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# **THE ROLE OF CAPITAL PUNISHMENT AND RAREST OF RARE CASE DOCTRINE IN INDIA'S CRIMINAL JUSTICE SYSTEM - A COMPREHENSIVE ANALYSIS**

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## **ABSTRACT**

Capital punishment remains one of the most controversial aspects of the criminal justice system, balancing between justice and human rights. India, as a democratic nation with a robust legal framework, retains the death penalty for the "rarest of rare" cases. However, the debate surrounding its effectiveness, fairness, and alignment with constitutional principles continues to persist. This Paper, titled '**The Role of Capital Punishment and Rarest of Rare Case Doctrine in India's Criminal Justice System: A Comprehensive Analysis**' critically examines the legal, judicial, socio-economic, and ethical dimensions of the death penalty in India.

The research begins by exploring the historical evolution of capital punishment in India, tracing its roots from colonial laws to modern-day statutes. It then delves into the constitutional and legal provisions governing the death penalty, including Articles 21, 72, and 161 of the Indian Constitution, as well as key statutory provisions under the Indian Penal Code, Code of Criminal Procedure, POCSO Act, BNS and BNSS. A detailed judicial analysis is presented, focusing on landmark cases such as **Bachan Singh v. State of Punjab (1980)**, which laid down the "rarest of rare case" doctrine, constitutional validity of the doctrine which was upheld in - **Jagmohan Singh v. State of U.P(1972)** and **Shatrughan Chauhan v. Union of India (2014)**, which addressed the issue of delays in execution.

A comparative analysis is conducted, examining global trends on capital punishment, particularly in abolitionist and retentionist countries such as the United States, China, Saudi Arabia, and European nations. The Paper also evaluates the deterrent effect of capital

punishment, assessing whether it significantly reduces crime rates or if alternative sentencing methods, such as life imprisonment without parole, serve as better deterrents.

The Paper concludes by proposing reforms and alternatives, including stricter sentencing guidelines, enhanced legal aid for death row inmates, and a re-examination of clemency powers. The research findings indicate that while capital punishment continues to be legally valid in India, its effectiveness as a deterrent remains debatable. The study calls for a national debate on the future of the death penalty, considering global trends, evolving jurisprudence, and the ethical considerations of state-sanctioned executions.

**KEYWORDS:** Death Penalty Jurisprudence; Constitutional Safeguards; Judicial Discretion; Criminal Justice Reforms; Right to life.

## CHAPTER-1

### UNDERSTANDING THE ROLE AND JUSTIFICATION OF CAPITAL PUNISHMENT AND DOCTRINE OF RAREST OF RARE CASE IN INDIA

#### 1.1 INTRODUCTION

Capital punishment, the most severe form of legal sanction, has been a subject of intense debate for centuries, with discussions centered on its morality, effectiveness, and role in the justice system.

Historically, societies have employed the death penalty as a means of retribution, deterrence, and social control, often perceiving it as a necessary response to heinous crimes. Ancient legal codes, such as the **Code of Hammurabi**, prescribed death for various offenses based on the principle of retributive justice—*"an eye for an eye."* Similarly, Roman law, along with medieval European and Asian legal systems, widely sanctioned public executions to instil fear and maintain order. Methods such as crucifixion, beheading, burning at the stake, and hanging were not only punitive but also intended as deterrents.

Over time, the justification and application of capital punishment have evolved in response to shifting moral, legal, and political perspectives. The Enlightenment era marked a significant turning point, with philosophers such as **Cesare Beccaria** arguing against the death penalty on the grounds that it was neither an effective deterrent nor a morally justifiable punishment. With the advancement of human rights discourse, concerns over wrongful convictions, procedural fairness, and the inhumane nature of executions led to widespread abolition in many jurisdictions. The 20th and 21st centuries have seen a growing global movement against capital punishment, with international organizations such as the **United Nations, Amnesty**

**International, and the International Commission Against the Death Penalty** advocating for its worldwide abolition.

Despite these global shifts, many nations continue to retain the death penalty, asserting that it serves as an essential tool for justice and deterrence. Countries such as China, the United States (in certain states), Iran, and Saudi Arabia justify its use, particularly for crimes such as murder, terrorism, and drug trafficking. Proponents argue that the threat of execution prevents violent crimes and ensures justice for victims and their families. However, critics contend that its deterrent effect remains unproven and that the irreversible nature of capital punishment poses a significant risk, particularly in cases of wrongful convictions. The ongoing global divide on the death penalty reflects deep-rooted legal, cultural, and ethical differences, making it one of the most contentious issues in modern criminal justice systems.

Internationally, capital punishment policies vary widely. Countries within the European Union, along with Canada and Australia, have abolished it, emphasizing life imprisonment as a more humane and effective alternative. Conversely, retentionist nations continue to implement the death penalty, often invoking arguments related to public safety, religious doctrines, and legal traditions. The debate over its efficacy remains unresolved, with abolitionist nations highlighting concerns related to human rights violations, while retentionist countries maintain that capital punishment is necessary for maintaining law and order.

In **India**, capital punishment remains constitutionally valid but is reserved for the "rarest of rare" cases, as established in **Bachan Singh v. State of Punjab (1980)**<sup>1</sup>. The Indian legal system incorporates various procedural safeguards, including the right to appeal, presidential clemency powers, and judicial review, to ensure due process. However, concerns persist regarding the arbitrary nature of its application, socio-economic biases in sentencing, and its effectiveness as a deterrent. With a growing number of countries moving toward abolition, the future of capital punishment in India remains an evolving debate, influenced by both global trends and domestic legal and moral considerations.

## **1.2 STATEMENT OF PROBLEM**

The research paper titled "*The Role of Capital Punishment and Rarest of Rare case doctrine in India's Criminal Justice System: A Comprehensive Analysis*" explores the complexities surrounding the death penalty in India, focusing on its legal, judicial, and socio-ethical dimensions. The study aims to critically examine the justification, effectiveness, and

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<sup>1</sup> Bachan Singh v. State of Punjab: AIR 1982 S.C. 1325

implications of capital punishment within India's criminal justice framework while assessing whether it aligns with contemporary human rights standards and evolving global trends.

Capital punishment remains one of the most debated aspects of criminal jurisprudence in India, raising critical questions about **deterrence, fairness, judicial discretion, and constitutional morality**. Despite being upheld as a legal form of punishment for the "rarest of rare" cases, concerns persist regarding its arbitrary application, socio-economic biases, wrongful convictions, and its effectiveness as a deterrent to crime.

Firstly, the **lack of uniformity in sentencing** has led to judicial inconsistencies, where similar offenses may result in different punishments depending on subjective interpretations by courts. While the Supreme Court's "**rarest of rare**" doctrine seeks to limit the application of the death penalty, it remains ambiguous and inconsistently applied. This creates uncertainty and raises concerns about potential miscarriages of justice, particularly for marginalized communities who may lack adequate legal representation.

Secondly, **the deterrence argument remains inconclusive**, as there is limited empirical evidence to suggest that capital punishment significantly reduces crime rates. Studies indicate that factors such as socio-economic conditions, law enforcement efficiency, and certainty of punishment have a more substantial impact on deterrence than the severity of punishment. This calls into question whether the death penalty serves its intended purpose in preventing heinous crimes.

Additionally, **the socio-ethical and human rights concerns** surrounding capital punishment highlight the risks of wrongful executions and the psychological trauma experienced by death row inmates and their families. International human rights organizations and legal scholars increasingly advocate for its abolition, citing violations of the right to life under Article 21 of the Indian Constitution and international human rights treaties to which India is a signatory.

Furthermore, **India's stance on capital punishment remains a subject of debate in the global legal landscape**. While many countries have abolished the death penalty, India continues to retain it, arguing that it serves justice in the most egregious cases. However, this raises questions about India's commitment to evolving global human rights norms and whether alternative sentencing methods, such as life imprisonment without parole, could serve as a more effective and humane substitute.

In conclusion, the role of capital punishment in India necessitates a **comprehensive legal, ethical, and empirical analysis** to determine its continued relevance in a modern, rights-based legal system. This research endeavors to contribute to the ongoing discourse by critically examining the legal framework, judicial precedents, socio-economic implications, and global

perspectives on capital punishment. The study also seeks to explore potential **reforms or alternatives** that could ensure a more just, equitable, and effective criminal justice system.

### **1.3 OBJECT AND UTILITY**

Recognizing the complex legal, ethical, and societal implications of capital punishment in India serves as the foundation for this research. The death penalty remains a contentious issue, with debates surrounding its deterrent effect, fairness in application, and alignment with constitutional and human rights principles. By examining the role of capital punishment in India's criminal justice system, this study aims to provide a comprehensive analysis of its justification, effectiveness, and future viability. The primary goal of this research is to critically assess the death penalty from multiple perspectives, including legal, judicial, criminological, and human rights viewpoints, while also considering alternative sentencing mechanisms.

The present study is undertaken with the following objectives:

1. **To Examine the Legal Framework Governing Capital Punishment in India:**  
This objective aims to analyse the constitutional provisions, statutory laws, and judicial precedents that define and regulate the death penalty in India. Special attention will be given to the “rarest of rare” doctrine established in *Bachan Singh v. State of Punjab (1980)*<sup>2</sup> and subsequent rulings that have shaped the jurisprudence of capital punishment.
2. **To Assess the Deterrent Effect of Capital Punishment on Crime:**  
This study will evaluate whether the death penalty serves as an effective deterrent against serious crimes such as murder, terrorism, and sexual offenses. Empirical data, crime statistics, and criminological theories will be analyzed to determine whether executions contribute to a reduction in crime rates.
3. **To Critically Analyze the Judicial Trends and Discretion in Death Penalty Sentencing:**  
This objective will involve a detailed examination of Supreme Court rulings to assess the consistency and fairness of capital punishment sentences. The research will explore judicial discretion, the role of mitigating and aggravating factors, and instances of disproportionate sentencing, including socio-economic biases in death row convictions.
4. **To critically examine the application of the rarest of the rare doctrine by the judiciary:**

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<sup>2</sup> *Id.* at 14

To study a comprehensive understanding of how the judiciary interprets and implements the 'rarest of rare' doctrine in capital punishment cases. By highlighting the importance of consistency and adherence to judicial guidelines, the research aims to contribute to ongoing debates on sentencing reform, judicial accountability, and the fair administration of justice. By analyzing judicial interpretations and sentencing patterns in capital punishment cases, the research seeks to highlight the practical challenges and implications of applying this doctrine.

5. **To Conduct a Comparative Analysis of Capital Punishment Practices in Other Jurisdictions:**

This research will compare India's death penalty framework with those of other nations, including abolitionist countries (e.g., the European Union, Canada) and retentionist states (e.g., the United States, China, Saudi Arabia). Lessons from international human rights bodies and legal reforms in other jurisdictions will be analyzed to determine whether India should move toward abolition or reform.

6. **To Evaluate the Arguments for Abolition or Retention of the Death Penalty in India:**

This objective will explore both sides of the death penalty debate, examining arguments related to retribution, deterrence, human rights violations, and judicial fallibility. The study will assess whether alternative punishments, such as life imprisonment without parole, can serve as viable substitutes for the death penalty.

7. **To Provide Recommendations for Reforming Capital Punishment in India's Criminal Justice System:** Based on the research findings, this paper will propose recommendations for legal and policy reforms, such as stricter sentencing guidelines, improved clemency mechanisms, enhanced legal aid for death row inmates, and potential legislative changes regarding the scope of capital punishment in India.

#### **1.4 RESEARCH QUESTIONS**

To explore the topic comprehensively, the following research questions will guide the analysis:

1. What constitutional and human rights challenges arise in the context of capital punishment under the 'rarest of the rare' doctrine?
2. How has the Indian judiciary interpreted and evolved the 'rarest of the rare' principle in landmark death penalty cases?
3. How do common law countries interpret and implement capital punishment?

## **1.5 HYPOTHESIS**

The doctrine of rarest of rare case is an appropriate principle for capital punishment in the demographic dividend of India. However, due to the changing nature of economic and social structure, few modifications are warranted.

## **1.6 REVIEW OF LITERATURE**

There are several books and write ups on capital punishment. The review has been aimed to analyze the research of other scholars and to know what has been undone so that I may contribute my ideas and findings in this area as a researcher.

### **1.6.1 E-BOOKS**

- **Cesare Beccaria's *Of Crimes and Punishments*** is a foundational text in criminology that advocates for a fair and rational penal system. He argues against capital punishment, calling it ineffective and morally wrong, and stresses that punishment should be proportionate, certain, and swift rather than severe. Beccaria also supports legal codification and crime prevention through social reform. His utilitarian philosophy has greatly influenced modern criminal justice, human rights, and legal reform debates.
- **Lizzie Seal's *Capital Punishment in Twentieth-Century Britain*** critically examines the social, political, and cultural influences on the use and eventual abolition of the death penalty. Through analysis of key cases, public opinion, and media portrayals, Seal explores how class, gender, and race shaped capital punishment discourse. The book situates Britain's experience within broader criminological debates, offering valuable insights into the decline of executions and the evolution of legal and societal values.

### **1.6.2 ARTICLES**

- **Zavatta's article *Controversial Theories on the Death Penalty*** offers a critical analysis of the philosophical, legal, and practical debates surrounding capital punishment. It examines retributive and deterrence-based justifications versus abolitionist views rooted in human rights and the risk of wrongful convictions. The article discusses shifting global attitudes, the role of international law, and empirical studies challenging the death penalty's deterrent effect. Overall, Zavatta presents a

thorough critique of the death penalty's moral and legal legitimacy in modern legal systems.

- **Mahapatro, 2013, Roscoe Pound** presented the theory of social engineering based on doctrine of rarest of rare cases. The aim of this theory is to want of maximum satisfaction towards society as possible also proving justice to build as efficient structure of society. It speaks about balancing of conflicting interests or defactor claims wherein the interests are categorized into individual public and social. It speaks about balancing the interest of society as well as individual public at large.
- **International Commission against death penalty, 20108** Capital Punishment in US was suspended between 1972 to 1976 after SC decision in number of cases of death penalty and declared capital punishment as unconstitutional. In April 2013, 18 states repeated death penalty.
- **Agarwal A, 200010** when we talk about the Capital Punishment there exist two types of opinion, with one group arguing in support of capital punishment while the other group arguing against capital punishment.

### 1.6.3 TEXT BOOKS

- **Ratan Lal & Dhirajlal, The Indian Penal Code, 30th edition, 2004**, Wadhwa & Company, Nagpur mentions about the detailed explanation of the death penalty and doctrine of rarest of the rare cases mentioning about the evolution of the doctrine with relevant case laws
- **Ratanlal & Dhirajlal, The Indian Penal Code, 34th edition, 2014**, Lexis Nexis, Haryana, India. mentions about the detailed explanation of the death penalty and doctrine of rarest of the rare cases mentioning about the evolution of the doctrine with relevant case laws
- **R.V. Kelkar's, The Criminal Procedure Code, 4 th edition, 2002**, Eastern Book Company, Lucknow mentions about the detailed explanation of the death penalty and doctrine of rarest of the rare cases mentioning about the evolution of the doctrine with relevant case laws
- **R.C. Srivastava. Law relating to Crime and Punishment, Advocate, Edition 2006**, Manav Law House, Allahabad mentions about the detailed explanation of the death penalty and doctrine of rarest of the rare cases mentioning about the evolution of the doctrine with relevant case laws

## **1.7 RESEARCH METHODOLOGY**

The paper adopts a doctrinal research methodology to comprehensively analyze the role of capital punishment and rarest of rare case doctrine in India's criminal justice system. The doctrinal approach will primarily focus on studying constitutional provisions, legal statutes, judicial precedents, and international legal frameworks governing the death penalty in India. This method provides a structured understanding of the legal and jurisprudential aspects of capital punishment, particularly the evolution of the "rarest of rare" doctrine, judicial discretion, and the impact of landmark Supreme Court rulings on sentencing patterns. A thorough review of statutory provisions, including the **Bharatiya Nyaya Sahita (BNS)**, **Bharatiya Nagrik Suraksha Sanhita (BNSS)**, **Indian Penal Code (IPC)**, the **Code of Criminal Procedure (CrPC)**, and the **Protection of Children from Sexual Offences (POCSO) Act**, will be undertaken to examine how capital punishment is prescribed and implemented in different categories of crimes.

