

MODE OF JUDICIAL EXECUTION OF DEATH PENALTY IN AMERICA: A CRITICAL ANALYSIS *

INTRODUCTION

Modes of judicial execution of death sentence have to be determined in light of various objective factors like prevailing atmosphere of the international opinion, international norms and standards, contemporary penological theories and ever progressing standards of human decency.¹ Diverse and numerous aspects varying from society to society, influenced by the sacred tradition and culture of that society, its philosophy and history and its sense of moral and ethical values, are the key determining factors which effect the evolving standards of human decency.² This could be clearly understood by taking an example of countries like South Africa where the punishment prescribed by law for theft is cutting off the arm and for adultery is stoning to death, there can be no doubt as to the fact that such punishment would be regarded as inhumane, barbaric and cruel in countries like India, although the same may considered as just, reasonable and appropriate for the crime committed in other countries.³ With the gradual passage of time the standards and norms of human decency do vary within the same society as well. In a progressive society, these standards keep on elevating to higher altitudes. As a result, what used to be regarded as just, reasonable and appropriate punishment for a particular offence at one point of time, may now be condemned as extremely cruel, barbaric, inhumane and wholly disproportionate to same offence.⁴

From a truly humanitarian prospective, the inbuilt disgracefulness of death deliberately imposed upon a person by his fellows, may make the death sentence highly untenable.⁵ This is where the courts and concerned state authorities come in and demand that if at all the death sentence is to be retained, its imposition must be with utmost human decency and evolved standards. Although the movement away from brutal and cruel punishment has been a slow yet steady process.⁶

The subject of the mode of judicial execution of death sentence has always been quite controversial. To deal with this controversy, the scholar will be critically examining the history of various methods of judicial execution carried out in United States of America, analyzing

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¹ [Shabnam Hashmi v Union of India, \(2014\) 4 SCC1\(India\)](#)

² *Id.*

³ Law Commission of India, 187th Report on Mode of Execution of Death Sentence and Incidental Matters, (October, 2003).

⁴ *Id.*

⁵ PAUL RAMSEY, *THE INDIGNITY OF DEATH WITH DIGNITY*, (Hastings Center Studies, 2nd ed., 1974)

⁶ DEL VECCHIO, *THE STRUGGLE AGAINST CRIME, IN THE PHILOSOPHY OF PUNISHMENT*, (Acton, 1st ed., 1969)

how and why an ongoing mode was substituted by the other and would also be giving appropriate suggestions connected thereto.

2. American countries

2.1. Historical background

By looking at the history of the United Nations, we observe that the chief mode of execution was hanging.⁷ It was practiced in the middle of the town using a rope over a tree. The main reason behind this practice was the simplicity of the procedure involved and its deterrent effect upon the society. Hanging as a mode of execution did not require any modern equipment and facilitated a public punishment in presence of the people affected by the crime. The two basic tools, i.e., the rope and the tree, were available even in the remotest areas of the nation. The primary objective was to convey a moral message to all the people along with the deterrent effect.⁸ Subjects plotting and planning of committing an offence might hesitate and stop after seeing other offenders hanging at the other side of the rope. Hangings became well known shows, mostly like sports and human sacrifices in ancient Rome. Millions of people used to be present to witness some hangings, and authorities delivered sermons.⁹ Families with children made excursions to see the human drama.¹⁰ However, this public mode of execution had its own shortcomings. This practice of execution did not always bring the expected results, as demonstrated by those who witnessed the execution and reports of pick-pocketers functioning during hangings.¹¹

Nevertheless, this trend of public hangings accompanied by huge gatherings continued well into the twentieth century. However, this practice was abruptly stopped in 1890, when New York carried out its first execution through electrocution.¹² The public perception of death penalty was completely changed by the introduction of this new mode of execution. As the new mode involved completely new technology coupled with the uncertainty as to the type and amount of current to be used in the process, hence it's quite doubtful that this mode was chosen solely with an intent to provide a more dignified and less painful method of death.¹³ Executions were brought under single roof with comparatively less witnesses.¹⁴

Public perception of death penalty was completely changed with the introduction of electrocution.¹⁵ The chief requirements of this new method were sophisticated machinery, specialized knowledge and careful preparation. The electric chair executions were no longer public. The electrocutions were conducted within the prison premises by the officials with their chosen witnesses.¹⁶

A shift in the purpose behind death penalty from sending a warning to the community to taking retribution on the convict was evident with this procedure of execution. In 'recounting of the history of the American death penalty', Mr Stuart Banner pointed out that hangings failed to

⁷ STUART BANNER, THE DEATH PENALTY: AN AMERICAN HISTORY 24 (2002).

