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Supreme Court Upholds Hanging as Constitutional Mode of Execution, Reopening Debate on Dignity, Science and Capital Punishment

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Recent Developments:

- On **18 August 2026**, the **Supreme Court of India** dismissed a petition challenging the constitutional validity of hanging as the prescribed method of execution for death sentences under **Articles 14 and 21**.
- A Bench comprising **Justice Vikram Nath and Justice Sandeep Mehta** held that the material placed before it was insufficient to establish that hanging is inherently unconstitutional or that alternative methods such as lethal injection are demonstrably more humane.
- The Court reaffirmed the precedent laid down in **Deena v. Union of India (1983)**, which had upheld hanging as a constitutionally valid method of execution when carried out in accordance with prescribed safeguards.
- However, the Court clarified that its ruling does not create a permanent constitutional closure. It explicitly stated that **future scientific, medical, or empirical evidence** could justify reconsideration of the issue.
- Importantly, the Court observed that the **Union Government is free to constitute an expert committee** to examine whether alternative methods of execution may better align with constitutional requirements of dignity and minimal suffering.

Statutory Framework of Hanging in India:

Present Legal Position:

- Under **Section 393(5) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, a death sentence is to be executed by directing that the convict be **"hanged by the neck till he is dead."**
- This provision is a continuation of the earlier **Section 354(5) of the Code of Criminal Procedure, 1973**, reflecting legislative continuity in India's criminal justice system.
- Thus, hanging remains the **sole statutory method of execution for civilian death sentences** in India.
- In contrast, **military law** permits alternative methods such as shooting, but the Supreme Court has consistently held that this does not violate Article 14, as armed forces personnel constitute a distinct class governed by a separate legal regime.

Nature of the Method:

- Judicial hanging in India is generally based on the **long-drop technique**, where the drop length is calculated based on the convict's body weight and physical characteristics.
- The intended physiological effect is rapid unconsciousness through fracture-dislocation of the cervical vertebrae, leading to swift death.
- However, the effectiveness of this method depends heavily on **precision in calculation and execution**, and any error may result in prolonged suffering.
- Therefore, the constitutional issue is not merely the fact of death, but whether the method involves **avoidable pain, cruelty, or degradation**, which would violate Article 21.

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Constitutional and Legal Dimensions:

Article 21 and Human Dignity:

- **Article 21** guarantees that no person shall be deprived of life or personal liberty except according to a procedure established by law.
- Over time, the Supreme Court has expanded this provision to include substantive guarantees of **fairness, reasonableness, and human dignity**.
- Even a person sentenced to death retains certain minimal constitutional protections, particularly the right to be treated in a manner consistent with dignity.
- In **Deena v. Union of India (1983)**, the Court held that hanging does not violate Article 21, provided it is carried out in a regulated and non-arbitrary manner, based on the scientific understanding available at that time.

Gian Kaur and the Right to Die:

- In **Gian Kaur v. State of Punjab (1996)**, a Constitution Bench held that the **right to life under Article 21 does not include a right to die**.
- However, the Court acknowledged that dignity is an essential component of life and death, particularly in cases involving terminal illness and end-of-life care.
- Importantly, this case does not extend to recognising a right to choose death, but it reinforces that **dignity remains relevant even in the context of death**.
- The present issue is distinct: whether the State's chosen method of execution satisfies constitutional standards of dignity.

Article 14 and Non-Arbitrariness:

- The challenge also invoked **Article 14**, arguing that hanging is arbitrary and discriminatory when compared to alternative methods like shooting used in military law.
- The Supreme Court rejected this argument, holding that **military personnel and civilians form separate and distinct classes**, and differential treatment in execution methods does not automatically amount to discrimination.
- The Court reiterated that Article 14 prohibits arbitrariness, not classification per se, and the existing statutory framework does not meet the threshold of arbitrariness.

Supreme Court Jurisprudence on Death Penalty:

Bachan Singh v. State of Punjab (1980):

- This landmark judgment upheld the constitutional validity of the death penalty but introduced the “**rarest of rare**” doctrine.
- The Court held that **life imprisonment is the rule, and death penalty is an exception**, to be imposed only in extraordinary circumstances.
- Courts must consider both **aggravating and mitigating factors**, ensuring that sentencing is individualized and proportionate.
- The judgment is central to capital punishment jurisprudence as it introduces **judicial restraint and constitutional proportionality**.

Machhi Singh v. State of Punjab (1983):

- This case elaborated the principles laid down in Bachan Singh.
- It identified categories such as brutality, motive, and social impact of the crime as relevant factors in determining whether a case falls within the “rarest of rare” category.

- However, it reaffirmed that courts must still assess **individual circumstances, including the possibility of reform and rehabilitation**.

