during the last three decades of the twentieth century, credible reports about the vivid occurrences of botched executions began to circulate, wherein the equipment appeared to have faulted to such a magnitude that the flame shots from the condemned person's body with intense muscle spasms causing excruciating pain.¹⁰

¹Ilo, U., & Ajayi, O., On the Gallows, Human Rights Law Service. HURIS (2005).

²Bohm (1999) available at: <http://www.deathpenaltyinfo.org>. (Visited on February 13, 2018).

³ The United Kingdom Royal Commission on Capital Punishment 1949 – 1953 Report (Cmd 8932, 1953) p. 265, at Para. 734.

⁴*Malloy v. South Carolina*, 237 US 180, 185, 35 S Ct 507, 59 L.Ed 905 (1915).

⁵*Glass v. Louisiana* 471, U.S 1093 – 94, S.ct 2159, 2163.

⁶*Ibid.*

⁷428 U.S, 135, 176 – 187 1976

⁸The United Kingdom Royal Commission on Capital Punishment 1949 – 1953 Report (Cmd 8932, 1953) p. 265, at Para. 734.

⁹Lawes, L.E., *Life and Death in Sing Sing* (New York: Double Day, 1928) p.170

¹⁰Akingbehin, E.O., “Right to Freedom from Torture, Inhuman or Degrading Treatment in the Context of the Nigerian Criminal Justice System. : A Critical Appraisal.”

How an execution in the electric chair can turn out, has been perfectly described by Justice Brennan of the United States Supreme Court in the following words:

“The prisoner’s eyes sometimes burst out of his sockets and end up down on his cheeks. He defecates, urinates and vomits blood and saliva. The body turns bright red when the temperature rises, the muscle starts to swell and the skin tightens to the point of bursting. Sometimes, the prisoner catches fire, especially if he’s sweating a lot. The witnesses may hear a loud, drawn out sound that is reminiscent of what is heard when you are frying up some bacon and then, a disgusting, cloying smell of burned meat wafts through the chamber. If the voltage is too low, the prisoner is slowly roasted to death.”¹

Lord Brennan, in his concluding remarks stated that even if we assume that electrocution does not cause persistent pain and indignities, the apparent century-long pattern of failed attempts and prolonged deaths signify that it unconditionally carries very high risk of such violence.²

The outcome of the above discussion clearly indicates that electric chair as a mode of execution could be interpreted as a gross violation of basic standards of human decency and dignity, therefore, an inhuman, cruel and degrading treatment.³Hence, it’s quite uncertain that it satisfies the test of painless killing.

3. Gas Chamber

In 1924, the first state to introduce asphyxiation by lethal gas as a method of execution was Nevada⁴ and Gee Jon⁵ became the condemned person to be executed through this method. While Jon was sleeping, the concerned authorities attempted to pump cyanide gas into his cell, however the said attempt failed as the gas leaked from the cell, consequently a gas chamber was constructed.⁶

The technique of gas chamber first developed in the United States of America along with the electric chair, hence it’s use to execute death sentence is essentially restricted to the United States. An unequivocal trend towards an execution that minimizes pain, suffering and above all, mutilation of the body, led to its adoption in the United States.⁷ Popularity of the gas oven as a means of suicide as well as the use of poisonous gas in World War 1, were the major stimulations behind the use of gas chamber for execution. While hearing an early challenge to the gas chamber, the

Supreme Court of Nevada also mentioned the use of gas by dental surgeons to extract teeth painlessly.⁸

As per the original protocol, for one week, the condemned person is placed in a special cell and during this time, the valves are opened at an unstipulated time while the condemned person is asleep and his death occurs in sleep. At that time no criticism to this method was successful, as the State was admired by the Court for the introduction of a new method that sought to inflict death in the most humane manner known the modern science.⁹

Later on in Nevada, replacing the original protocol, gas chamber was introduced as a special cell wherein the execution was carried out very quickly, while the condemned person being asleep. Subsequently, the execution using cyanide gas was implemented in nine states.¹⁰ Located at San Quentin state prison and having the shape of a modified octagon, the California gas chamber is approximately seven and a half feet in diameter. The condemned person is trapped in, through two

chairs, by the legs and arms before execution.