⁸ *Id.*

⁹ *Id.* at 24-52.

¹⁰ *Supra* note 6, at 2.

¹¹ PETER LINEBAUGH, THE LONDON HANGED: CRIME AND CIVIL SOCIETY IN THE EIGHTEENTH CENTURY 216 (1992).

¹² RICHARD MORAN, EXECUTIONER'S CURRENT: THOMAS EDISON, GEORGE WESTINGHOUSE, AND THE INVENTION OF THE ELECTRIC CHAIR 3 (2002).

¹³ *Id.* at 36-62.

¹⁴ Peter, *Supra* note 11, at 148.

¹⁵ CRAIG BRANDON, THE ELECTRIC CHAIR: AN UNNATURAL AMERICAN HISTORY 47-48 (1999).

¹⁶ *Id.* at 181-82.

convey the message intended: “The execution ceremony, by focusing attention on the qualities of the person being hanged, produced as much pity as condemnation.”¹⁷ Now in electrocution, the most sophisticated and lethal technology was used to put an end to the convict’s life. “Technology would make the death penalty more humane by making it less human.”¹⁸ The state’s authority was dominating and the convict’s demise was humiliating. The execution was now carried out behind the closed door with no access even to the prisoners. As electrocution assured to be a swifter mode than hanging, hence state claimed it to be humane. This method came with an added advantage of not being on display for everyone to see; hence if anything went wrong (as it frequently did) no one came to know about it.¹⁹ After a period of ninety years, with the introduction of lethal injection as a method of execution, the public perception of death penalty was completely changed. As there was uncertainty as to the continuation of the death penalty in general, hence this shift was mandatory. It was for the first time in the history of United States that the Supreme Court halted the executions for a certain period in 1972.²⁰ Ten year moratorium on executions resulted from the Court’s striking down of all existing statutes on death penalty.²¹ As gas chambers and electric chairs began to appear antiquated and dangerous, hence remained unused. This period was chosen by certain states to bring in a technological innovation that would on one hand restore the state’s power and balance it with compassion and dignity on the other.²²

2.2. Challenges faced by earlier modes of execution

No mode of execution was ever found unconstitutional, though the methods did face certain opposition. However, prior to the introduction of lethal injection, the opposition did not result in delays of more than a few days.²³ Reasons behind the ineffectiveness of such opposition are many. Firstly, the cruel and unusual punishments clause the Eighth Amendment was not made applicable to the states until 1962.²⁴

Although, the courts did examine various aspects of the modes, but a quick hearing was given falling short of any major halt to the convict’s execution.

The case of William Kemmler clearly demonstrated how cruel and inhumane the method of electrocution is. Past three months after his appeal was filed, he was executed on August 6.²⁵ The Court took longer to decide whether subjecting a person to electrocution twice constituted a cruel and unusual punishment. The electricity applied to Willie Francis when he was first placed in the electric chair in Louisiana on May 3, failed to kill him.²⁶ After sending him back to his cell, he filed appeal in the U.S. Supreme Court and on January 13, 1947, the Court passed the judgment stating that the additional pain to which he was subjected to during a second electrocution was an unforeseeable consequence of the first attempt, thus did not amount to

¹⁷ Peter *Supra* note 11, at 148.

¹⁸ *Id.* at 184.

¹⁹ RICHARD, *Supra* note 12, at 205.

²⁰ MICHAEL MELTSNER, CRUEL AND UNUSUAL PUNISHMENT: THE SUPREME COURT AND CAPITAL PUNISHMENT (1973).

²¹ *Furman v. Georgia*, 408 U.S. 238, 292-93 (1972).

²² *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

²³ 49 DEBORAH DENNO, THE LETHAL INJECTION QUANDARY: HOW MEDICINE HAS DISMANTLED THE DEATH PENALTY, 103-104 (2007).

²⁴ *Supra* note 22, at 122

²⁵ *Id.* at 206-12.