Deena v. Union of India (1983):

- The Court directly addressed the constitutionality of hanging under **Section 354(5) CrPC**.
- It held that hanging does not violate Article 21, based on the scientific and medical understanding available at the time.
- However, the Court also emphasised that the State cannot impose **cruel, degrading, or inhuman treatment**, even in execution of a lawful sentence.

The 2026 Supreme Court Decision:

Core Reasoning:

- The petition argued that hanging is outdated and violates constitutional guarantees of dignity, proposing lethal injection as a more humane alternative.
- The Court held that there is **no conclusive scientific evidence** demonstrating that lethal injection is less painful or more humane than hanging.
- It therefore found no basis to overturn the existing legal position or refer the matter to a larger Bench.
- The Court also rejected comparisons with military execution methods, reiterating the principle of **distinct legal classifications**.

Key Clarification:

- The Court did not declare hanging to be permanently valid in all circumstances.
- It explicitly acknowledged that **constitutional interpretation evolves with scientific and social developments**.
- If future evidence demonstrates that hanging causes unnecessary suffering or that alternatives are clearly superior, the issue may be reopened.

Law Commission and Alternative Methods:

187th Law Commission Report (2003):

- The Law Commission examined the method of execution rather than the existence of the death penalty itself.
- It recommended retaining hanging but introducing **lethal injection as an alternative option**.
- It also suggested procedural reforms, including giving convicts a right to be heard on the method of execution.
- Additionally, it recommended strengthening appellate safeguards in death penalty cases.

Legislative Position:

- Despite these recommendations, Parliament retained hanging in the **BNSS, 2023**.
- This reflects legislative continuity but also indicates that the issue remains open to **future reform based on constitutional and scientific developments**.

Key Concerns Surrounding Hanging:

Scientific Reliability:

- The effectiveness of hanging depends on precise calculation and execution.
- Errors can result in prolonged suffering, raising concerns under **Article 21's dignity requirement**.

- Since subjective experience cannot be directly measured, evaluation depends on **medical and forensic evidence**.

Human Dignity:

- Even condemned prisoners retain a minimal right to dignity.
- Execution must not amount to **torture, humiliation, or degrading treatment** beyond lawful punishment.
- This reflects the transformation of Article 21 into a **substantive right to dignity**.

Psychological Suffering:

- Death row prisoners often face prolonged mental anguish due to delays, uncertainty, and isolation.
- The Court has previously recognised that such conditions can themselves raise constitutional concerns.

Colonial Legacy:

- Hanging is a legacy of colonial criminal law.
- While historical origin alone does not make it unconstitutional, it raises questions about whether modern constitutional democracy should retain such practices without periodic review.

Alternatives:

- Alternatives such as **lethal injection, electrocution, gas chambers, and shooting** exist globally.
- However, each method must be evaluated on criteria of **pain, reliability, dignity, and risk of error**, rather than assumption of superiority.

Death Penalty as a Broader Constitutional Issue:

Irreversibility:

- Capital punishment is irreversible, making wrongful conviction a critical constitutional concern.
- Once executed, judicial errors cannot be corrected, increasing the need for **stringent procedural safeguards**.

Arbitrariness:

- Sentencing inconsistencies remain a concern due to subjective judicial interpretation of aggravating and mitigating factors.
- The “rarest of rare” doctrine attempts to reduce arbitrariness but does not eliminate it entirely.

Proportionality and Morality:

- The State must ensure that capital punishment satisfies **proportionality, fairness, and constitutional morality**.
- The debate involves balancing **retribution, deterrence, rehabilitation, and human dignity**.

Global Perspective:

- Many countries have abolished the death penalty, reflecting a global shift toward **human rights-based criminal justice systems**.
- However, countries like **Japan and Singapore** still retain hanging or similar methods.
- India continues to retain capital punishment but applies it sparingly under the **rarest of rare doctrine**.

Way Forward:

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- India should consider establishing an **independent expert commission** to evaluate execution methods using scientific and medical evidence.
- Execution protocols must be designed to ensure **minimum suffering and maximum procedural fairness**.
- Periodic review of capital punishment practices is necessary in light of **evolving constitutional morality and scientific advancements**.
- Greater emphasis should be placed on **wrongful conviction safeguards, appellate review, and mental health considerations** in death penalty cases.

Conclusion:

The Supreme Court's 2026 judgment reaffirms the constitutional validity of hanging but does not close the door on future reconsideration. The ruling reflects a careful balance between **legislative authority, judicial precedent, and evolving constitutional values**. Ultimately, the debate is not only about the method of execution but about the deeper constitutional question of whether the State can impose death in a manner fully consistent with **human dignity, fairness, and constitutional morality**.