The research will also include an in-depth analysis of case law, focusing on significant judgments such as *Bachan Singh v. State of Punjab (1980)*<sup>3</sup>, which established the "rarest of rare" doctrine, and *Shatrughan Chauhan v. Union of India*<sup>4</sup> (2014), which addressed the issue of delays in execution. Additionally, the study will evaluate reports from the Law Commission of India, the **National Crime Records Bureau (NCRB)**, and international organizations such as the **United Nations Human Rights Council (UNHRC)** and **Amnesty International**, providing insights into global perspectives on capital punishment.

By relying on secondary sources such as legislation, judicial decisions, academic commentaries, policy papers, and human rights reports, this research aims to critically assess whether the legal framework surrounding capital punishment in India aligns with constitutional principles and international human rights standards. Furthermore, a comparative study will be conducted to evaluate India's stance on capital punishment in relation to other countries. The research will examine abolitionist and retentionist jurisdictions, analyzing trends in the United States, China, Saudi Arabia, and European nations to understand how different legal systems approach the death penalty. This comparative analysis will help determine whether India's existing framework aligns with global best practices or if reforms are necessary. By adopting a purely doctrinal approach, this paper seeks to provide a comprehensive legal analysis of capital punishment in India, evaluating its constitutional validity, judicial application, and alignment with international human rights obligations. The study will

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<sup>3</sup> *Id.* at 14

<sup>4</sup> *Shatrughan Chauhan Union of India*, (2014) 1 S.C.R. 609

contribute to the ongoing discourse on the death penalty by offering policy recommendations aimed at balancing justice, deterrence, and human rights considerations in India's criminal justice system.

## **1.8 CHAPTERISATION**

### **Chapter 1: Introduction**

This chapter introduces capital punishment in India's criminal justice system, defining its legal and historical context. It outlines the paper's primary focus: analyzing the role of the death penalty, its effectiveness as a deterrent, and the legal, ethical, and constitutional challenges it presents.

The chapter sets the research aim, addressing key questions regarding capital punishment's justification, its impact on crime rates, and its alignment with human rights. The central hypothesis suggests that while capital punishment is legally upheld, its fairness, effectiveness, and human rights implications remain contested.

The methodology combines doctrinal, focusing on constitutional provisions, judicial decisions, and global perspectives. A summary of relevant literature establishes the groundwork for the subsequent chapters' analysis.

### **Chapter-2: Legal Framework Of Capital Punishment In India**

This chapter succinctly examines India's legal framework on capital punishment, focusing on constitutional provisions, key statutes, and landmark judicial decisions. It analyzes Article 21 of the Constitution, which guarantees the Right to Life, and discusses its interplay with the death penalty. The clemency powers under Articles 72 and 161, enabling the President and Governors to grant pardons, are also reviewed.

Statutory laws are explored, including the Indian Penal Code (IPC) of 1860 and the Code of Criminal Procedure (CrPC) of 1973, which define capital offenses and outline sentencing procedures. The chapter also considers the Protection of Children from Sexual Offences (POCSO) Act of 2012, which prescribe the death penalty for specific crimes.

Recent legislative developments are highlighted, notably the Bharatiya Nyaya Sanhita (BNS) of 2023, which proposes expanding capital offenses to include gang rape of a woman under 18, mob lynching, organized crime resulting in death, and terrorist acts causing death. The Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 introduces procedural changes affecting death row prisoners, including new rules for filing mercy petitions. Furthermore, the chapter also discusses the finding of Project 39A, an initiative taken up by NLU, Delhi to suggest

reforms and extensively study about the prisoners on death row.

### **Chapter-3: Judicial Trends And Landmark Cases**

This focuses on the judicial trends and landmark cases that have shaped the application of capital punishment in India. It begins with an analysis of the "rarest of rare" doctrine, a key principle established to ensure that the death penalty is imposed only in the most heinous cases. Introduced in the *Bachan Singh v. State of Punjab* (1980) case, this doctrine has been refined over time, with the judiciary emphasizing that capital punishment should be reserved for crimes that shock society's collective conscience.

The chapter then examines important case laws that have influenced the interpretation and application of the death penalty. Cases like *Jagmohan Singh v. State of UP* (1973), *Bachan Singh v. State of Punjab* (1980)<sup>5</sup>, and *Machhi Singh v. State of Punjab* (1983) laid down the foundations for sentencing, while *Dhananjoy Chatterjee v. State of West Bengal* (1994) and *Santosh Kumar Bariyar v. State of Maharashtra* (2009)<sup>6</sup> further shaped the understanding of aggravating and mitigating factors. *Shatrughan Chauhan v. Union of India* (2014) was particularly significant in addressing delays in execution and the human rights implications of prolonged death row incarceration.

### **Chapter-4: Comparative Analysis: India, European union and USA**

The chapter provides a comparative analysis of capital punishment practices in India and around the world. It begins by examining countries that have abolished the death penalty, including the European Union, Canada, Australia, and South Africa, highlighting the shift towards abolition driven by human rights concerns and evolving public opinion. The chapter then contrasts this with nations that retain capital punishment, such as the United States, where its application varies by state, China, which carries out the highest number of executions, and Saudi Arabia and Iran, where executions are often based on Sharia law. Finally, the chapter draws lessons for India from these global trends, suggesting that while India's approach to the death penalty is influenced by its own legal, cultural, and social context, it could benefit from reforms that align with international human rights standards and evolving global perspectives on capital punishment.

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<sup>5</sup> Bachan Singh v. State of Punjab: AIR 1982 S.C. 1325

<sup>6</sup> Santosh Kumar Bariyar v. State of Maharashtra, [2009] 9 S.C.R. 90

### **Chapter-5: Arguments for and Against Abolition**

This chapter critically examines the ongoing debate surrounding the abolition of the death penalty. It explores key arguments in favor of abolition, including concerns over wrongful convictions, the ineffectiveness of capital punishment as a deterrent, and its incompatibility with human rights principles. Conversely, it also presents arguments supporting its retention, such as retribution, public sentiment, and its perceived role in delivering justice for heinous crimes. By analyzing legal, moral, and practical dimensions, the chapter aims to provide a balanced perspective on the complexities of capital punishment and the broader implications of its continued use or potential abolition.

### **Chapter-6: Conclusion and Recommendations**

This chapter presents a comprehensive conclusion and policy recommendations on the death penalty, drawing from the preceding analysis. It critically evaluates the effectiveness of capital punishment in achieving deterrence, justice, and societal protection. The discussion highlights key legal, ethical, and criminological perspectives, assessing whether the death penalty aligns with contemporary human rights principles.

Based on these findings, the chapter proposes legal reforms, alternative sentencing mechanisms, and enhanced procedural safeguards to ensure a fair and just criminal justice system. It emphasizes the need for a balanced approach that upholds justice while addressing concerns of wrongful convictions and proportionality.

## **CHAPTER 2**

### **LEGAL FRAMEWORK OF CAPITAL PUNISHMENT IN INDIA**

#### **2.1. INTRODUCTION**

Capital punishment, or the death penalty remains one of the most contentious issues in the aspect of criminal justice across the globe. In India, the framework governing the capital punishment is intricate, encompassing constitutional provisions, statutory laws and judicial interpretations. The interplay between the sanctity of life, as enshrined in the Indian Constitution, and the state's authority to administer the death penalty presents a complex legal and ethical dilemma. The chapter delves into the constitutional articles pertinent to death penalty, examines the key statutes that prescribe the death penalty for specific offences, analyses the landmark judgments that have shaped its application.

## 2.2. Constitutional Provisions

### 2.2.1. Article 21: Right to Life and Personal Liberty

**Article 21** of the Indian Constitution declares that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” While its plain text appears to provide a simple protection against arbitrary state action, over time the Supreme Court has interpreted “life” in a far broader sense. This guarantee is not limited to mere physical survival; it has evolved to encompass the right to live with human dignity, access to livelihood, education, health, and even environmental protection. In this way, Article 21 serves as a dynamic safeguard ensuring that any state action—which includes decisions made by the executive, legislature, and administrative bodies—must adhere to procedures that are fair, just, and reasonable.

The scope of Article 21 has expanded significantly through a series of landmark judgments. Early decisions like *A.K. Gopalan v. State of Madras*<sup>7</sup> initially interpreted the provision in a narrow procedural light. However, the seminal case of *Maneka Gandhi v. Union of India*<sup>8</sup> transformed this outlook by reading into the “procedure established by law” the requirements of fairness, reasonableness, and justice. Subsequent cases—including *Francis Coralie Mullin v. Union Territory of Delhi*<sup>9</sup> and *Olga Tellis v. Bombay Municipal Corporation*<sup>10</sup>—further extended the right to life also include the right to livelihood, health, and even a pollution-free environment. These decisions have collectively redefined Article 21 as a living guarantee that protects multiple dimensions of human dignity and welfare.<sup>11</sup>

The Supreme Court of India has rigorously scrutinized the imposition of the death penalty under Article 21. While the state retains the authority to impose capital punishment, the Court has consistently held that such an extreme measure can be constitutionally acceptable only in the “rarest of rare” cases. In judgments like *Bachan Singh v. State of Punjab*<sup>12</sup>, the Court emphasized that the death penalty must be imposed only after a meticulous evaluation of aggravating and mitigating circumstances<sup>13</sup>, ensuring that the sentence is neither arbitrary nor excessively cruel. This judicial framework requires that every death sentence be the result of a

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<sup>7</sup> A. K. Gopalan v. State of Madras, AIR 1950 SC 27

<sup>8</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597

<sup>9</sup> Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 746.

<sup>10</sup> Olga Tellis v. Bombay Municipal Corporation, 1986 AIR 180

<sup>11</sup> Article 21 of the Indian Constitution: Right to Life and Personal Liberty, available at: <https://blog.ipleaders.in/article-21/> (last visited February 2, 2025).

<sup>12</sup> Bachan Singh *Supra* note 5 at 26

<sup>13</sup> Surendranath, Anup, Vishwanath, Neetika and Dash, Preeti Pratishruti, "The Enduring Gaps and Errors in Capital Sentencing in India," 32 National Law School of India Review, (2020) available at: <https://repository.nls.ac.in/nlsir/vol32/iss1/3> (last visited February 2, 2025).

process that is not only legally correct but also ethically and morally justified, thereby reinforcing the principle that even the most severe state action must adhere to the constitutional mandate of fairness and justice.

The issue of capital punishment continues to generate intense legal and moral debate. Critics of the death penalty argue that it permanently denies individuals the possibility of reform, effectively nullifying the sanctity of life by ending it irreversibly. They also underscore the risks of judicial error and the potential for disproportionate punishment. In contrast, proponents contend that if capital punishment is administered strictly according to a process that is fair, just, and reasoned—as demanded by Article 21—it does not constitute a violation of the fundamental right to life. They argue that the right to life, while absolute in its protection against arbitrary deprivation, does not preclude the state from exercising its authority to impose punitive measures under stringent constitutional safeguards. This enduring debate reflects the complex challenge of balancing the irreversible nature of the death penalty with the imperative to uphold human dignity and the multifaceted protections guaranteed by Article 21.<sup>14</sup>

The evolution of Article 21 has far-reaching implications that extend well beyond capital punishment. The expansive interpretation of this Article has influenced various aspects of social policy and judicial practice, from the right to privacy and education to environmental rights. Contemporary debates continue to address whether the methods of execution and the circumstances under which the death penalty is applied are compatible with modern standards of human dignity. Critics highlight issues such as prolonged delays in execution and the potential for arbitrary sentencing, urging reforms that may include more humane methods of execution or alternative sentencing models. Additionally, public protests and international perspectives on the death penalty continue to fuel discussions about the need for further legislative and judicial reforms. This dynamic landscape illustrates an ongoing effort to reconcile the state's retributive authority with the inviolable dignity of human life as enshrined in Article 21<sup>15</sup>.

### **2.2.2. Clemency Powers: Articles 72 and 161**

The Indian Constitution grants clemency powers to both the President and the Governors

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<sup>14</sup> Megha Middha, Dr. Samrat Datta, Dr. Namita Jain, Mrs. S. Kalpana, “Capital Punishment vis-à-vis Right to Life,” 2 International Journal for Legal Research and Crime Analysis (2022), available at: <https://www.ijfmr.com/papers/2025/1/36375.pdf?> (last visited February 2, 2025).

<sup>15</sup> Dr. Priyanka Puri, “Article 21: The Heart and Lifeline of the Fundamental Rights,” International Journal for Multidisciplinary Research, available at: <https://www.ijfmr.com/papers/2025/1/36375.pdf?> (last visited February 5, 2025).

of states, enabling them to grant pardons, reprieves, respites, remissions, and to suspend, remit, or commute sentences. These powers are enshrined in Articles 72 and 161, respectively, and play a crucial role in the justice system, particularly in death penalty cases.

#### 2.2.2.1. **President's Clemency Powers under Article 72**

Article 72 of the Indian Constitution grants the President the authority to exercise clemency powers, including granting pardons, reprieves, respites, or remissions of punishment, as well as suspending, remitting, or commuting sentences in specific cases. This provision serves as a vital mechanism for ensuring justice and mercy within the Indian legal system.

##### **Scope of Presidential Clemency Powers**<sup>16</sup>

The clemency powers of the President are applicable in three distinct situations:

1. **Court-Martial Cases:** The President can exercise clemency in cases where the punishment or sentence is awarded by a court-martial, which pertains to military offenses. This power ensures that military justice can be tempered with mercy, providing a crucial check within military tribunals.
2. **Offenses Against Union Laws:** The President has the right to grant clemency in cases involving offenses against laws relating to matters within the Union's executive power. This extends the President's power to offenses under Union laws, underscoring the federal structure of governance. It ensures consistency in applying justice for offenses impacting national interest or requiring uniformity across states, preserving coherence in executive actions.
3. **Death Sentences:** The President can grant clemency in cases where the sentence is death, providing a mechanism for mercy in capital punishment cases. This provision reflects the Constitution's commitment to humanitarian values, allowing for review and potential mitigation of capital punishment.

These clemency powers are exercised on the advice of the Council of Ministers, as per Article 74(1) of the Constitution. This ensures that the exercise of such powers aligns with the collective executive responsibility of the government.

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<sup>16</sup> Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases, available at: <https://www.constitutionofindia.net/articles/article-72-power-of-president-to-grant-pardons-etc-and-to-suspend-remit-or-commute-sentences-in-certain-cases/> (last visited February 2, 2025).