²⁶ *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 460 (1947).

cruel and inhumane punishment.²⁷ Four months later, on May 9, 1947, he died in the electric chair.²⁸

It was in 1878, when the Supreme Court in the Utah territories allowed the execution of Wallace Wilkerson by firing squad.²⁹ Wilkerson was not executed until May 1879, in spite of shooting being upheld as a method of execution by the court. His execution by shooting was severely condemned by public, as was evident by one of the daily newspapers:

“The execution of Wallace Wilkerson at Provo yesterday affords no other illustration of the brutal exhibitions of inquisitorial torture that have of late disgraced . . . the country and which have in some States so shocked the natural sensibilities of the people that extreme punishment has been abrogated from pure disgust excited by the sickening spectacles of rotten ropes, ignorantly or carelessly adjusted nooses or inexperienced marksmen. These disgusting scenes are invariably ascribed to accidental causes, but they have become so horrifyingly frequent that some other method of judicial murder should be adopted. The French guillotine never fails. The swift falling knife flashes in the light, a dull thud is heard and all is over. It is eminently more merciful to the victim than our bungling atrocities, and the ends of justice are as fully secured.”³⁰

However, affirmation by the court of both, the constitutionality of the death penalty itself and the statutes of some states that implemented it in 1976, also had zero impact on it.³¹ Complaints against the modes of execution were deemed “frivolous” and looked upon as mere delay tactics.³² However, various cases of grave errors committed by the state in the administration of death penalty were exposed by the print media. Eventually, the number of executions dropped and the cases began to be reviewed with great scrutiny.³³

2.3. Challenges to Methods of Execution of Death Penalty under closer Scrutiny

As the death penalty began declining, a chain of electrocutions in Florida once again raised doubts as to the constitutionality of a particular mode of execution. It was during the electrocution of Pedro Medina on March 25, 1997, when a crown of foot-high flames shot from his headpiece during the execution.³⁴ Two dozen official witnesses were gagged when dense smoke filled the execution chamber.³⁵ Though the state was quick in claiming the incident to be the result of technical fault which could be effectively regularized and corrected, a thorough examination of the execution procedures was asked by the governor.³⁶

Despite of all this, two years later, on July 8, 1999, Allen Lee Davis was also executed by electrocution in Florida using a new electric chair. Before he was declared dead, blood started

²⁷ *Id.* at 464.

²⁸ *Supra* note 40, at 234-35.

²⁹ *Wilkerson v. State of Utah*, 99 U.S. 130, 134-35 (1878).

³⁰ L. KAY GILLESPIE, *THE UNFORGIVEN: UTAH'S EXECUTED MEN* 13 (1991).

³¹ *Gregg v. Georgia*, 428 U.S. 153, 187 (1976).

³² Deborah Denno, *Getting to Death: Are Executions Constitutional?*, 319, 333 (1997).

³³ Richard Dieter, *Innocence and The Crisis in The American Death Penalty*, DEATH PENALTY INFORMATION

CTR (Dec. 22, 2016, 11:30 AM), <http://www.deathpenaltyinfo.org/article.php?scid=45&did=1149>.

³⁴ Michael L. Radelet, *Some Examples of Post-Furman Botched Executions*, DEATH PENALTY INFORMATION

CTR. (Dec. 24, 2016), <http://www.deathpenaltyinfo.org/article.php?scid=8&did=478>.

³⁵ *Id.*

³⁶ Ron Word, *Flames burst from executed man*, WASH. POST, (Mar. 25, 1997, 10:00 AM).

oozing out from his nose and spread over his chest.³⁷ Justice Leander Shaw, Florida Supreme Court while describing Davis's execution noted, "the color photos of Davis depict a man who—for all appearances—was brutally tortured to death by the citizens of Florida."³⁸ However, the constitutionality of electrocutions was upheld by the majority of the Florida Court.³⁹

Ultimately a certiorari was issued by the U.S. Supreme Court to re-examine the constitutionality of electrocution as practiced in Florida.⁴⁰ Consequently electrocution as a method of execution was substituted by lethal injection by the Florida legislature,⁴¹ which enabled Florida to continue with the executions.⁴²

Somewhat similar incidents were reported from California, where the chief method of execution was gas chamber. As a result, gas chamber was held unconstitutional by the U.S. Court of Appeals, declaring it to be cruel and unusual punishment.⁴³ Eventually gas chamber was replaced by lethal injection as a mode of execution in California as well.⁴⁴