Under the chair, a reservoir, holding a mixture of sulphuric acid and distilled water, is located. A cheese cloth bag carrying sodium cyanide crystals is suspended over the reservoir. The gas rises through the holes in the seat.¹¹ Witnesses can see through five windows on the eight side chamber, while sitting on the chairs placed outside the said chamber.

Six pints of water and three pints of U.S.P sulphuric acid are carefully mixed in a lead container, exactly twenty minutes before execution. Covered with a lid of similar material, the container is placed under the chair in a position to receive the pellets when dropped. Adjacent to the chair, there are two copper pipes which lead to the physician's stand under the floor. To determining the time of the prisoner's death, there is a

¹*Glassv. Louisiana* 428 U.S, 135, 176 – 187 1976.

²*Ibid.*

³ Hood, R., & Hoyle, C., *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2008) p. 159.

⁴The United Kingdom Royal Commission on Capital Punishment 1949 – 1953 Report (Cmd 8932, 1953) p. 265, at Para. 734

⁵*Available at:* <http://www.deathpenaltyinformationcentre.org//execution>. (Visited on January 3, 2018).

⁶Bohm (1999) *available at:* <http://www.deathpenaltyinfo.rog>. (Visited on February 13, 2018).

⁷The United Kingdom Royal Commission on Capital Punishment 1949 – 1953 Report (Cmd 8932, 1953) p. 265, at Paraat 255.

⁸*State v. Gee Jon*. 46 Nev. 418, 211. p.676 (1923).

⁹*State v. Gee Jon*. 46 Nev. 418, 211. p.676 (1923).

¹⁰*Ibid.*

¹¹*Fierro v. Gomez* 865, F. Supp. 1387, 1406 (ND.Cal.1994).

rubber hose at the end of the pipe in the chamber, which is to be connected to the head of a Bowles stethoscope.¹

stethoscope.¹

With the purpose of eliminating the possibility of pockets of gas remaining in items of clothing, the condemned person with all his clothes removed, except shorts, is strapped into a chair in the chamber. During the execution, the condemned person is made to wear a mask while his chest, waist, arms and ankles are restrained. After receiving the order to commence execution from the concerned authority, three executioners turn on three keys due to which an electric switch causes the bottom of the cyanide container to open, further letting the sodium cyanide crystals to fall into sulphuric acid. The entire process produces hydrocyanic gas, which is inhaled by the condemned person.

Within a few seconds, the condemned person may become unconscious, provided he/she takes a deep breath. Conversely, if he/she holds the breath, death may occur after a long time and usually condemned person goes into wild convulsions. While sitting in the control room, the warden pronounces the inmate death after reading the heart monitor connected to the inmate's chest. Immediately, after that ammonia gas is pumped into the execution chamber to neutralize the gas. Subsequently, a specially constructed exhaust fan is used to remove the ammonia gas and this entire process of neutralizing approximately consumes thirty minutes.²

Undoubtly, cyanide inhalation has numerous consequences, any of which can be very painful to the condemned person. Oxygen Deprivation causes intense pain which is equivalent to the pain caused by

intense physical activity or heart attack.³ Eventually, the use of gas chamber as a method of execution was restricted to very few states in the United States as the same was surrounded with huge controversy and opposition. The number of States retaining it has further reduced to four that too only as an alternative to lethal injection.⁴ However, it is unlikely that a condemned person facing capital punishment would be choosing it.⁵ Moreover, it's its very applauding that a federal judge in *Fierro v. Gomez*⁶ in California, expressly ruled that the use of gas chamber is highly unconstitutional on the grounds that in this method the time taken to render the prisoner unconscious is very long hence unacceptable. The court further held that the execution method had no place in a civilized society. In the light of above arguments and discussion, no further proof is required to consider/declare this method as very cruel and inhumane.

4. Lethal Injection

Though, lethal injection as a method of execution was used in Texas in 1983, it was first introduced in Oklahoma in the United States in 1977. At present, thirty five out of thirty-six states in the United States practice this as the only method of execution.