### **Judicial Oversight and Landmark Judgments**

While the President's clemency powers are significant, they are not absolute and are subject to judicial review to prevent arbitrary exercise. The Supreme Court has delivered several landmark judgments that have shaped the understanding and application of these powers:

- **Purshottam Dashrath Borate vs Union of India<sup>17</sup> (2019)**, the Supreme Court upheld the Bombay High Court's decision to commute the death sentence of two convicts involved in the 2007 Pune BPO gang-rape and murder case to life imprisonment for 35 years without remission, citing inordinate delays in execution as the primary reason. In light of such cases, the Supreme Court laid down detailed guidelines to ensure a more humane and streamlined process in handling death penalty cases and mercy petitions. These include the establishment of dedicated cells in every state and Union Territory's Home or Prison Departments to oversee the timely processing of mercy petitions, with officers from the Law or Justice Department ensuring legal compliance and sharing contact details with all prisons. Prison authorities must promptly forward mercy petitions along with relevant case documents to the designated cell and Home Secretary, and then to the Governor or President without delay. The Court also encouraged the use of electronic communication for faster processing, except where confidentiality is a concern. Sessions Courts are required to maintain detailed records of death sentence cases and ensure timely listing while notifying prosecutors or agencies about any pending legal remedies. Furthermore, a mandatory 15-day gap must be maintained between the issuance and execution of a death warrant, during which the convict must be informed of their rights, provided with the warrant and related documents, and given immediate legal aid if they wish to challenge it. Lastly, state governments are instructed to apply for execution warrants promptly once a death sentence becomes final. These measures aim to enhance transparency, efficiency, and humane treatment in the administration of capital punishment in India.
- **Maru Ram v. Union of India (1981)<sup>18</sup>**: The Supreme Court addressed the constitutional validity of Section 433-A of the Criminal Procedure Code, which restricts the premature release of life convicts. The Court held that while Section 433-A imposes certain limitations, it does not fetter the constitutional power of the President under Article 72 to grant a full pardon, even before the expiry of the statutory period

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<sup>17</sup> Purshottam Dashrath Borate vs Union of India, [2015] 5 S.C.R. 1112

<sup>18</sup> Maru Ram v. Union of India, 1980 AIR 2147

prescribed under Section 433-A. This judgment underscored that the President's clemency powers are not absolute and must be exercised in a fair and reasonable manner.<sup>19</sup>

- **Kehar Singh v. Union of India (1989)**<sup>20</sup>: In this case, the Supreme Court considered whether the President can pardon people who have been given death sentences. The Court ruled that while evaluating a pardon, the President is empowered to independently examine the material and reach a different determination about guilt and sentence. It did, however, stress that the Council of Ministers, which is usually headed by the Home Minister, provides recommendations on how this authority is used. The decision emphasized that although the President officially possesses this authority, it is used in accordance with the Council of Ministers' recommendations, guaranteeing executive accountability.
- **Dhananjay Chatterjee v. State of West Bengal (1994)**<sup>21</sup>: The Supreme Court reiterated that the President must act on the advice of the Council of Ministers while deciding on mercy pleas. The Court clarified that although the President has significant powers under Article 72, these powers are not absolute and must be exercised in accordance with constitutional provisions and established procedures. This judgment reinforced the principle that the exercise of clemency powers is subject to executive advice and constitutional constraints.
- **Shatrughan Chauhan Union of India (2014)**<sup>22</sup>: The Supreme Court discussed difficulties pertaining to the execution of death sentences and emphasized that these delays may cause emotional distress for death row inmates. The Court emphasized that mercy petitions must be resolved quickly and that prolonged delay would violate the Constitution's Article 21 (Right to Life). This judgment underscored the importance of timely decisions in mercy petitions to uphold human dignity.
- **Pawan Gupta v. Union of India (2020)**<sup>23</sup>: Supreme Court in this case ruled that accused has no inherent right to seek a pardon or commutation. However, if a mercy petition is filed, it must be considered fairly and very justly by the President. The Court

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<sup>19</sup> Presidential Pardon - Can it be Subjected to Judicial Scrutiny?, available at: <https://articles.manupatra.com/article-details/Presidential-Pardon-Can-it-be-Subjected-to-Judicial-Scrutiny> (last visited February 2, 2025).

<sup>20</sup> Kehar Singh v. Union of India (1989), 1989 AIR 653

<sup>21</sup> Dhananjay Chatterjee v. State of West Bengal, (1994) 2 SCC 220

<sup>22</sup> Shatrughan Chauhan Union of India, (2014) 1 S.C.R. 609

<sup>23</sup> Pawan Gupta v. Union of India, [2020] 4 S.C.R. 1055

emphasized that the President's decision in mercy petitions should be made in a transparent and reasonable manner, ensuring that the rights of the convict are respected.

### **Significance in Death Penalty Cases**

The clemency powers of the Present hold particular significance in death penalty cases. They provide a mechanism for mercy, allowing for the review and potential mitigation of capital punishment. This reflects the Constitution's commitment to humanitarian values and ensures that justice is tempered with compassion. The aforementioned judgments, especially *Shatrughan Chauhan v. Union of India (2014)*<sup>24</sup>, highlight the importance of timely decisions in mercy petitions to prevent prolonged mental distress for convicts on death row.

In conclusion, the President's clemency powers under Article 72 are a crucial aspect of the Indian legal system, providing a balance between justice and mercy. While these powers are significant, they are subject to judicial review to prevent arbitrary exercise, ensuring that they are used in a fair and reasonable manner.

#### **2.2.2.2. Governor's Clemency Powers under Article 161**<sup>25</sup>

Article 161 grants the Governor of a state the authority to grant pardons, reprieves, respites, or remissions of punishment, and to suspend, remit, or commute sentences in cases involving offenses against laws relating to matters within the state's executive power.

However, this authority is confined to offenses under state laws and does not extend to offenses under Union laws or cases involving court-martial sentences. Notably, the Governor's clemency powers do not include the authority to pardon death sentences; such matters remain under the President's jurisdiction.

The Governor's clemency powers are also exercised on the advice of the Council of Ministers, as per Article 163 of the Constitution.

#### **2.2.3. Indian Penal Code (IPC), 1860**<sup>26</sup>

The Indian Penal Code (IPC), 1860, prescribes the death penalty for several offenses, reflecting the gravity with which these crimes are viewed under Indian law. table offenses punishable by death include:

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<sup>24</sup> Shatrughan Chauhan *supra* note 22 at 31

<sup>25</sup> INDIAN CONST. art. 161

<sup>26</sup> K.D. Gaur, *Commentary on the Indian Penal Code*, (Central Law Publishing, 3<sup>rd</sup> edn., 2019).

- **Waging war against the Government of India (Section 121)**: This section addresses acts of war against the nation, considered a severe threat to national security.
- **Abetting mutiny (Section 132)**: This pertains to individuals who assist or encourage mutiny within the armed forces, undermining military discipline and national defense.
- **Giving or fabricating false evidence leading to the execution of an innocent person (Section 194)**: If an individual provides false evidence resulting in the wrongful execution of someone, they may face the death penalty.
- **Murder (Section 302)**: The IPC prescribes capital punishment for individuals convicted of murder, depending on the case's circumstances.
- **Dacoity with murder (Section 396)**: Engaging in armed robbery (dacoity) that results in murder can lead to a death sentence.
- **Rape and injury causing death or leaving the victim in a persistent vegetative state (Section 376A)**: This section was introduced to address heinous sexual offenses resulting in severe injury or death.
- **Certain repeat offenses in the context of rape (Section 376E)**: Repeat offenders of specific sexual crimes may be subjected to the death penalty.

Additionally, under **section 120B(1)**, being part of a **criminal conspiracy** to commit an offense punishable by death can result in the same punishment as the principal offense.

The imposition of the death penalty in India is guided by the "rarest of rare" doctrine. This principle mandates that capital punishment should be reserved for cases where the crime is of an exceptionally heinous nature and the alternative of life imprisonment is inadequate. Courts must weigh aggravating factors, such as the brutality of the crime and the offender's prior criminal record, against mitigating factors like the offender's age, mental health, and potential for reform. The judiciary exercises discretion in this balancing act to ensure that the death penalty is imposed judiciously and sparingly.

#### **2.2.4. Code of Criminal Procedure (CrPC), 1973**

The Code of Criminal Procedure (CrPC), 1973, outlines specific procedures for the confirmation of death sentences, ensuring a thorough judicial review before execution. Sections 366 to 371 of the CrPC detail these procedures, emphasizing the role of the High Court in confirming death sentences passed by a Court of Session.

- **Section 366: Submission of Death Sentence by Court of Session for Confirmation**  
Section 366 mandates that when a Court of Session passes a death sentence, the proceedings must be submitted to the High Court for confirmation. The sentence cannot

be executed till it is confirmed by the High Court. Additionally, the court passing the sentence is required to commit the convicted person to jail custody under a warrant.

○ **Section 367: Power to Direct Further Inquiry or Additional Evidence**

Section 367 empowers the High Court to order further inquiry or additional evidence if it deems necessary regarding the guilt or innocence of the person who is convicted. The High Court can dispense with the presence of the convicted person during such inquiry or evidence collection unless it directs otherwise. If the inquiry or evidence is not conducted by the High Court itself, the results must be certified to the High Court.

○ **Section 368: Powers of the High Court**

Under Section 368, the High Court has several options upon reviewing a death sentence:

- Confirm the death sentence or pass any other order or sentence warranted by law.
- Convict the accused of any offense of which the Court of Session may have found him guilty and annul the conviction
- Can Order a fresh trial on the same charge or an amended charge.
- May Acquittal to the accused person.
- No order of confirmation shall be made until the period which has been allowed for preferring an appeal has been expired or, if an appeal is presented within given period, until such appeal is disposed of completely.

○ **Section 369: Confirmation or New Sentence to be Signed by Two Judges**

Section 369 stipulates that the confirmation of the death sentence or any new sentence or order which was passed by the High Court shall be signed by at least two Judges in cases where the High Court consists of two or more Judges.

○ **Section 370: Procedure in Case of Difference of Opinion**

Section 370 outlines the procedure when there difference of opinion among the Judges. When a case is heard before a Bench of Judges and there is an equal division in opinion, the case shall be decided as per the provisions of Section 392 CrPC, which provides for reference to another Judge or a larger Bench.

○ **Section 371: Procedure in Cases Submitted to High Court for Confirmation**

Section 371 requires that the High Court officer must promptly send a copy of the High Court's order sealed by the Court and signed officially to the Court of Session as soon as the High Court passes an order of confirmation or any other order.

In *Jagmohan Singh v. State of UP (1973)*<sup>27</sup>, the Supreme Court held that the - The Constitution allows for the deprivation of life under Article 21 of the Constitution of India, provided it is done according to the procedure established by law. The death sentence which is imposed after a trial conducted in accordance with legally established procedures under the CrPC is thus constitutional.

### **The Role of High Courts in Death Sentence Confirmation**

The High Courts play a pivotal role in the confirmation of death sentences. Their oversight ensures that all death sentences are thoroughly reviewed for legal and factual correctness. This appellate review mechanism serves as an important check against judicial errors and potential miscarriages of justice. The High Courts have the authority to reassess the evidence, consider new evidence, and re-evaluate the legal aspects of the case, thereby ensuring a comprehensive review process.

#### **2.2.5. Protection of Children from Sexual Offences (POCSO) Act, 2012**

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted by the Ministry of Women and Child Development to safeguard children from sexual offenses, including sexual harassment, exploitation, and pornography. In 2019, the POCSO Act was **amended** to introduce more stringent punishments for sexual offenses against children. The **amendment increased the minimum punishment for penetrative sexual assault from seven to ten years and introduced the death penalty for aggravated penetrative sexual assault.** Aggravated offenses include cases where the perpetrator is a person in a position of trust or authority, such as a police officer or family member, or when the assault results in the death of the child or is committed during a natural calamity.

**Section 13 of the Act** criminalizes the use of children for pornographic purposes, with **Section 14** prescribing punishments that range from five years of imprisonment and fines for first-time offenders to seven years and fines for subsequent offenses. In cases where pornographic acts involve penetrative sexual assault, the punishment can extend to life imprisonment or the death penalty.<sup>28</sup>

Furthermore, the **POCSO Act penalizes the abetment of offences**, treating instigation or facilitation of a crime as equivalent to committing the offense itself. Section 16 defines the abetment of an offense, and **Section 17** prescribes corresponding punishments. Additionally,

<sup>27</sup> Jagmohan Singh v. State of UP, 1973 AIR 947

<sup>28</sup> Death Penalty in POCSO Act Imperils Child Victims Of Sexual Offence, available at: <https://www.indiaspend.com/death-penalty-in-pocso-act-may-imperil-child-victims-of-sexual-offences/> (last visited February 3, 2025).

**Section 21** mandates that any person in charge of an institution who fails to report the commission of an offense under the Act shall be punished with imprisonment and fines, emphasizing the legal obligation to report such crimes.<sup>29</sup>

### **2.3. PROVISIONS UNDER BHARATIYA NYAYA SANHITA (BNS), 2023**

The Bharatiya Nyaya Sanhita (BNS), 2023, brings about a major transformation of India's criminal law system, replacing the Indian Penal Code (IPC) of 1860.. One of the notable changes in the BNS is the expansion of offenses punishable by death, increasing from 11 under the IPC to 15 in the BNS. This expansion reflects the legislature's intent to address emerging crimes with greater severity.

Among the new offenses introduced in the BNS that are punishable by death is the gang rape of a woman under 18 years of age. **Section 70** of the BNS stipulates that individuals convicted of this crime may face the death penalty, underscoring the law's stringent stance against sexual offenses involving minors.

**Section 103(1) of the BNS** provides for punishments ranging from seven years' imprisonment to life imprisonment, and even the death sentence, depending on the severity and circumstances of the offense.

Furthermore, the BNS introduces provisions targeting organized crime and terrorist acts. For the first time, terrorism and terrorist acts have been explicitly defined and recognized as offenses under **Section 111 of the BNS**. This inclusion signifies a robust legal framework to combat organized criminal activities and terrorism, with stringent penalties, including the death penalty, for the most egregious offenses.

Comparing the IPC and the BNS reveals significant differences in their approach to capital offenses. The IPC, enacted during the colonial era, contained provisions that have become outdated in addressing contemporary crimes. The BNS, in contrast, introduces new offenses and expands the scope of existing ones to encompass modern criminal activities, thereby reflecting the evolving societal and legal landscape.

The implications of these changes are profound. By broadening the range of capital offenses, the BNS aims to deter heinous crimes more effectively. However, this expansion also raises critical discussions about the application of the death penalty, the potential for misuse, and the need to balance deterrence with human rights considerations. The legal community and

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<sup>29</sup> Death Penalty Cannot Be Imposed By Giving Retrospective Effect To POCSO Amendment To An Offence Committed Prior To Amendment: SC, available at: <https://www.livelaw.in/top-stories/sc-rejects-telangana> (last visited February 4, 2025).

policymakers must carefully navigate these issues to ensure that the BNS serves the cause of justice while upholding the principles of fairness and proportionality.<sup>30</sup>

#### **2.4. PROVISIONS UNDER BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) 2023<sup>31</sup>**

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, India's comprehensive criminal code, addresses capital punishment with provisions that aim to balance justice and human rights.

##### **Execution of Death Sentences**

**Section 454** of the BNSS 2023 stipulates that when a death sentence is passed by the High Court by the way of appeal or revision, the Court of Session is responsible for executing the sentence upon receiving the High Court's order. This involves issuing a warrant to carry out the execution.

##### **Postponement of Execution**

**Section 455** outlines circumstances under which the execution of a death sentence may be postponed. If an appeal is made to the Supreme Court, the High Court must delay the execution until the appeal period expires or until the appeal is resolved. Additionally, if the convicted individual applies for a certificate under **Articles 2 or 134(1)(c) of the Constitution**, the execution is postponed until the application is disposed of or until the period for filing an application to the Supreme Court expires.

##### **Commutation for Pregnant Women**

**Section 456** provides that if a pregnant woman is sentenced to death, the sentence may be commuted. This provision reflects a humanitarian approach, recognizing the unique circumstances of pregnant women and aiming to protect the rights of the unborn child.