Along the same, Georgia also altered its mode of execution to lethal injection around the same time.⁴⁵

Lastly in 2008, the Supreme Court of Nebraska held that under Nebraska's state constitution,⁴⁶ the state's sole method of execution, i.e., electrocution was completely prohibited as it inflicts "intense pain and agonizing suffering," and "condemned prisoners must not be tortured to death, regardless of their crimes."⁴⁷

2.4. Lethal Injections

Lethal injection as a method of execution was far from unusual. Post Furman era this was the most predominant method of execution. Since the beginning of 2000, lethal injection was used to carry out ninety-eight percent of the state's executions.⁴⁸ It was chosen as a more humane alternative over electric chair and gas chamber.⁴⁹ Lethal injection changed the perception of death penalty altogether by being more modern and innovative yet humane. It showed that state could also be compassionate while exercising its control over the subjects.

In this form of execution, convicts were put to deep sleep with lethal injections and were dispatched with much decorum. The objective behind this form of execution was neither to horrify the convicts or nor meant to be spectacles. Laws to permit victims' families to watch the execution along with the defendant's family were also passed.⁵⁰ The state had assurance that witnesses would be reporting an execution resulting into a peaceful death.

³⁷ Rick Bragg, *Florida's Messy Executions Put the Electric Chair on Trial*, N.Y. TIMES, Nov. 18, 1999, at A14.

³⁸ Provenzano v. Moore, 744 U.S. 440 (1999).

³⁹ *Id.* at 416.

⁴⁰ Bryan v. Moore, 528 U.S. 960 (1999).

⁴¹ Bryan v. Moore, 528 U.S. 1133 (2000).

⁴² *Id.*

⁴³ Fierro v. Gomez, 77 F.3d 301, 309 (9th Cir. 1996), vacated on other grounds, 519 U.S. 918 (1996).

⁴⁴ Denno, *supra* note 32, at 442.

⁴⁵ Deborah Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says About Us*, 63 OHIO ST. L.J. 63, 86 (2002).

⁴⁶ Nebraska v. Mata, 745 N.W.2d 229, 279-80 (Neb. 2008).

⁴⁷ *Id.*

⁴⁸ C Executions DEATH PENALTY INFORMATION

CTR.(Dec.24,2016), <http://www.deathpenaltyinfo.org/executions.php>

⁴⁹ Denno, *Supra* note 32, at 90-92.

⁵⁰ Denno, *supra* note 32, at 123.

However, all the executions did not go smoothly.⁵¹ Where the executioners were not able to find the appropriate vein for inserting IV, were the most worrying cases.⁵² Consequently, it prolonged the whole process which was otherwise claimed to be more swift and painless resulting into the possibility of having to cut open a convict's leg or neck to find a more appropriate spot for the fatal chemicals.⁵³

Such cases rose dilemma in the minds of authority as to whether this cut-down process should be carried out by non-medical personnel thereby increasing the risk of further mistakes, or by physicians which would raise immediate ethical concerns.⁵⁴ Doctors are prohibited by American Medical from participating in such executions.⁵⁵

2.5. Challenges to lethal injection as a mode of execution

Ever since this mode of execution was established in 1977, it was challenged by Defense attorneys.⁵⁶ However, most of these challenges were declared as delayed tactics and without merit, hence dismissed.⁵⁷

Despite this, the controversy associated with this mode moved from boarders to the centre with the advancements in the science of anesthesiology and growing condemnation concerning the use of the typical three-drug cocktail by doctor. Judicial cognizance of this matter was taken only after testimony as to the largely ad hoc and sporadic eyewitness accounts of “botched” executions was added by the medical personnel.⁵⁸ Moreover, ethical prohibition against doctors participating in executions was reiterated by the American Medical Association (“AMA”) which was further supported by associations of nurses and emergency medical technicians.⁵⁹ Further, it was indicated by the American Association of Veterinary Medicine that the frequent use of chemicals in lethal injections of humans for the euthanasia of animals was strongly condemnable.⁶⁰ Lethal injection discussion was put in a new light with these statements and criticisms. As doctors started to distance themselves from lethal injection executions, the move casted a pall over the system. This was quite evident, when the execution of Michael Morales was stayed in California and then tentatively permitted to go forward only when assurance of presence of two doctors was given by the state to the presiding judge, to avoid any irregularity and unwanted pain.⁶¹ However, both the doctors declined their presence at the last minute, when it became obvious that they would be more than spectators.⁶² Consequently, the execution was stayed and since then no executions have been carried in California.⁶³

⁵¹ *Supra* note 48.