In most of the jurisdictions, electrocution and lethal gas are replaced by lethal injection, being the latest and most modern method of execution. At the angle of the condemned person's elbow, a small tube or a cannula is inserted into his vein, while being strapped to a gurney. A series of substances are injected into his body, once the cannula is passed into the vein.⁷

The use of three drug combination is authorized by the execution protocol of most of the jurisdictions. The first drug to be inserted rendering the condemned prisoner unconscious is sodium thiopental. This is followed by pancuronium bromide, a muscle relaxant, which further paralyzes the diaphragm, lungs and eventually, respiration. Lastly potassium chloride is inserted which stops the heart and finally causes death.⁸

In this execution process death occurs from anaesthetics overdose and due to respiratory and cardiac arrest.⁹ And the condemned person is said to become unconscious within ten to fifteen seconds. Justice Antonin Scalia of the Supreme Court of the United States speaking in favour of lethal injection, has referred to the death as "a quiet death by lethal injection."¹⁰ While further confirming that lethal injection is a painless method of execution, a lower court has held that:

¹The United Kingdom Royal Commission on Capital Punishment 1949 – 1953 Report (Cmd 8932, 1953) p. 265, at Para. 734.

²*Malloy v. South Carolina*, 237 US 180, 185, 35 S Ct 507, 59 L.Ed 905 (1915). *Supra*

³Frank, H.G., *The Barbaric Punishment: Abolishing the Death Penalty* (MartinusNijhoff Publishers, 2003) pp. 37-39.

⁴*Glass v. Louisiana* 428 U.S., 135, 176 – 187 1976..

⁵Caminker, E., & Chemerinsky, E., "The Lawless Execution of Robert Alton Harris". Yale Law Journal, 102 (1992) pp. 225-254.

⁶865 F. Supp. 1387 (N.D. Cal. 1994).

⁷ Amnesty International Report 2006 at p. 281.

⁸*Ibid.*

⁹Hillman, H., "The Possible Pain Experienced During Execution by Different Methods". (1993) Perception 745 at p.747.

¹⁰*Callis v. Collins* (Cert. denied) 114, S.Ct 1127, 1128, 1271, Ed. 435 (1994) (Scalia J.).

"...there is a general agreement that lethal injection is at present the most humane type of execution available and is far preferable to the sometimes barbaric means employed".

In furtherance of this, it was observed by another court that there exists a national consensus that ever evolving standards of American society's human decency are not violated by lethal injection as method of execution.¹

Nevertheless, this so called most modern and scientific technique also does not exist without flaws. Judge Fogel in *Morales v. Tilton*,² while distinguishing between the acceptability of the execution protocols and the constitutionality of lethal injection as a mode of execution, categorically stated that; "...there was inconsistent and unreliable screening of execution team members, a lack of meaningful training, supervision, and oversight of the execution team who, extra ordinarily, almost, uniformly have no knowledge of the nature or properties of the drugs that are used or the risks or potential problems associated with the procedure. There was unreliable record keeping, improper mixing, administration and preparation of sodium thiopental by the execution team, who work with inadequate lighting in overcrowded conditions and poorly designed facilities."

The observation of Judge Fogel is quite worrisome; however, he further held that "though the implementation of lethal injection is broken, it can be fixed".³ He further concluded by stating that the Eighth Amendment does not stipulate an entirely painless procedure but merely prohibits "unnecessary and wanton infliction of pain".

Flowing from the foregoing discussion, it cannot be outrightly ruled out that infliction of capital punishment through lethal injection does lead to torture and cruelty. At present, no one is unaware of the outcry to reform the procedure relating to the administration of lethal injection and in the light of scientific advancements and medical developments, there is no doubt that a flawless effective process can be devised with the co-operation and support of the medical profession in developing a procedure that is highly medicalized in nature.

5. Conclusion

In light of the above discussion, we can conclude by saying that the necessity of invention of the new methods is to minimize physical harm, decrease the time required to end a life, etc. and this has certainly been the main aim and objective of each and every State machinery associated with the process, though none of them can minimize the mental stress and fear of upcoming death.

However, the current trend towards lethal injection as the preferred method of execution presents an opportunity for physicians to participate in the evolution and implementation of capital punishment while still maintaining their role as comforting caregivers. Despite reasonable and legitimate concerns, ethical, legal, and public policy considerations all suggest that physicians should embrace this opportunity to extend their comforting capabilities to the condemned. Physicians should not, as urged by the dominant professional societies, abandon these patients for the sake of political posturing. External influences have already fractured the modern doctor-patient relationship; professional politics should not compromise patient care in the execution chamber. This, to some extent, suggests that lethal injection as a contemporary mode if medicalized may lead to painless killings.

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