##### **Powers of Suspension, Remission, and Commutation**

**Sections 472 to 476** grant the State Government the authority to suspend or remit sentences and to commute sentences, including death sentences. However, in cases involving death sentences, the Central Government also holds concurrent powers to exercise these authorities, as specified Section 476.

These provisions collectively ensure that the imposition and execution of capital punishment in India are carried out with due process, **allowing for appeals, reviews, and considerations**

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<sup>30</sup> The Bhartiya Nyaya Sanhita, 2023 vs. The Indian Penal Code: A Comparative Analysis, available at: <https://edzorblaw.com/2024/08/30/the-bhartiya-nyaya-sanhita-2023-vs-the-indian-penal-code-a-comparative-analysis/> (last visited February 2, 2025).

<sup>31</sup> Review Death Penalty Punishments in Bhartiya Nyaya Sanhita 2023, available at: <https://www.pudr.org/press-statements/review-death-penalty-punishments-in-bhartiya-nyaya-sanhita-2023/> (last visited February 2, 2025).

**of mitigating factors.** The BNSS 2023 reflects a commitment to justice that is both fair and humane.

## **2.5. PROJECT 39A BY NLU DELHI<sup>32</sup>**

**Project 39A, established by the National Law University, Delhi (NLU-D),** is a pioneering initiative that critically examines the administration of the death penalty and broader issues of criminal justice in India. Named after Article 39A of the Indian Constitution, which mandates equal justice and free legal aid, the project seeks to highlight systemic deficiencies in capital sentencing and advocate for reforms in the criminal justice system.

One of the most significant contributions of Project 39A is its empirical research on the imposition of capital punishment in India. The project has conducted extensive studies on the socio-economic backgrounds of death row prisoners, the fairness of trials, and the psychological impact of prolonged incarceration.

In its landmark *Death Penalty India Report (2016)*, Project 39A revealed alarming trends in the administration of capital punishment. The report found that an overwhelming majority of death row prisoners belong to economically and socially marginalized communities, highlighting concerns regarding unequal access to legal representation and the systemic biases entrenched in the criminal justice system. It also exposed the inconsistencies in sentencing, where similar crimes resulted in vastly different punishments due to judicial discretion, underscoring the arbitrary nature of capital punishment in India.

**Project 39A has consistently advocated for a re-evaluation of capital punishment in India.**

Through its research, legal representation initiatives, and public engagement, the project has pushed for greater transparency and accountability in death penalty cases. It has also emphasized the need for reformative justice approaches, arguing that excessive reliance on retributive punishment undermines the principles of fairness and rehabilitation.

The project's work has been instrumental in shaping legal debates on the death penalty. The Supreme Court has cited Project 39A's findings in multiple cases, reinforcing the need for a more structured and humane approach to sentencing. Additionally, its research has influenced policymakers, legal practitioners, and human rights organizations in their efforts to reform India's capital punishment framework.

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<sup>32</sup> Death penalty, available at: <https://www.project39a.com/death-penalty> (last visited February 10, 2025).

## **2.6. CONCLUSION**

This chapter has examined the legal framework governing capital punishment in India, highlighting its historical evolution, key legislative provisions, and judicial interpretations. The analysis has revealed that while the death penalty remains a legally sanctioned punishment, its application is shaped by a complex interplay of statutory law, constitutional principles, and international human rights norms.

Recent legislative changes have introduced significant modifications to the capital punishment regime, reflecting broader societal and political shifts. These reforms suggest a growing trend toward greater procedural safeguards, increased scrutiny of sentencing practices, and, in some instances, a movement toward abolition or restriction of its use. The long-term implications of these developments remain uncertain, but they indicate a legal landscape in flux—one that may continue to evolve in response to domestic pressures and global human rights discourse.

Moving forward, the future application of the death penalty in India will likely depend on judicial interpretations of recent laws, legislative responses to public opinion, and the influence of international legal obligations. As this chapter has demonstrated, while capital punishment remains entrenched in the legal system, its trajectory will be shaped by ongoing debates about justice, deterrence, and human rights.

## **CHAPTER-3**

### **JUDICIAL TRENDS THROUGH LANDMARK CASES AND DOCTRINE OF RAREST OF RARE CASE**

#### **3.1. INTRODUCTION**

The death penalty remains one of the most debatable aspects of criminal justice system , particularly in India, where it operates within the framework of the "rarest of rare" doctrine. This doctrine, evolved through judicial precedents, aims to strike a balance between retributive justice and the constitutional guarantee the right to life under **Article 21 of the Indian Constitution**.

Historically, capital punishment in India was the default sentence for murder under **Section 302 of the Indian Penal Code (IPC)**. However, the Criminal Procedure Code (CrPC) Amendment of 1973 reversed this, making life imprisonment the default punishment, with death penalty applicable only in exceptional cases where “special reasons” were recorded. The Supreme Court further refined this in *Bachan Singh v. State of Punjab*<sup>33</sup> (1980), introducing

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<sup>33</sup> Bachan Singh *supra* note 5 at 40

the "rarest of rare" doctrine, the which remains the guiding principle in determining the imposition of the death penalty.

Despite this framework, the lack of a universally accepted definition of "rarest of rare" and the subjectivity involved in its interpretation have resulted in inconsistent application. This has led to growing judicial restraint in awarding capital punishment and calls for a more uniform approach to sentencing, particularly regarding mitigating circumstances.

In **Rooper v Simmons**<sup>34</sup> case Supreme Court prohibited the awarding of death penalty less than 18 years of age and sets minimum age of death penalty.

In **Uttecht v Brown**<sup>35</sup> case US Supreme Court judgment was proved an exception regarding death penalty. Supreme Court in its judgment ordered for the formation of trial in two phases for death penalty. In its 1<sup>st</sup> trial the jurist will find whether the accused is guilty of crime of murder and in 2<sup>nd</sup> trial the jurist will decide whether to penalize the guilty with death penalty only if the accused proved guilty in 1<sup>st</sup> trial. As to the award of penalty, the Supreme Court requires the jury to consider aggravating and mitigating circumstances. It was also held that death penalty must be awarded in 'the worst of worst murder case' and not routinely and that to will be judged on criminal's violent past acts. If accused had long violent and criminal record or served people killed at the time of accused committed murder or murders.

### **3.2. LANDMARK JUDGMENTS IN INDIA**

#### **3.2.1. Bachan Singh v. State of Punjab (1980): Establishing the "Rarest of Rare" Doctrine**

The case of **Bachan Singh v. State of Punjab (1980)** is a landmark judgment that redefined the application of the death penalty in India by introducing the "**rarest of rare**" doctrine. Before this ruling, capital punishment was often awarded based on judicial discretion, with no clear standard guiding when the death sentence should be imposed over life imprisonment. This case set the foundation for a structured approach to sentencing in death penalty cases.

#### **Background of the Case**

Bachan Singh, the appellant, was convicted of **murdering three people, including his wife, in a fit of rage**. Death sentence imposed on him under **Section 302** of the Indian Penal Code (IPC). The Punjab and Haryana High Court upheld the sentence, leading to an appeal before the Supreme Court. The central question before the Court was whether **the imposition of the**

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<sup>34</sup> Rooper v Simmons 543 US 551, 578 app.579 -580 (2005)

<sup>35</sup> Uttecht vs brown 551 US 1 (2007).

**death penalty under Section 302 IPC violated Articles 14 (Right to Equality) and 21 (Right to Life) of the Indian Constitution.**

**Supreme Court's Ruling**

The **five-judge bench** of the Supreme Court upheld the constitutional validity of the death penalty but **limited its application to "rarest of rare" cases**. The Court emphasized the need to evaluate **aggravating and mitigating circumstances** before awarding capital punishment, stating that the death sentence should be imposed only when life imprisonment would be **"unquestionably foreclosed."** This ruling established that the **burden lies on the prosecution** to prove why life imprisonment would be insufficient for a particular case. The "rarest of rare" doctrine applies only in exceptional cases, based on a careful balance of:

- Aggravating Circumstances
- Mitigating Circumstances

**Aggravating Circumstances:** A court may impose penalty under his discretion only-

- Only in cases where the murder was carried out with premeditation and with cruelty
- Murder entails extraordinary immorality
- Murder is committed by the member of police or armed force of union or of any Public servant when member was on duty.
- Any action taken by public servant in the course performing their duties under section – 43 of Cr.P.C., 1973

**Mitigating Circumstances:** -Court take the following circumstances into consideration -

- Offence committed under mental or emotional disturbance
- Young age accused shall not be penalized with capital punishment
- Probability that accused would not commit crime against society
- Based on the fact and circumstance, it was believed that the accused was morally fit and fine at time of committing offence.
- Act was committed under pressure.
- Accused condition demonstrates his mental weakness.

Supreme Court made it clear that in extremely rare cases, the bench shall not provide death penalty under rarest of rare case. After **balancing both aggravate and mitigating circumstances** the principle could be determined that the guilt must be to provide sentence to life imprisonment. This decision was made for 3 important reasons

- Accused was of young age

- Victim died by strangulation
- Victim was not a legally wedded wife but had an extra martial affair with accused i.e., brother-in-law.

### **Key Principles Established**

1. **Doctrine of "Rarest of Rare":** The Court held that the death penalty should be awarded only and only in exceptional cases where the act is of such extreme brutality that no alternative punishment would serve the ends of justice.
2. **Balancing Aggravating and Mitigating Circumstances:** The Court ruled that sentencing should consider both the nature of the crime (aggravating factors) and the personal circumstances of the accused (mitigating factors) before determining the appropriateness of the death penalty.
3. **Judicial Discretion Must Be Guided by Principles:** The Court emphasized that arbitrary or excessive use of capital punishment must be avoided and that judges should carefully justify their decision when awarding a death sentence.

### **Impact on Death Penalty Jurisprudence**

The **Bachan Singh** ruling marked a fundamental shift in India's criminal justice system by **making life imprisonment the norm** and requiring **special reasons** for imposing the death penalty. It laid the groundwork for subsequent cases that further refined the doctrine, including *Machi Singh v. State of Punjab (1983)*<sup>36</sup> and *Santosh Kumar Bariyar v. State of Maharashtra (2009)*, which clarified the circumstances under which the "rarest of rare" standard should be applied.

This case remains a cornerstone of Indian death penalty jurisprudence, shaping how courts assess the appropriateness of capital punishment and reinforcing the constitutional mandate to uphold the right to life.

#### **3.2.2. Machhi Singh v. State of Punjab (1983): Defining the Criteria for Death Penalty**

In *Machhi Singh v. State of Punjab (1983)*, the Supreme Court expanded upon the "rarest of rare" doctrine established in *Bachan Singh (1980)* by attempting to provide a structured framework for awarding the death penalty. This case arose from a series of brutal murders carried out as an act of revenge, resulting in the death of 17 individuals, including women and

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<sup>36</sup> Machi Singh v. State of Punjab, 1983 AIR SC 957

children. The Court upheld the death penalty for the accused, stating that their crime fell within the "rarest of rare" category due to its exceptional brutality, premeditated nature, and the magnitude of the killings.<sup>37</sup>

### **Key Criteria for Imposing the Death Penalty**

The Supreme Court laid down a more **structured test** for determining when capital punishment may be justified, outlining five key of cases where the death penalty could be considered:

- I. **Manner in which murder committed** - When the murder is committed in an extremely brutal, heinous, horrific or demonic way t causes the community to become immensely outraged. For example:
  - a. The victim's home is set on fire with the intention of roasting him alive in house;
  - b. When the victim is tortured or cruelly treated by humans to cause his or her death
  - c. The victim's body is sliced into pieces or dismembered in a demonic fashion.
- II. **Purpose for Commission of Murder** – This refers to a purpose of murder that demonstrates complete depravity and meanness. For example, when
  - a. A hired assassin kills people in order to get money or reward.
  - b. A cold-blooded murder one that is purposefully carried out to obtain property that will allow the murderer to gain control over the victim or in relation to whom the murderer holds a position of authority or trust
  - c. A betrayal against the motherland.
- III. **Anti-social or Socially repugnant aspects of crime** When a member of a reserved caste or minority group etc is murdered for non- personal purpose but in conditions that provoke popular outrage. For example:
  - a. A Crime is committed leaving a place, or when someone is deprived of or forced to surrender lands or benefits that have been granted to them in an effort to reverse the course of justice and restore social balance
  - b. n situations involving "bride burning," "dowry deaths," or murders committed in order to remarry in order to remarry for the sake of extracting dowry once again or to marry another woman on account to infatuation

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<sup>37</sup> Macchi Singh v. State of Punjab: Application of the Rarest of Rare Doctrine, available at: <https://lawctopus.com/clatalogue/clat-pg/macchi-singh-v-state-of-punjab/> (last visited February 23, 2025)

IV. **Magnitude of Crime** – When there are several murders, such as when all or nearly all of a family's members or a significant number of people from a caste, community, or neighbourhood are killed, the crime is massive in proportion.

a. Acts of revenge or mass killings that cause widespread devastation

V. **Personality of Victim**

a. An innocent youngster who is incapable of offering a justification, much less a pretext for murder, has not done so.

b. A helpless woman or any person who rendered helpless by old age or infirmity

c. Where the victim who is murdered is someone who is in a position of domination or trust.

d. When the person who is murdered is public figure and the murder is committed for political or similar reasons other than personal reasons.

**Impact and Criticism of the Judgment**

While **Machhi Singh** attempted to provide objective criteria for awarding the death penalty, it also introduced **subjective elements**, particularly the concept of "**shocking the collective conscience of society**." The reliance on public sentiment as a factor in determining the severity of punishment has been criticized for leading to **inconsistent sentencing**. Moreover, **the judgment did not define clear legal thresholds** for what constitutes a crime that "shocks the collective conscience," leaving significant discretion to individual judges.

In later cases, including **Santosh Kumar Bariyar (2009)** and **Shankar Kisanrao Khade (2013)**<sup>38</sup>, the Supreme Court acknowledged **the inconsistencies in applying Machhi Singh's criteria** and emphasized that capital punishment should be reserved **only for cases where reformation is impossible**. Despite these concerns, Machhi Singh remains a landmark judgment in the evolution of the "**rarest of rare**" doctrine and continues to influence death penalty jurisprudence in India.

**3.2.3. Mithu v. State of Punjab (1983)<sup>39</sup>: Striking Down Mandatory Death Penalty**

In this landmark case, Section 303 of the Indian Penal Code (IPC), which stipulated that a convicted person who committed murder while serving a life sentence would be executed, was struck down by the Supreme Court. The Court ruled that this provision was unconstitutional as

<sup>38</sup> Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546

<sup>39</sup> Mithu v. State of Punjab, 1983 AIR 473

it infringes A-14 (Right to Equality) and A-21 (Right to Life) of Indian Constitution.

### **Background of the Case**

The section- 303 of the IPC was originally introduced with the belief that life convicts were already hardened criminals, and if they committed murder while serving their sentence, the only appropriate punishment would be death. The provision assumed that those already convicted of serious offenses were beyond reformation and posed a greater threat to society. However, this blanket imposition of capital punishment on life convicts eliminated judicial discretion, leaving no room for considering mitigating circumstances such as:

- **Accidental or provoked killings** within prison settings
- **Self-defense or retaliatory attacks** due to prison conditions
- **Psychological factors affecting prisoners** who had already been incarcerated for long periods

Many legal scholars and human rights activists had criticized **Section 303**, arguing that it imposed **disproportionate punishment** and **ignored individual circumstances**.