⁵² *Id.*

⁵³ *Nelson v. Campbell*, 541 U.S. 637, 641 (2004).

⁵⁴ Gregory D. Curfman, Stephen Morrissey & Jeffrey M. Drazen, *Physicians and Execution*, 358 NEW ENG. J. MED. 403-04 (2008), available at <http://content.nejm.org/cgi/content/full/358/4/403>.

⁵⁵ Council on Ethical & Jud. Affairs, Am. Med. Ass'n, Council Rep., *Physician Participation in Capital Punishment*, 270 JAMA 365, 365 (1993).

⁵⁶ Denno, *supra* note 32, at 375-77.

⁵⁷ Denno, *supra* note 32, at 70.

⁵⁸ Denno, *supra* note 32, at 104.

⁵⁹ *Supra* note 98.

⁶⁰ Am. Veterinary Med. Ass'n, *2000 Report of the AVMA Panel on Euthanasia*, 218 J. AM. VETERINARY MED. ASS'N 669, 680 (2001).

⁶¹ Maura Dolan & Henry Weinstein, *The Chaos Behind California Executions*, L.A. TIMES, Oct. 2, 2006, at 1.

⁶² *Ibid.*

⁶³ *Dep't of corrections & rehabilitation, condemned inmates who have died since 1978* (Jan. 22, 2017, 10:04 AM) http://www.cdcr.ca.gov/Reports_Research/docs/CIWMD.pdf.

As Challenges to lethal injection could also be raised as a civil rights issue, once affirmed by the U.S. Supreme Court, opened the door for evidentiary hearings and formal discovery of state protocols pursuant to civil suits. As a result of litigation, the veil covering the state execution procedures in a cloak of secrecy, has been lifted partially. Consequently, far more problems have been discovered than just the names and dosages of the drugs being used.

For years, many states have veiled their execution procedures in a cloak of secrecy. That veil has been partially lifted as a result of the litigation, and courts have discovered far more problems than just the names and dosages of the drugs being used. Several media sources have extensively reported some of these findings. For instance, an article published in the Los Angeles Times stated in detail California's procedures for executions by lethal injection.

The execution procedures were described as "almost haphazard events," by the witnesses.⁶⁴

The article furnished the following details:

"Lethal injection is performed in a dark, cramped room by men and women who know little, if anything, about the deadly drugs they inject under extreme stress. . . . After the IVs are set up, the chamber's heavy, solid steel door is shut and locked, and the inmate is left alone. A prison employee leans into the door to seal it, an apparent holdover from the days when the prison had to ensure toxic gas would not escape."⁶⁵

After that, the "execution team retires to an adjacent room, where members insert the execution drugs by syringe into IV lines that run through the wall and into the inmate's arms."⁶⁶ The anteroom to the execution chamber is often packed with state officials, prosecutors and other government visitors.⁶⁷

As explained by former San Quentin Warden, Steven W. Ornoski that the anteroom are so crowded that once he was compelled to ask a doctor to leave.⁶⁸ In fact, "a nurse working in the jammed room said she had to pass syringes to an outstretched hand whose owner she could not see. The same nurse said she did not know the origins of a document with instructions for the drugs. She had simply found it 'in the gas chamber.'⁶⁹

On top of this, in order to prevent executioners from being seen or identified by witnesses, the execution rooms are illuminated only by a red light.⁷⁰ "A doctor who filled out execution records said the room was so dark he had to use a flashlight to see what he was writing."⁷¹ Lastly, concern was raised in the article regarding the functioning of the IV lines. It was further explained by Dr. Mark Heath, a Columbia University anesthesiologist and expert witness for Morales that the IV bags were hung so high that it was not possible to make sure if they were functioning correctly.⁷²

As reported by the Associated Press, an examination of Tennessee's "Manual for Execution" on lethal injections was full of contradictory directives and mixed old guidelines for carrying