### **Supreme Court's Ruling and Constitutional Interpretation<sup>40</sup>**

The S.C in **Mithu case** ruled that **mandatory capital punishment** under Section 303 was arbitrary and violated fundamental rights. The Court made the following key observations:

1. **Violation of Article 14 (Right to Equality):** The Court held that **Section 303 treated all life convicts as a single category**, disregarding the **nature and circumstances** of the murder they committed. This arbitrary classification led to unequal discrimination, as someone not already serving a life sentence for a similar crime could still receive life imprisonment under **Section 302 of the IPC**, whereas a life convict had no such option.
2. **Violation of Article 21 (Right to Life and Personal Liberty):** By eliminating judicial discretion, **Section 303** directly contravened the principles of due process and fair trial. The Court emphasized that the right to life of individual could only be taken away through fair and just procedure, which must include an individualized sentencing process that considers both aggravating and mitigating factors.
3. **Reinforcing Judicial Discretion in Death Penalty Cases:** The Court reaffirmed that capital punishment must never be automatic and should always involve a **case-by-case** evaluation. By striking down **Section 303**, the Supreme Court ensured that even **repeat**

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<sup>40</sup> Section 303 Of IPC: Judgement In Mithu V. State Of Punjab And The Newly Added S. 104 Of BNS, available at: <https://www.livelaw.in/articles/section-104-bharatiya-nyaya-sanhita-and-supreme-court-judgment-mithu-vs-state-of-punjab-mandatory-death-sentence-252494#:~:text=more%20content%20at%20we%20all%20know%2C%20Section%20303%20of%20the%20Indian%20Penal,of%20the%20Constitution%20of%20India.> (last visited February 18, 2025)

**offenders and life convicts** would be entitled to the same legal protections as others accused of murder.

### **Impact of the Judgment**

The decision in **Mithu v. State of Punjab (1983)** had far-reaching consequences for India's capital punishment jurisprudence:

- **Life convicts who commit murder are now prosecuted under Section 302 of the IPC**, which allows for either death or life imprisonment depending on judicial discretion.
- It reinforced the principle that no category of offenders can be deprived of fair sentencing procedures.
- It **strengthened measures to prevent the death sentence from being applied arbitrarily**, stressing that the specifics of the crime and the offender's circumstances must always be taken into account.
- The judgment set a precedent for future rulings, reinforcing the idea that **mandatory death penalties violate constitutional rights**.

The **abolition of Section 303 IPC** brought India's criminal justice system even closer to international human rights norms, emphasizing **reformatory justice over purely retributive approaches**. It also contributed to the **modern trend of judicial restraint** in awarding the **death penalty**, ensuring that capital punishment remains an **exception rather than the norm** in India's criminal justice system.

### **3.2.4. Santosh Kumar Bariyar v. State of Maharashtra<sup>41</sup> (2009): Emphasizing Reformation Over Execution<sup>42</sup>**

The SC's decision in **Santosh Kumar Bariyar case** is a landmark judgment in India's evolving death penalty jurisprudence. It reinforced the guidelines laid down in **Bachan Singh case (1980)** and **Machhi Singh case (1983)** by emphasizing a more disciplined, structured, and cautious approach to capital punishment. The ruling clarified that the rarest of rare doctrine must be applied with extreme caution, ensuring that the death penalty is imposed only when life imprisonment is unquestionably inadequate.

### **Judicial Findings and Key Rulings**

<sup>41</sup> Santosh Kumar Bariyar v. State of Maharashtra, [2009] 9 S.C.R. 90

<sup>42</sup> The Death Penalty: A New Perspective In Light Of Santosh Bariyar Case, available at: <https://docs.manupatra.in/newslines/articles/Upload/3B83BABE-3411-4964-8317-FAA2BFBB73BC.pdf> (last visited February 18, 2025).

In this case, the Supreme Court critically examined the application of capital punishment, highlighting two major concerns:

1. **Discretionary Nature of Death Sentencing:** The Court noted that the lack of a uniform standard for determining what constitutes a rarest of rare case has led to arbitrary and inconsistent sentencing in capital punishment cases. The judgment underscored that sentencing should not be driven by public sentiment or subjective judicial interpretation but rather by a principled and well-reasoned approach.
2. **Insufficiency of Aggravating Factors:** The Court held that the prosecution had failed to establish that the appellant's crime warranted the death penalty. It noted that while the offense was grave, it did not meet the threshold of the rarest of rare doctrine, as set forth in *Bachan Singh (1980)*. The Court emphasized that life imprisonment must be the norm, and the death penalty should only be an exception when there is no possibility of reformation.
3. **Granting of Pardon Under Section 307 of CrPC:** The Supreme Court upheld the validity of granting pardon to an approver U/s 307 CrPC. It stated that if pardon were not granted at the investigative stage, the prosecution's ability to establish the case would be weakened. This ruling reaffirmed the legal and procedural legitimacy of granting pardon to an approver, ensuring that such mechanisms are not rendered redundant.

### **Reaffirmation of the Reformation Principle**

A significant contribution of **Santosh Kumar Bariyar** was its strong endorsement of the reformation principle in sentencing. The Court acknowledged that the rehabilitative potential of an accused must be a central consideration before awarding capital punishment. This principle gained further recognition in later cases, including **Shankar Kisanrao Khade v. State of Maharashtra (2013)** and **Manoj & Others v. State of MP (2022)**, where courts stressed the need for psychological evaluation and mitigating circumstances in death penalty cases.

Additionally, the Court warned against the **judicial populism** of using capital punishment as a **retributive tool**, arguing that the judiciary's role is to ensure justice, not vengeance. The ruling emphasized that public outcry or societal pressure should not dictate the imposition of the death penalty, aligning with the evolving human rights standards on capital punishment.

### **Impact and Academic Significance<sup>43</sup>**

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<sup>43</sup> Santosh Kumar Satishbhushan Bariyar V. State Of Maharashtra, available at: [https://lawfoyer.in/santosh-kumar-satishbhushan-bariyar-v-state-of-maharashtra/#google\\_vignette](https://lawfoyer.in/santosh-kumar-satishbhushan-bariyar-v-state-of-maharashtra/#google_vignette) (last visited February 20, 2025).

The ruling in **Santosh Kumar Bariyar** is a cornerstone judgment that shaped modern death penalty jurisprudence in India. It reinforced the need for a uniform, structured approach to capital sentencing and signaled a shift toward judicial restraint in awarding capital punishment. This case is frequently cited in discussions on sentencing reforms, particularly in the context of mitigating factors, reformation, and the limited scope of the death penalty.

Furthermore, the judgment's emphasis on procedural fairness and due process laid the foundation for subsequent judicial interventions on mitigating circumstances. It remains a crucial precedent in cases where courts must assess whether life imprisonment is a viable alternative to the death penalty, thereby ensuring a more equitable and consistent application of criminal justice.

### **3.3. Constitutional Validity of the Death Sentence**

For the 1<sup>st</sup> time in **Jag Mohan Singh Vs State of UP**<sup>44</sup>, the constitutionality of death sentence was challenged in front of the Supreme Court and contended- section 302 of Indian Penal Code is violative Articles 14 (1-a), 19 (1-B), 21 (1-C) of the Indian Constitution.

**Firstly**, The appellant initially argued that the death penalty, which terminates all fundamental rights protected by Article 19(1) clauses (a) to (g), is irrational and not in the public interest. It was maintained that the rights protected by Article 19 of the Constitution were fundamental to the right to life.

**Secondly**, It was argued that the judge's discretion to apply the death penalty in lieu of life in prison violated Article 14 of the Constitution since it was not supported by any legislatively established standards or policies. based on the idea that two people convicted of murder for comparable reasons can get different punishments, with one losing their life and the other receiving only a life term in prison.

**Thirdly**, The law's provisions lacked any essential process for choosing between the death penalty and life in prison. The protection provided by Article 21 of the Constitution has been violated in the lack of any legal process for sentencing, making the death penalty unconstitutional.

The Supreme Court dismissed the appellant's arguments, held that- no law could take away a citizen's life unless it was reasonable and in the public interest, even if the "Right to Live" was a fundamental component of the freedom provided in Article 19 of the Constitution. It would be challenging to argue that the death penalty is unjustified and not necessary for the general

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<sup>44</sup> Jagmohan Singh v. State of U. P., (1973) 1 SCC 20

welfare. The court added that it cannot be claimed that the death penalty is either unreasonable or not in the public interest, violating article 19 of the Constitution, in the absence of any objective proof regarding its unreasonableness.

The Court further stated that **Section 302 of the IPC** has granted broad discretion in the matter of the sentence, to be exercised after balancing all the aggravating and mitigating circumstances of the crime. As a result, it will be impossible to say that there would be any discrimination since the facts and circumstances of another person are rarely involved subject to the discretion of the court.

The court additionally ruled that, in accordance with the Indian Evidence Act and the Code of Criminal Procedure, which were unquestionably parts of the legally mandated process, section 302 of the Indian Penal Code did not violate Article 21 of the constitution. The judge determines the accused's guilt and punishment in accordance with the Code of Criminal Procedure. Following this ruling, there was no question about the death penalty's constitutionality. In this instance, the court held that the death penalty should only be reinstated in certain specific circumstances, such as white-collar crimes, anti-social offenses, and handed murders, where it is not feasible to reform to an acceptable level. Justice Krishna Iyer also said that special reasons to be given for imposition of death penalty should relate to the criminal and not to the crime. Justice Sen in his dissenting opinion, remarks.

A man must face the consequences of his actions when he commits a crime against society by killing an innocent person in a cold-blooded, premeditated, and diabolical manner. The court's conscience is demonstrated by this cruelty. The humanistic approach should not obscure our perception of reality. A person like that loses their right to life.

Considering the philosophical, constitutional, criminological, and cultural trends in India and elsewhere, the Supreme Court came to the conclusion that the death penalty should be abolished and replaced with life in prison.

In meantime, the **Menaka Gandhi Vs Union of India**<sup>45</sup> case resulted in view interpretation of Article 14 and 21 of the Constitution. This expansion, rendered the death penalty vulnerable to new attack. Also, India, ratified the International Covenant on Civil and Political Rights.

A Constitution bench of five judges was constituted and a fresh challenge was made to the constitutionality of Section- 302 of IPC as it did not lay down guidelines indicating as to when the award of death penalty is to be made or in the alternative life imprisonment is to be awarded. The Constitution attack in **Bachan Singh Vs State of Punjab**<sup>46</sup> indeed, reached a high water

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<sup>45</sup>Menaka Gandhi Vs Union of India, AIR 1978 SC 597

<sup>46</sup> Bachan singh *supra* note. 5 at 52

mark in this case. The challenge based on Article 19 and 21 of the Constitution.

The Court while delivering the majority judgment opined that Article 21; if interpreted in accordance with the principles laid down in Maneka Gandhi's case would read as under:

No one's life or personal freedom will be taken away from them unless an appropriate law establishes a fair, reasonable, and just process. This is how the extended article will appear in the opposite positive form.

According to a fair, reasonable, and just process set down by law, a person may be deprived of his life or personal freedom. The learned court said that the constitution's founders also intended for the state to have the authority to take away someone's life and personal freedom in a way that is fair, reasonable, and just. Additionally, the IPC 1860 and the Cr.P.C., 1896 as they existed at the time the Constitution was drafted are particularly mentioned in **entries I and II of the list III concurrent list of the 7th schedule**. The very fact that the president and Governor of States have the power under the constitution to commute, suspend or remit the sentence suggests that death penalty is within the purview of the constitution. The learned judge also drew attention to the right to appeal granted to the person sentenced to death by the High Court

**In this case court held that –**

According to standard procedure, a murder conviction carries a life sentence in jail. Only in exceptional circumstances may the court deviate from this provision and inflict the death penalty. Such justifications need to be documented in writing prior to putting the death penalty into effect.

The court takes into account every relevant factor pertaining to the crime and the offender when deciding on the appropriate sentencing for the murder offense under section of the IPC. The death penalty may be imposed by the court if it determines, but not otherwise, that the offense is of an especially heinous nature and poses a serious risk to society as a whole due to its plans and implementation.

The Court also observed:

“The Supreme Court should not venture to formulate rigid standards in an area in which legislature so warily tread only broad guidelines consistent with the policy indicated by the legislature can be laid down”:

The majority however expressed the need for liberal construction of mitigating factors in death penalty and held that, “dignity of human life postulates resistance to taking life through laws instrumentality. That ought not to be save in rarest of rare cases when alternative option is

unquestionable for enclosed. It seems the doctrine of rarest of rare cases leaving much to the judicial discretion has caused inner conflict in the minds of the judges. Hence the Supreme Court in subsequent case has laid down guidelines to identify the rarest of the rare cases. The five factors are:

**Manner for committing the crime:** When the crime is executed in an exceptionally brutal, horrible, or evil way that provokes intense public outrage

- Setting a victim's residence on fire with the intent of burning them alive
- Subjecting the victim to extreme physical torture or cruelty
- Dismembering or mutilating the body in a barbaric manner

**Motive for the Crime:** When the underlying motive reflects extreme moral depravity or is driven by selfish and malicious intent.

- Murder by a contract killer for financial gain
- Premeditated killing to usurp property or eliminate a person in a position of trust or dependence
- Acts that amount to betrayal of national interest (e.g., espionage or terrorism)

**Antisocial or socially unacceptable nature :** When the crime is committed in a manner that disrupts social harmony or targets vulnerable groups

- Killing members of Scheduled Castes, minorities, or other marginalized communities to instill fear or force displacement
- Cases involving dowry deaths or bride burning, where murder is linked to regressive social practices

**Magnitude of the Offence:** When the offence involves large-scale impact or mass killings

- Multiple homicides such as the extermination of an entire family
- Killings affecting a significant portion of a caste, locality or community

**Status or Condition of Victim:** When victim is particularly vulnerable or holds a significant position in society

- Children or individual's incapable of self-defence
- Elderly or infirm persons
- Victims who were in a dependent or trusting relationship with the offender
- Public figures who are respected and admired, especially if the motive is political or not of a personal nature

In **Kehar Singh and others Vs State**<sup>47</sup> The accused not only takes away the life of a popular

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<sup>47</sup>Kehar Singh and others Vs State 1988 AIR 1883

leader, but also challenges our system, which has been operating so effectively for the past 40 years, the Supreme Court noted in upholding the death penalty. Since the accused were posted to protect her from outside threats or criminals, committing this type of offense themselves can be considered one of the rarest of the rare cases, and there doesn't seem to be any justification or non-mitigating circumstances for the death penalty to be taken into consideration.

The court further observed that Any thought of reducing her sentence is repudiated by the way the accused, on whom trust was placed to provide her protection, viciously attacked her.

In **Madhu Mehta Vs Union of India**<sup>48</sup> the court observed that the prisoner suffered mental suffering as a result of spending too much time in the shadow of death. Hence the Supreme Court commuted the sentence of death to life imprisonment.

### **3.3.1. 35th REPORT OF LAW COMMISSION OF INDIA ON “THE DEATH PENALTY”**

According to the Law Commission's 35th Report, which recommended its retention, the death sentence serves the following functions:

- **Deterrence:** According to the 35th Report, the primary aim of punishment in general and the death penalty in particular is deterrence.
- **Retribution:** The 35th Report considered retribution to be a significant defense of the death penalty. It was said that revenge should be interpreted as a public denunciation of crime rather than as a "eye for an eye."
- **Incapacitation:** According to the 35th Report, there is a group of people who are "cruel and wicked" and incapable of changing. According to the report, "[t]o allow such persons to live would be like leaving wolves alive in a civilized country," citing Sir James Fitz James Stephen. It went on to say that it might be appropriate to end a person's life if there is a risk that they will commit crimes again.