⁶⁴ *Supra* note 51

⁶⁵ *Id*

⁶⁶ *Id*

⁶⁷ *Id*

⁶⁸ *Id*

⁶⁹ *Id*

⁷⁰ *Id*

⁷¹ *Id*

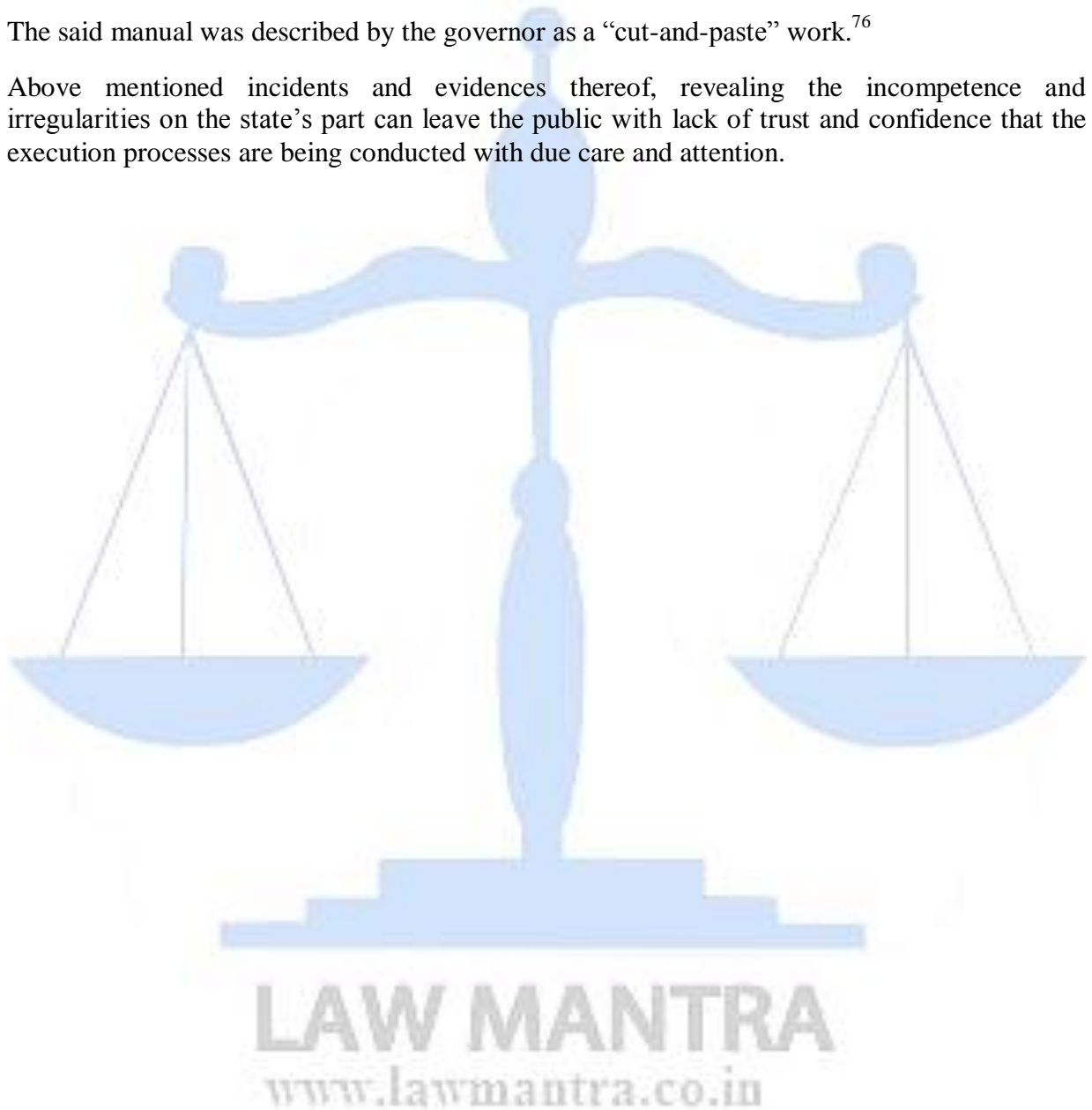
⁷² *Id*

out electrocutions with new procedures.⁷³ The manual contained the following instructions for the prison officials;

“To shave the condemned prisoner’s head prior to an execution, as if preparing him for electrocution, and have a fire extinguisher nearby.⁷⁴ To control the voltage flowing to an electric chair, and the facility manager to disconnect the electrical cables in the rear of the chair before the doctor checks whether the lethal injection was successful.”⁷⁵

The said manual was described by the governor as a “cut-and-paste” work.⁷⁶

Above mentioned incidents and evidences thereof, revealing the incompetence and irregularities on the state’s part can leave the public with lack of trust and confidence that the execution processes are being conducted with due care and attention.