### **3.3.2 The Rarest of Rare Test, the Criminal Test, and the Crime Test**

In a recent series of judgments, the Supreme Court articulated an alternative version of the Bachan Singh theory in response to the criticism that capital punishment is "judge centric." In cases such as **Gurvail Singh @ Gala v. State of Punjab**<sup>49</sup>, the court has ruled that three requirements must be met before the death penalty is imposed: the crime test, which considers the case's aggravating circumstances; the criminal test, which requires that there be no

<sup>48</sup> Madhu Mehta Vs Union of India 1989 AIR 2299

<sup>49</sup> Gurvail Singh @ Gala v. State of Punjab 7 February, 2013

mitigating circumstances that favor the accused; and if both requirements are met, the rarest of rare cases test, “which depends on the perception of the society and not “judge-centric”, that is whether the society will approve the awarding of death sentence to certain types of crime or not. While applying this test, the Court has to look into variety of factors like society’s abhorrence, extreme indignation and antipathy to certain types of crimes...” Explaining the test, the Court in **Mofil Khan v. State of Jharkhand**<sup>50</sup> observed that the test is for “basically examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community.”

The death penalty can only be applied in a very specific set of situations when there are no mitigating circumstances, according to the triple test. This test is consistent with Bachan Singh's belief that the death sentence ought to be applied only in the most extraordinary conditions.

However, by concentrating on how society responds to the crime, the triple test analysis helps avoid the judge centric" aspect of death penalty . This is concerning because, as Bachan Singh and Bariyar case both acknowledged, judges are likely to replace societal perceptions with their own preconceptions, values, and preferences. This is because, even if one were to assume that society has broad, stable, and determinate shared preferences on these issues, judges would be powerless to ascertain these preferences.

Bachan Singh also rejected the notion of categorizing crimes eligible for the death penalty, as mentioned earlier. Instead, the 'Rarest of Rare' doctrine emphasizes society's intense disgust, outrage, and strong disapproval toward certain exceptional offences.

According to the debate above, judges have different understandings of the rarest of rare standard's qualifications, which leads to a random and "judge-centric" assessment of whether a case qualifies as rarest of rare. The Bachan Singh ruling seems to have been "lost in translation," as the Court stated in Sangeet. In **Mohd. Farooq**, the Supreme Court recognized the “disparity in sentencing by [the] court flowing out of varied interpretations to the rarest of rare expression,” and was worried that “the precedent on death penalty... is crumbling down under the weight of disparate interpretations.” The Court cautioned that Article 14 would be violated if the test were not consistently interpreted.

### **3.4. APPLICATION OF CAPITAL PUNISHMENT IN INDIA (2000–PRESENT)**

Even though the majority of rulings following Bachan Singh have made reference to the "rarest

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<sup>50</sup> Mofil Khan v. State of Jharkhand, Criminal Appeal No. 1795 of 2009

of rare" standard, it is rarely carried out to balance aggravating and mitigating circumstances and then only impose the death penalty in situations when there is no doubt that there is no other option left, as required in Machi Singh. The court has come under heavy fire for treating cases with comparable facts differently, and these rulings actually demonstrate that the fate of the accused is determined by the judges' own ideologies rather than the extremely unusual standards. Also the court is criticized of disregarding the offender's history and, in certain situations, his prospects for reformation and rehabilitation. It is argued that the punishment imposed out in the majority of cases is always determined by the type of crime committed and the offender's involvement in the crime.

An study of some significant cases decided after Bachan Singh is provided below in an effort to determine the validity of such assertions and, if any, the evolution of the law in this field following Bachan Singh.

#### **3.4.1. Judicial Trends: Increasing Judicial Restraint**

Over the past two decades, Indian courts have shown **growing reluctance** in awarding the death penalty. Instead, they have emphasized **life imprisonment without parole** as an alternative in cases where execution may have been considered.

A key example of judicial restraint is **Shankar Kisanrao Khade v. State of Maharashtra (2013)**<sup>51</sup>, where the Supreme Court criticized the lack of uniformity in death penalty sentencing and emphasized the need for a clear sentencing framework. This judgment reinforced the importance of considering mitigating factors and ensuring that capital punishment is imposed only as a last resort.<sup>52</sup>

#### **3.4.2. Mukesh & Anr. v. State for NCT of Delhi<sup>53</sup> (2017): Nirbhaya Case and the Role of Public Sentiment**

In the **Nirbhaya gang rape case (Mukesh & Anr. v. State for NCT of Delhi, 2017)**, the Supreme Court upheld the death penalty for the accused, citing the extreme brutality of the crime and its impact on the collective conscience of society. While the judgment was widely supported, it also sparked debates over whether **public outrage should influence judicial decisions**. Critics argue that reliance on collective conscience introduces subjectivity, making

<sup>51</sup> Shankar Kisanrao *supra*. note 38 at 57

<sup>52</sup> Rajkumari, "THE DOCTRINE OF RAREST OF RARE: A CRITICAL ANALYSIS," 2 Indian Journal of Integrated Research in Law, available at: <https://ijirl.com/wp-content/uploads/2022/08/THE-DOCTRINE-OF-RAREST-OF-RARE-A-CRITICAL-ANALYSIS.pdf> (last visited February 18, 2025).

<sup>53</sup> Mukesh & Anr. v State of NCT of Delhi, (2017) 6 SCC 1

the application of capital punishment inconsistent.

### **3.4.3. Manoj & Others v. State of MP<sup>54</sup> (2022): Psychological Evaluation Before Sentencing**

In *Manoj & Others v. St. of MP (2022)*, the Supreme Court held that before imposing the death sentence, courts must conduct a psychological evaluation of the accused to determine their potential for rehabilitation. This ruling reinforced the idea that capital punishment should be used only as a last resort after exhausting all possibilities of reformation.

### **3.4.4. Hyderabad Vicenarian Case**

In the 2019 Hyderabad veterinarian case, a female doctor was alone on her scooter, which she had parked near Shamshabad Plaza before taking a taxi to work. During this time, four individuals were watching her and deliberately punctured her scooter. When she returned from work and saw her vehicle damaged, the same four men approached her, forcibly took her away, sexually assaulted her, and later set her body on fire. The case was considered a straightforward instance for awarding the death penalty. However, instead of going through a formal trial, the police encountered the accused and killed them, raising concerns about the criminal justice system in India.

### **3.4.5. RG Kar Case Study**

The 2024 incident at RG Kar Medical College and Hospital in Kolkata, involving **the rape and murder of a 31-year-old postgraduate trainee doctor**, has reignited debates on the death penalty in India. The victim's body was discovered on August 9 in a classroom, prompting widespread outrage and protests across the nation. The Central Bureau of Investigation (CBI) took over the investigation, leading to **arrest of Sanjay Roy**, a police volunteer, who was charged with rape and murder.

The brutality of the crime led to mass protests, with demonstrators demanding justice and enhanced safety measures for women, particularly in medical institutions. The incident highlighted ongoing concerns about women's safety and the effectiveness of existing protective measures.

In Jan. 2025, Sanjay Roy was found guilty of rape and murder in accordance with Bharatiya Nyaya Sanhita sections 64, 66, and 103(1). **He received a life sentence and a ₹50,000 fine.**

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<sup>54</sup> *Manoj & Ors. v State of Madhya Pradesh*, [2022] 9 S.C.R. 452

He was sentenced to life imprisonment and fined ₹50,000 for each offense. The presiding judge, Anirban Das, determined that this case didn't fulfil the "rarest of rare" criteria necessary to impose the death penalty.

The decision was met with widespread dissatisfaction. The victim's family expressed their disappointment, believing that Roy deserved the death penalty. Medical professionals and the general public echoed similar sentiments, organizing protests and voicing their discontent with the court's decision. West Bengal Chief Minister Mamata Banerjee publicly stated her shock over the verdict, asserting that the crime warranted capital punishment.

In response to the public outcry, the West Bengal state government filed an appeal with the Calcutta High Court, seeking to overturn the life sentence in favor of the death penalty for Sanjay Roy. This move underscored the government's alignment with the public's demand for harsher punishment in cases of such grievous nature.

The RG Kar case has intensified the ongoing debate over the application of the death penalty in India. The death penalty's supporters contend that it deters serious offenses and delivers justice commensurate with the offense's gravity. They contend that some crimes are so heinous that the death penalty is necessary to uphold societal moral standards.

Conversely, opponents of the death penalty argue that it does not effectively deter crime more than life imprisonment. They highlight the potential for judicial errors, the irreversible nature of capital punishment, and its inconsistent application, often influenced by socio-economic and racial biases. In the context of the RG Kar case, some anti-death penalty advocates supported the life imprisonment sentence, asserting that it was a more humane and equally effective form of punishment.

The discourse around the RG Kar case has been further enriched by comparisons to other cases, such as the **Greeshma-Sharon Raj case in Kerala**, where a 24-yr-old woman was given death penalty for premeditated murder of her partner. The contrasting sentences in these cases have sparked discussions on the consistency and criteria used in awarding the death penalty in India. The RG Kar case serves as a focal point in the broader debate on capital punishment in India. It highlights the complexities involved in balancing the demands of justice, the effectiveness of the death sentence as a deterrent, and the ethical considerations surrounding state-sanctioned execution. As the legal proceedings continue, this case may significantly influence future policies and public opinion on the application of the death penalty in the country

### **3.5. 2022 SUPREME COURT REFERENCE TO A CONSTITUTION BENCH: NEED FOR A UNIFORM APPROACH**

The Supreme Court addressed the issue of how to hold a "meaningful, real, and effective" hearing on mitigating circumstances in death penalty cases to a Constitution Bench in September 2022. The Court acknowledged - while sentencing frameworks exist, there is no uniform approach in considering mitigating factors, leading to inconsistent application of the "rarest of rare" doctrine.<sup>55</sup>

This reference is significant because it may result in a structured framework requiring courts to examine mitigating factors at the trial stage itself, before determining whether a case qualifies as "rarest of rare." If implemented, this would strengthen procedural safeguards, ensuring fairer sentencing in capital punishment cases.

### **3.6. Conclusion**

The "rarest of rare" doctrine has evolved as a crucial safeguard against the arbitrary imposition of the death penalty. From Bachan Singh (1980) to Mithu (1983), the Indian judiciary has consistently reinforced the need for judicial discretion in capital sentencing, ensuring that the death penalty is reserved only for exceptionally heinous crimes.

However, despite these safeguards, the lack of a clear, universally accepted definition of "rarest of rare" has resulted in inconsistent sentencing. Judicial reliance on subjective factors such as public outrage and collective conscience has further complicated the application of the doctrine. The 2022 Supreme Court reference to a Constitution Bench is a crucial development that may provide much-needed clarity and uniformity in death penalty sentencing.

The modern judicial trend increasingly favors life imprisonment over the death penalty, emphasizing reformation over retribution. While capital punishment remains constitutionally valid in India, its application is becoming increasingly restricted. Future judicial developments, particularly the Constitution Bench ruling, will play a decisive role in shaping the future of the "rarest of rare" doctrine and the overall approach to capital punishment in India.

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<sup>55</sup> What is the 'rarest of rare' doctrine? | Explained, available at: <https://www.thehindu.com/news/national/what-is-the-rarest-of-rare-doctrine-explained/article69235510.ece> (last visited February 19, 2025).

## **CHAPTER 4**

### **COMPARATIVE ANALYSIS: INDIA AND EUROPEAN UNION AND USA**

#### **4.1. COUNTRIES THAT HAVE ABOLISHED CAPITAL PUNISHMENT**

Growing number of countries have recognized the inherent human rights concerns, ethical dilemmas, and judicial errors associated with the death penalty. As a result, many have chosen to abolish this form of punishment, either entirely or in practice.

##### **4.1.1. EUROPEAN UNION (COMPLETE ABOLITION):**

The European Union (EU) and the broader Council of Europe have played a pioneering role in the global movement to abolish the death penalty, firmly establishing Europe as a death penalty-free - zone. The abolition of capital punishment in all the 46 members states of the Council of Europe underscores the region's strong commitment to human rights, democracy, and the rule of law. This position has evolved over decades, supported by legally binding instruments and reinforced as a fundamental requirement for European integration.<sup>56</sup>

#### **Historical Evolution and Legal Instruments**

##### **1. The Council of Europe's Leadership in Abolition:**

The Council of Europe has been at the forefront of the campaign against capital punishment since the early 1980s, recognizing it as a grave violation of human rights and human dignity. The Parliamentary Assembly of the Council of Europe (PACE) played a pivotal role in persuading governments to commit to abolition, ultimately making Europe the first region in the world to permanently outlaw the practice.

A major milestone in this journey was the adoption of **Protocol No. 6 to the European Convention on Human Rights (ECHR) in 1983**, which provided for the unconditional abolition of the death penalty in peacetime. Over time, this protocol was ratified by all 46 member states, ensuring that executions were completely outlawed under normal legal conditions.

The next significant step was the adoption of **Protocol No. 13 to the ECHR in 2002**, which extended the abolition to all circumstances, including wartime or imminent threats of war. Unlike other legal instruments, Protocol No. 13 does not allow for any reservations or derogations, making it one of the strongest international commitments against capital

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<sup>56</sup> Abolition of death penalty and fight against torture, available at: [https://www.eeas.europa.eu/eeas/abolition-death-penalty-and-fight-against-torture\\_en](https://www.eeas.europa.eu/eeas/abolition-death-penalty-and-fight-against-torture_en) (last visited February 17, 2025).

punishment. The protocol came into force on **1 July 2003**, and to date, it has been ratified by 45 member states, demonstrating near-universal adherence to its principles.

## 2. A Condition for Membership and Regional Stability

Since the 1990s, the abolition of the death penalty has been a **precondition for membership in the Council of Europe**. Countries aspiring to join the European Union must not only comply with economic and political criteria but also align their legal systems with fundamental human rights standards, including the complete prohibition of capital punishment.

This requirement was particularly significant in the post-Soviet era, as Eastern European countries sought integration into European institutions. Nations such as Ukraine, Georgia, and Armenia, which previously retained capital punishment, were required to abolish it before gaining membership. This policy has had a **cascading effect** beyond Europe, influencing neighboring regions to reconsider their stance on the death penalty.

### The European Approach: Ethical and Legal Justifications<sup>57</sup>

1. **Human Rights and the Right to Life:** The European abolitionist stance is grounded in the principle that **the death penalty is incompatible with fundamental human rights**. Article 2 of the European Convention on Human Rights guarantees the right to life, which is considered absolute and non-derogable. The use of capital punishment is viewed as a violation of human dignity and an irreversible form of punishment that contradicts modern principles of justice.
2. **The Risk of Wrongful Executions:** One of the strongest arguments against capital punishment, emphasized by European legal scholars, is the **irreversibility of wrongful executions**. Judicial errors can never be corrected once an execution has been carried out. Many European nations abolished the death penalty partly due to concerns about the fallibility of justice systems, recognizing that life imprisonment serves as a more humane and reversible alternative.
3. **The Lack of Deterrent Effect:** Empirical studies have shown that **capital punishment does not act as an effective deterrent to crime**. European policymakers and legal experts argue that countries with the death penalty do not necessarily experience lower crime rates compared to abolitionist nations. Instead, social and economic policies, along with fair and efficient legal systems, are more effective in reducing crime.

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<sup>57</sup> Abolition of the Death Penalty in Europe, available at: <https://www.coe.int/en/web/abolition-death-penalty/abolition-of-death-penalty-in-europe> (last visited February 16, 2025).

4. Strengthening the Rule of Law and International Influence: By abolishing capital punishment, Europe has reinforced its commitment to the rule of law, justice, and rehabilitation over retribution. This stance has also enhanced the EU's moral authority in international human rights advocacy, allowing it to engage in diplomatic efforts to encourage other nations to move toward abolition. The EU actively opposes the death penalty worldwide and uses its political and economic influence to promote abolition in retentionist states.