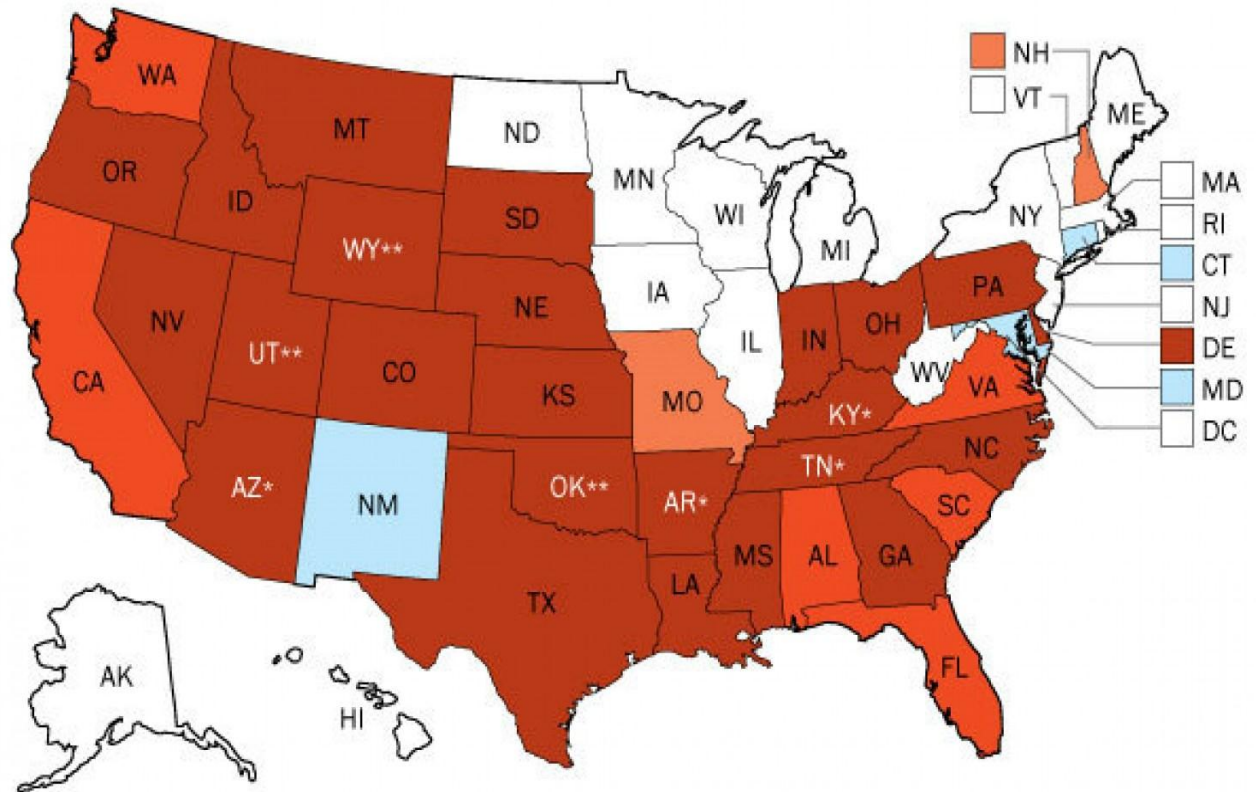
⁷³ Erik Schelzig, *Execution Manual is a ‘Cut-and-Paste Job’*, ST. LOUIS POSTDISPATCH, Feb. 11, 2007.

⁷⁴ *Id*

⁷⁵ *Id*

⁷⁶ *Id*

3. Map representing various modes of execution of death penalty in American States



■ Lethal injection

*Lethal injection, but alternatives are allowed retroactively.

**Lethal injection but alternatives provided if injection is ruled unconstitutional.

■ Lethal injection or gas in Missouri. Injection or hanging in New Hampshire.