#### **4.1.2. CANADA, AUSTRALIA, AND SOUTH AFRICA:**

Canada, Australia, and South Africa have each undertaken significant legal reforms to abolish capital punishment, driven by concerns over wrongful convictions, questions about its deterrent effect, and a commitment to humane justice systems.

##### **CANADA**

Canada's journey toward abolishing the death penalty reflects a gradual shift in legal and societal perspectives:

- **1962:** The last executions in Canada were carried out on the December 11, 1962, when the Arthur Lucas and Ronald Turpin were hanged at Toronto's Don Jail.
- **1976:** On July 14, 1976, the Canadian Parliament passed Bill C-84, abolishing the death penalty for offenses including murder, treason, and piracy. This legislation replaced capital punishment with mandatory 25 years in jail without a likelihood of release for first-degree murder.
- **1998:** 1998: The death penalty was abolished through an amendment to the National Defense Act for military offenses, marking the complete abolition of capital punishment in Canada.<sup>58</sup>

These reforms were influenced by concerns over the potential for wrongful convictions and a lack of conclusive evidence supporting the death penalty's deterrent effect.

##### **AUSTRALIA**

Australia's path to abolishing capital punishment involved both state and federal actions:

- **1967:** The last execution in Australia occurred on February 3, 1967, when Ronald Ryan was hanged in Victoria.

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<sup>58</sup> Death Penalty in Canada, available at: <https://amnesty.ca/what-we-do/death-penalty/death-penalty-in-canada/> (last visited February 19, 2025)

- **1973:** The federal government passed the Death Penalty Abolition Act, abolishing capital punishment for federal offenses.<sup>59</sup>
- **1985:** New South Wales became the final state to abolish the death penalty for all crimes with the enactment of the Crimes (Death Penalty Abolition) Amendment Act.

The movement toward abolition in Australia was driven by debates over the morality of capital punishment, the risk of irreversible errors, and a commitment to upholding human rights standards.

### **SOUTH AFRICA**

South Africa's abolition of the death penalty was a landmark decision in its transition to a democratic society:

- **1995:** On June 6, 1995, the In S v. Makwanyane and Others, the South African Constitutional Court, declared the death penalty unconstitutional. The court held that capital punishment violated the rights to life and dignity as enshrined in the country's interim Constitution.<sup>60</sup>

This ruling was pivotal in aligning South Africa's legal system with international human rights norms and reflected a broader commitment to break from the injustices of the apartheid era.

In summary, the experiences of Canada, Australia, and South Africa in abolishing the death penalty underscore a global trend toward prioritizing human rights, rectifying judicial fallibility, and fostering justice systems rooted in rehabilitation over retribution.

## **4.2. COUNTRIES THAT RETAIN CAPITAL PUNISHMENT**

Despite the global trend toward abolition, a number of countries continue to retain capital punishment as part of their legal systems. These nations justify the death penalty on various grounds, including deterrence of serious crimes, retribution, and cultural or religious beliefs.

### **4.2.1. UNITED STATES**

One of the few advanced nations that still uses the death penalty is the United States, yet its application has become increasingly controversial. While a majority of Adult Americans continue to favor the death sentence for murder convictions, public sentiment is tempered by concerns over racial bias, wrongful executions, and the lack of a proven deterrent effect. Furthermore, while executions and death sentences have declined at the state level, federal

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<sup>59</sup> Capital punishment, available at: <https://www.aic.gov.au/sites/default/files/2020-05/tandi003.pdf> (last visited February 20, 2025).

<sup>60</sup> S v Makwanyane and Another (CCT3/94) [1995] ZACC 3, available at <https://www.saflii.org/za/cases/ZACC/1995/3.html> (last visited February 21, 2025).

executions surged during the Trump administration, demonstrating the fragmented and politically influenced nature of capital punishment in the U.S. This complex legal landscape raises important questions about the ethical, legal, and practical implications of retaining the death penalty in a modern justice system.

### **Public Opinion and the Erosion of Support**

According to an April 2021 Pew Research Center survey<sup>61</sup>, most Americans continue to favor the death penalty for those convicted of murder. However, this support is accompanied by significant concerns:

- **Racial Bias:** A majority of respondents believe the death penalty is not applied in a racially neutral manner. Studies have shown that racial disparities persist in capital sentencing, with Black defendants more likely to be executed, especially in cases when the victim is white.
- **Lack of Deterrence:** The death penalty's ability to deter violent crime is questioned by many Americans. Empirical research supports this skepticism, as states that retain capital punishment do not exhibit lower murder rates than those that have abolished it.
- **Risk of Wrongful Execution:** Concerns over wrongful convictions have further eroded confidence in the death penalty. The U.S. has seen numerous cases of individuals being exonerated from death row, highlighting the fallibility of the judicial system and the irreversible nature of capital punishment.

### **A Declining but Uneven Trend in Death Sentences and Executions**

The overall use of the death penalty has significantly declined over the past two decades. This trend is driven by several factors, including:

- **Abolition by States:** A growing number of U.S. states have abolished the death penalty, with 23 states formally ending the practice as of 2024. Additionally, three states (California, Pennsylvania, and Oregon) have enacted moratoriums on executions.
- **Reduction in Death Sentences:** Prosecutors seek the death penalty less frequently, and the juries are increasingly reluctant to impose it. The number of new death sentences has dropped significantly from its peak in the 1990s.

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<sup>61</sup> Most Americans Favor the Death Penalty Despite Concerns About Its Administration, available at: <https://www.pewresearch.org/politics/2021/06/02/most-americans-favor-the-death-penalty-despite-concerns-about-its-administration/> (last visited February 16, 2025).

- **Fewer Executions:** The actual carrying out of executions has become rarer, in part due to legal challenges, difficulties in obtaining lethal injection drugs, and shifts in political will.

Despite this overall decline, the federal government disrupted the downward trajectory with an unprecedented wave of executions during the Trump administration. Between July 2020 and January 2021, the federal government executed 13 prisoners—the highest number of federal executions a one year after the death penalty was reinstated by the US Supreme Court in 1976. This deviation highlights how political leadership can significantly influence the use of the death penalty, even when broader trends point toward abolition.

### **Key Legal and Ethical Concerns**

1. **Inconsistencies in Application:** The death penalty is applied unevenly across states, creating a geographically arbitrary system of justice. While some states, such as Texas and Oklahoma, continue to carry out executions regularly, others have not executed anyone in decades. This inconsistency undermines the argument that the death sentence is a consistent and impartial method of punishment.
2. **Racial and Socioeconomic Disparities:** The racial disparities in capital sentencing are well-documented. Studies have shown that defendants of color, particularly Black defendants, are more likely to be executed, particularly if the victim is white. Additionally, those with inadequate legal representation—often due to financial constraints—are at a higher risk of receiving a death sentence.
3. **The Risk of Executing Innocent People:** In the United States, at least 190 death row inmates have been pardoned and exonerated since 1973, raising profound concerns about the reliability of capital convictions. DNA evidence has played a crucial role in overturning wrongful convictions, but many cases lack such definitive proof, leaving room for irreversible miscarriages of justice.
4. **The Cost of Capital Punishment:** Contrary to common belief, The cost of the death sentence is far higher than that of life in prison, due to the lengthy and complex legal process required to ensure due process. Studies have shown that death penalty cases can cost taxpayers millions of dollars more than non-capital cases, largely due to appeals, specialized defense teams, and extended incarceration periods.

### **Death Penalty Future in the United States**<sup>62</sup>

As debates over capital punishment continue, the U.S. faces several potential paths forward:

- **Complete Abolition:** A growing number of lawmakers, activists, and legal experts advocate for the full abolition of the death penalty at both state and federal levels, citing its racial disparities, high costs, and ethical concerns.
- **Further State-Level Bans and Moratoriums:** If the current trend continues, more states may choose to formally abolish capital punishment or impose moratoriums, effectively phasing it out over time.
- **Judicial Review:** The U.S. Supreme Court has historically played a key role in shaping death penalty policies. Future court rulings could either strengthen or further restrict its application, depending on the ideological composition of the Court.

The death penalty remains a deeply polarizing issue in the United States. While public support persists, concerns over racial bias, wrongful executions, and its lack of deterrence have contributed to a steady decline in its use. The death penalty's future will likely be shaped by legal, political, and societal shifts, with an increasing number of states moving away from its application. Will the U.S. ultimately join the ranks of other developed nations in abolishing capital punishment entirely remains an open question, but the trajectory suggests a gradual movement toward a more humane and just penal system.

#### **4.2.2. CHINA**

China's criminal justice system retains the death penalty as a severe punitive measure for offenses deemed harmful to state stability and social order. The Chinese Criminal Law (1979, amended in 1997) prescribes capital punishment for various crimes, including violent offenses, drug-related crimes, economic offenses such as large-scale corruption, and acts against state security. The system allows for both immediate execution and suspended death sentences, where an execution may be commuted to life imprisonment under specific conditions. Although some legal reforms have reduced the number of capital crimes, the broad scope of offenses eligible for the death penalty continues to raise concerns. One of the most controversial aspects of China's use of the death penalty is the opacity surrounding its implementation. Unlike countries that publish execution data, China treats death penalty statistics as a state secret, making it difficult to assess the true extent of capital punishment.<sup>63</sup>

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<sup>62</sup> Death Row Information, available at: [https://www.tdcj.texas.gov/death\\_row/dr\\_facts.html](https://www.tdcj.texas.gov/death_row/dr_facts.html) (last visited February 18, 2025)

<sup>63</sup> INTERNATIONAL: China Moves to Sharply Restrict Use of Death Penalty, available at: <https://deathpenaltyinfo.org/international-china-moves-to-sharply-restrict-use-of-death-penalty> (last visited

#### **4.2.3. SAUDI ARABIA AND IRAN**

Saudi Arabia and Iran are among the most active enforcers of capital punishment, implementing executions based on their interpretations of Islamic law (Sharia). These nations maintain stringent legal frameworks that allow for executions in a wide range of cases, including crimes that do not meet the international standard of "most serious crimes" under Article 6 of the International Covenant on Civil and Political Rights (ICCPR)<sup>64</sup>. Their continued use of the death penalty, often carried out in highly publicized and severe ways, has led to extensive international criticism, particularly regarding due process concerns, the execution of minors, and the criminalization of acts that are not recognized as capital offenses under international law.<sup>65</sup>

#### **4.3. LESSONS FOR INDIA FROM INTERNATIONAL TRENDS**

India, while retaining capital punishment, applies it in the "rarest of rare" cases. However, examining international trends provides key takeaways:

1. **Human Rights Considerations:** Nations that have abolished the death penalty emphasize the right to life and the human dignity, aligning with global human rights standards. India could consider alternative punishments such as life imprisonment without parole for heinous crimes.
2. **Wrongful Convictions and Judicial Errors:** The irreversible nature of capital punishment poses a risk of executing innocent individuals. Learning from countries like Canada and the EU, India could strengthen judicial safeguards or consider abolition.
3. **Deterrence Debate:** Studies suggest that the death penalty does not serve as an effective deterrent. The U.S. experience shows that states with high execution rates do not necessarily have lower crime rates, prompting India to assess whether capital punishment truly reduces serious crimes.
4. **Transparency and Fair Trials:** China and some Middle Eastern nations face criticism for opaque trials and lack of due process. India must ensure that capital cases meet the highest standards of legal scrutiny to prevent miscarriages of justice.
5. **Gradual Abolition or Reform:** Some nations, like the U.S., have taken a phased approach, either limiting the scope of capital punishment or implementing

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February 20, 2025).

<sup>64</sup> Article 6 of the International Covenant on Civil and Political Rights (ICCPR)

<sup>65</sup> Saudi Arabia: Highest execution toll in decades as authorities put to death 198 people, available at: <https://www.amnesty.org/en/latest/news/2024/09/saudi-arabia-highest-execution-toll-in-decades-as-authorities-put-to-death-198-people/> (last visited February 22, 2025).

moratoriums. India could explore similar legal reforms, moving toward a more humane justice system while addressing public and political concerns.

#### **4.4. CONCLUSION**

India stands at a crossroads regarding its death penalty policy, navigating the delicate balance between justice, deterrence, and human rights concerns. While capital punishment remains a part of its legal framework, the global trend toward abolition and evolving human rights jurisprudence present compelling considerations. The experiences of both abolitionist and retentionist countries offer valuable insights into the effectiveness, ethical implications, and socio-legal consequences of the death penalty.

To ensure that justice is served without the risk of irreversible miscarriages, India must focus on strengthening due process protections, enhancing judicial accountability, and addressing systemic biases that may affect sentencing decisions. Greater transparency in clemency proceedings, stricter evidentiary standards in capital cases, and a more robust appellate review mechanism could serve to minimize the risk of wrongful executions.

At the same time, India can explore alternative sentencing models, such as life imprisonment without parole, which may offer a more humane yet equally deterrent form of punishment. A comprehensive and informed policy shift—one that considers criminological research, public sentiment, and international human rights obligations—could help India move toward a more just and equitable criminal justice system. By fostering meaningful discourse on the death penalty's effectiveness and ethical ramifications, India has the opportunity to align with evolving global human rights standards while ensuring that its legal framework remains fair, proportionate, and capable of addressing serious crimes.

## **CHAPTER 5**

### **ARGUMENTS FOR AND AGAINST ABOLITION IN INDIA**

#### **5.1. REASONS FOR ABOLISHING CAPITAL PUNISHMENT**

##### **5.1.1. International human rights perspective**

India's continued use of the death penalty stands in stark contrast to the global trend toward its abolition. International human rights organizations, including the United Nations, have consistently advocated for the eradication of capital punishment, asserting that it infringes upon the fundamental rights to life and dignity as enshrined in **Article 6 of the International Covenant on Civil and Political Rights (ICCPR)**. This article emphasizes the inherent right to life of every individual and stipulates that this right shall not be arbitrarily denied to anyone.

The application of the death penalty, viewed by many as a form of inhumane and degrading treatment, is increasingly seen as incompatible with these principles.<sup>66</sup>

The global movement against capital punishment has gained significant momentum over the past decades. The death penalty has been outlawed in more than two-thirds of nations worldwide, reflecting a growing consensus that state-sanctioned executions undermine human rights and fail to serve as an effective deterrent against crime. Despite this international shift, India has maintained its stance on capital punishment, often justifying its use in the "rarest of rare" cases—a standard established by the S.C of India in 1983 to limit the application of the death Sentence. However, this ambiguous criterion has led to inconsistencies in sentencing, raising concerns about arbitrariness and potential miscarriages of justice.<sup>67</sup>

Human rights organizations have repeatedly called on India to reconsider its position. **In 2012, Human Rights Watch** urged the Indian government to reinstate its moratorium on executions, emphasizing that capital punishment is an inherently irreversible and inhumane act. Similarly, Amnesty International has criticized India's resumption of executions after an eight-year hiatus, describing such actions as a regressive step for human rights in the country.<sup>68</sup>

The application of the death penalty in India has also raised concerns about due process and fairness. Cases like that of **Devinder Pal Singh Bhullar**, who was sentenced to death in 2001 based on a confession obtained under the now-lapsed Terrorist and Disruptive Activities (Prevention) Act (TADA), highlight issues related to the reliance on questionable evidence and the potential for wrongful executions. Such instances underscore the inherent risks associated with capital punishment, particularly in legal systems where procedural safeguards may be inadequate.