■ Lethal injection or alternative - prisoner can choose.

□ Abolished

■ Abolished but retroactive executions remain.

Source: Deathpenaltyinfo.org

THE WASHINGTON POST

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4. Authorized methods in American States: Tabular form⁷⁷

Method	Number of executions by method since 1976	Number of States authorizing methods	Jurisdictions that authorize
Lethal Injection	1265	33 states + U.S. Military and U.S. Gov't	<p>Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico*, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming, U.S. Military, U.S. Government.</p> <p>*New Mexico and Nebraska abolished the death penalty but their repeals may not apply retroactively, leaving inmates on death row facing possible execution.</p>
Electrocution	158	8 states (all have lethal injection as primary method).	<p>Alabama, Arkansas, Florida, Kentucky, [Oklahoma], South Carolina, Tennessee, Virginia</p> <p>The supreme courts of Georgia (2001) and Nebraska (2008) have ruled that the use of the electric chair violates their state constitutional prohibitions against cruel and unusual punishment.</p> <p>UPDATE: In 2014, Tenn. passed legislation allowing imposition of the electric chair if lethal injection drugs cannot be obtained.</p>
Gas Chamber	11	5 states (all have lethal injection as primary method)	<p>Arizona, California, Missouri, [Wyoming], [Oklahoma]</p> <p>Okla. Gov. Mary Fallin signed legislation allowing the state to use nitrogen gas as a form of execution if either the drugs for lethal injection are unavailable or if lethal injection is struck down by the courts.</p>

⁷⁷Michael L. Radelet, *Authorized methods in American States*, DEATH PENALTY INFORMATION CTR. (Dec.27, 2016), <http://www.deathpenaltyinfo.org/methods-execution?>.

Hanging	3	3 states (all have lethal injection as primary method)	Delaware , New Hampshire , Washington
Firing Squad	3	2 states (all have lethal injection as primary method)	[Oklahoma] , Utah UPDATE: On March 23, 2015, Utah Governor Gary Herbert signed legislation reauthorizing the state to use the firing squad in the event that the drugs required for lethal injection are unavailable. Prior to this, the firing squad was an option, but was only allowed for inmates who chose this method prior to its elimination in 2004. Oklahoma offers firing squad only if lethal injection and electrocution are found unconstitutional.

NOTE: States in [brackets] authorize the listed method only if a current method is found unconstitutional.

5. Conclusion and suggestion

After a thorough analysis of various modes of judicial execution practiced in United States of America since inception, the scholar has come to a conclusion that a gradual trend towards humanizing modes which are swift causing less pain, so that the convict quickly passes into death is observed. As the most predominant method of execution, i.e., hanging was replaced by shooting, which in turn was substituted by electrocution and gas chamber. However, ultimately it was lethal injection which was one of its kinds and hence became the sole method of execution.

Electrocution and gas chamber, both couldn't stand the test of evolving standards of human decency as laid down in eighth amendment to American Constitution.

Eighth Amendment provides that a method of execution violates it if it either causes or intends to cause

- a) Pain, or
- b) Violation of bodily integrity, such as
 - i) Mutilation,
 - ii) Violence upon the body, or

iii) Subversion of the prisoner's control over his body.

Although, administration of lethal injections was also not very smooth as it had its own shortcoming. In this regard, the scholar would like to suggest the following precautions that the executioners ought to keep in mind before and while administering the deadly chemicals:

- a) In order to take the method of administration of lethal injections out of the scope of medical ethics, the appropriate authority needs to train persons having knowledge of the medicine and field connected thereto and provide them with appropriate designation in this behalf.
- b) Such trained persons may assist in carrying out the executions.
- c) The equipments used and the procedure adopted shall be designed in such a manner so as to keep the identity of the person administering fatal chemicals unknown even to the person himself
- d) The “Manual for execution” on lethal injection must be drafted carefully so that it’s free from any kind of ambiguity, contradictory instructions and mixed old guidelines.
- e) The origin of the document with instructions for the drugs must be kept at correct place and made known to the person concerned.
- f) The IV bags should not be hung so high that it becomes difficult to ensure that they are functioning correctly.
- g) The anteroom to the execution chamber should not be unnecessarily packed with state officials, prosecutors and other government visitors. Access to this room should be strictly kept only to those whose participation is a must for completion of the execution process.