Moreover, the effectiveness of the death penalty as a deterrent remains highly contested. Studies have shown There is no concrete proof that the death penalty works better than other types of punishment at deterring crime. This challenges the rationale often cited by proponents of the death penalty and calls into question its continued use as a tool for achieving justice.

In light of these considerations, there is a growing call for India to align its criminal justice policies with international human rights standards by abolishing the death penalty. Doing so

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<sup>66</sup> India: Death penalty never the solution to crime and violence against women, available at: <https://www.amnesty.org/en/latest/news/2024/09/india-death-penalty-never-the-solution-to-crime-and-violence-against-women/> (last visited March 18, 2025).

<sup>67</sup> Indian executions would be blow to human rights, available at: <https://www.amnesty.org/en/latest/news/2011/05/indian-executions-would-be-blow-human-rights-2/> (last visited March 7, 2025).

<sup>68</sup> India: Stop Executions, Renew Death Penalty Moratorium, Then Abolish Capital Punishment, available at: <https://www.hrw.org/news/2013/08/21/india-stop-executions> (last visited March 18, 2025).

would not only affirm the country's commitment to upholding the right to life and dignity but also address the systemic issues associated with capital punishment, including its arbitrary application and the risk of irrevocable errors. As the global community moves toward universal abolition, India's adherence to capital punishment increasingly isolates it from the prevailing human rights consensus, highlighting the urgent need for reform in this area.

### **5.1.2. Miscarriage of justice and wrongful convictions**

The death penalty's finality raises profound concerns about miscarriages of justice, particularly in India, where systemic flaws have led to wrongful convictions and, potentially, the execution of innocent individuals. The Indian criminal justice system, like many worldwide, is susceptible to errors stemming from various factors, including inadequate legal representation, coerced confessions, and unreliable witness testimonies.

A significant issue is the quality of legal representation provided to defendants, especially those from marginalized communities. Many accused individuals lack the resources to secure competent legal counsel, leading to inadequate defence strategies and increased vulnerability to wrongful convictions. This disparity underscores the systemic inequities within the justice system.

Coerced confessions further exacerbate the problem. Instances have been reported where law enforcement officials, under pressure to solve high-profile cases, resort to intimidation or torture to extract confessions. Such practices not only violate human rights but also compromise the integrity of the evidence presented in court, increasing the risk of convicting innocent individuals.

Unreliable witness testimonies also contribute to wrongful convictions. Eyewitness accounts can be influenced by various factors, including suggestive identification procedures and personal biases. The reliance on such testimonies without corroborative evidence can lead to miscarriages of justice, especially in capital cases where the stakes are life and death.

The appellate process in India has highlighted these systemic issues. Between 2016 and 2022, the High Courts and the Supreme Court acquitted over two hundred individuals previously sentenced to death, acknowledging the insufficiency of evidence in these cases. These acquittals underscore the fallibility of the trial process and the potential for grave errors when imposing capital punishment.<sup>69</sup>

Despite these acknowledgments, the death penalty remains in practice, raising ethical and legal

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<sup>69</sup> Kent Roach, "Wrongful Convictions, Wrongful Prosecutions and Wrongful Detention in India," available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4729087](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4729087) & (last visited March 17, 2025).

questions about its application in a system prone to error. The irreversible nature of capital punishment means that any miscarriage of justice cannot be rectified, leading to the ultimate violation of human rights—the wrongful taking of an innocent life.

Efforts to address these issues have been limited. India lacks a statutory framework to compensate individuals wrongfully convicted and sentenced to death, leaving exonerees without support to rebuild their lives after years of unjust incarceration. This absence of redress further highlights the need for systemic reforms to prevent wrongful convictions and provide justice to those affected.

The persistence of the death penalty in India, despite its demonstrated risks and the global trend toward abolition, calls for a critical examination of its role within the justice system. Addressing the root causes of wrongful convictions—such as improving legal representation, eliminating coercive interrogation practices, and ensuring the reliability of witness testimonies—is essential. However, as long as the death penalty remains an option, the possibility of irrevocable miscarriages of justice persists, challenging the ethical foundation of its continued use.<sup>70</sup>

### **5.1.3. Judicial bias and socio-economic discrimination**

India's administration of capital punishment exposes entrenched disparities emanating from socio-economic stratification and systemic prejudices. A preponderance of death row inmates originate from marginalized communities, including Dalits, Adivasis, and religious minorities. This disproportionate representation underscores a disconcerting nexus between indigence, limited educational attainment, and societal stratification within the judicial apparatus.

The educational profiles of these inmates further illuminate systemic inequities. A considerable number have not progressed beyond secondary education, with many compelled into labor during their formative years. This educational deficiency and premature workforce entry often culminate in a diminished awareness of legal entitlements and an impaired capacity to adeptly navigate the labyrinthine judicial system.

Securing proficient legal representation remains a formidable challenge for economically disadvantaged individuals. Financial limitations frequently necessitate reliance on overextended public defenders or, in certain instances, result in facing judicial proceedings sans legal counsel. This dearth of adequate representation undermines the integrity of trials and

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<sup>70</sup> India's Compliance with International Covenant on Civil and Political Rights: The Death Penalty, available at: <https://www.theadvocatesforhumanrights.org/Res/India%20CCPR%20DP%20FINAL.pdf> (last visited March 19, 2025).

amplifies the propensity for draconian sentences, including capital punishment.

The judicial process itself is susceptible to biases. Documented instances of precipitous trials and capricious sentencing engender concerns regarding the consistency and impartiality of capital punishment adjudications. For example, in 2022, a case in Bihar witnessed a man condemned to death for rape subsequent to a perfunctory 30-minute trial—a verdict later overturned due to the judge's undue precipitance and failure to uphold fair trial standards. Such episodes accentuate the exigency for comprehensive sentencing reforms to ensure that punishments are commensurate and equitable.

The socio-economic and systemic disparities manifest in India's capital punishment regime contravene the principles of fairness and equality before the law. Redressing these issues necessitates a multifaceted strategy, encompassing legal reforms, augmented access to competent legal representation for marginalized cohorts, and a critical appraisal of the role of capital punishment within a justice system aspiring toward equity.

## **5.2. REASONS FOR RETAINING CAPITAL PUNISHMENT**

### **5.2.1. Public sentiment and victim rights**

In the intricate tapestry of India's criminal jurisprudence, the retention of capital punishment remains a polarizing issue, deeply entwined with public sentiment and the perceived rights of victims. A substantial segment of the populace advocates for the death penalty, particularly in response to egregious offenses such as terrorism, rape, and heinous murders. This proclivity is often underpinned by the conviction that such punitive measures not only administer justice to aggrieved parties but also serve as a formidable deterrent against prospective transgressions.

The emotional and psychological ramifications experienced by the families of victims further amplify the clamour for capital punishment. For many, the execution of the perpetrator embodies a form of closure, a cathartic denouement to their harrowing ordeal. This sentiment is particularly palpable in cases characterized by extreme brutality, where the irrevocable nature of the crime engenders a profound yearning for retributive justice.<sup>71</sup>

Conversely, this perspective is not devoid of contention. Human rights advocates, legal scholars, and certain societal factions contend that the death penalty is antithetical to the principles of human dignity and justice. They posit that its efficacy as a deterrent remains empirically unsubstantiated and underscore the peril of irrevocable miscarriages of justice. The

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<sup>71</sup> 76% Indians Want Death Penalty For Rapists, Want States To Award Capital Punishment, Finds Poll, available at: <https://www.indiatimes.com/news/india/76-indians-want-death-penalty-for-rapists-want-states-to-award-capital-punishment-finds-poll-344046.html> (last visited March 15, 2025).

Justice Verma Committee, instituted in the aftermath of the Nirbhaya incident, eschewed the endorsement of capital punishment for rape, advocating instead for rigorous life imprisonment. Such recommendations underscore the complexities inherent in balancing retributive justice with the imperatives of human rights and judicial prudence.

The legal landscape further complicates this discourse, with disparities in sentencing eliciting apprehensions regarding the arbitrariness of capital punishment's application. Instances where expedited trials culminate in death sentences, subsequently overturned due to procedural infirmities, spotlight the exigency for a more standardized and equitable sentencing framework. In response, the Indian judiciary and legislative bodies have initiated reforms aimed at mitigating sentencing disparities and ensuring that punitive measures are commensurate with the gravity of the offense, thereby upholding the sanctity of justice.

In summation, while a considerable faction within Indian society perceives the death penalty as an indispensable instrument for dispensing justice and deterring heinous crimes, the debate remains multifaceted and deeply nuanced. The visceral desire for retribution and closure among victims' families must be judiciously balanced against the imperatives of human rights, the potential for judicial fallibility, and the overarching quest for a just and humane penal system. This ongoing dialectic reflects the intricate interplay between collective societal sentiments, individual rights, and the foundational principles that underpin India's legal and moral ethos.

### **5.2.2. Challenges in implementing alternative punishments**

Implementing alternative sanctions to capital punishment in India presents a myriad of formidable challenges. Detractors contend that measures such as life incarceration sans parole may not sufficiently deter individuals predisposed to perpetrating the most heinous offenses. Concerns also encompass the burgeoning congestion within penitentiaries and the fiscal ramifications of sustaining inmates ad infinitum. Moreover, the potential for political or judicial interventions culminating in premature releases renders capital punishment seemingly a more unequivocal punitive recourse. In scenarios encompassing terrorism and exigencies of national security, the retention of the death penalty is frequently perceived as indispensable for the preservation of public safety.

The sentencing paradigms within the Indian judiciary have been subjected to intense scrutiny due to perceived capriciousness and inconsistency. For instance, in 2022, an individual in Bihar received a capital sentence for rape following a trial lasting a mere 30 minutes—a verdict subsequently overturned owing to the precipitous nature of the proceedings. This episode underscored the imperative for standardized sentencing guidelines to ensure proportionality

and equitability in punitive measures. In response, India has contemplated reforms aimed at instituting a grading system for sentencing, aspiring to achieve congruence with judicial standards prevalent in jurisdictions such as Britain and Canada.<sup>72</sup>

The escalating populace of death row inmates in India further convolutes the discourse on alternative sanctions. In 2024, the number of prisoners awaiting execution reached an unprecedented zenith since the turn of the century. This surge is attributable to protracted trials and a diminished rate of adjudications by appellate courts. The extended incarceration of death-row prisoners engenders apprehensions regarding their psychological well-being and the overarching efficacy of the justice system.

Life imprisonment devoid of the prospect of remission has been posited as a viable substitute for the death penalty. Nonetheless, this stratagem has encountered criticism for its ostensibly inhumane and degrading nature, potentially infringing upon prisoners' rights to social rehabilitation. Such sentences convey an assertion of the redeemability of individuals, which stands in contradistinction to the reformatory objectives of the Indian penal system. Despite these reservations, courts have increasingly resorted to life sentences without remission when commuting death sentences, with a significant proportion of all commutations resulting in such sentences in 2024.<sup>73</sup>

The pecuniary burden of maintaining inmates for life constitutes another formidable challenge. Life incarceration entails enduring expenditures related to housing, alimentation, and medical care for prisoners. Given India's extant predicaments with prison overcrowding and resource constraints, these financial considerations are nontrivial. Additionally, the potential for political or judicial interventions culminating in early releases undermines public confidence in the justice system's capacity to administer appropriate sanctions.

In instances involving terrorism and threats to national security, the death penalty is often deemed a necessary deterrent. The contention is that the ultimate punitive measure serves to dissuade individuals from engaging in acts that could precipitate catastrophic ramifications for society. However, this perspective is contentious, with opponents questioning the deterrent efficacy of capital punishment and advocating for alternative measures that emphasize rehabilitation and address the underlying etiology of such crimes.

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<sup>72</sup> Is it Time to say goodbye to Death Penalty, available at: <https://juriscentre.com/2023/03/10/is-it-time-to-say-goodbye-to-death-penalty/> (last visited March 23, 2025).

<sup>73</sup> India's death-row dilemma: Growing numbers, delayed justice, and shift to life imprisonment, available at: <https://indianexpress.com/article/opinion/columns/death-penalty-life-imprisonment-justice-9859166/> (last visited March 26, 2025).

## **CHAPTER 6**

### **CONCLUSION AND SUGGESTIONS**

#### **6.1 CONCLUSIONS AND RECOMMENDATIONS OF THE 262<sup>ND</sup> LAW COMMISSION OF INDIA:**

1. The death penalty is not more effective than life imprisonment in preventing crimes. In India, life imprisonment often means 30–60 years in jail, depending on the case and remission rules.
2. Punishment should be about justice, not revenge. The idea of “an eye for an eye” goes against constitutional values and has no place in a modern justice system.
3. The death penalty distracts from fixing real issues like poor investigations, weak crime prevention, and lack of support for victims.
4. The State should set up proper victim compensation and witness protection schemes, and courts should use their powers to grant compensation when needed.
5. There is a strong need for police reforms to improve the quality of investigation and prosecution.
6. The Supreme Court has pointed out that death penalty in India is arbitrary and inconsistent. Similar type of cases often gets different results—life imprisonment in some, death in others—violating the principles of equality and due process.
7. No clear or fair method exists to fix this arbitrariness. Strict rules treat all cases the same, while flexible ones lead to unpredictable and unjust results.
8. Death row inmates face long delays in trials, appeals, and mercy pleas, leading to intense mental and emotional suffering. Harsh prison conditions and solitary confinement make it worse, violating the right to dignity under Article 21.
9. India remains among a small and shrinking number of countries that still retain the death penalty, while over 140 countries have abolished it in law or practice.
10. The global trend shows that the death penalty is not essential even for dealing with terrorism or violent crimes.
11. It is recommended to keep life imprisonment till death as the primary punishment, and reserve the death penalty only for terrorism-related cases, which should be handled quickly through fast-track courts.

#### **6.2 SUGGESTIONS**

After taking an overview; it is suggested and recommended to retain the DEATH PENALTY for all heinous offences in India subject however to certain sentencing guidelines such as

### 1. **Life Imprisonment Without Parole as an Alternative**

One such alternative to death penalty is life imprisonment without the possibility of parole (LWOP), which ensures that serious offenders remain incarcerated for life without the option of release. This approach serves as a strong punitive measure while avoiding the ethical and moral concerns associated with the death penalty. It provides a means to incapacitate offenders permanently, LWOP addresses concerns about wrongful executions by allowing for judicial review in cases of potential miscarriages of justice. It raises legal and human rights concerns. Prolonged imprisonment without hope of release may violate human dignity and cause psychological harm. In India, adopting LWOP would require legal reforms, periodic judicial reviews, and strong safeguards to ensure it is used fairly, only for the most serious crimes, and in line with constitutional rights under Article 21.

### 2. **Reforming India's Sentencing Policy**

India's sentencing framework grants significant discretion to judges, often resulting in inconsistencies and perceptions of arbitrariness in sentencing. The absence of structured guidelines has led to disparities in punishments for similar offences, raising concerns about fairness and transparency in the judicial process. The lack of a uniform sentencing policy has also contributed to public scepticism regarding the predictability and proportionality of punishments.

The **Malimath Committee (2003)** recommended the establishment of structured sentencing norms, drawing from international best practices to create a balanced approach. A well-defined policy would provide clarity on aggravating and mitigating factors, ensuring that similar offences receive comparable punishments while allowing limited judicial discretion to account for case-specific circumstances. Implementing sentencing reforms in India requires legislative intervention, judicial commitment, and institutional support.

### 3. **Introduction of strict sentencing guidelines**

Building upon the need for sentencing reform, the introduction of strict sentencing guidelines is essential to standardize judicial decisions and minimize disparities. Structured guidelines would provide a framework for judges, balancing judicial discretion with consistency. The establishment of a statutory committee, as recommended by the Malimath Committee, could oversee the formulation and implementation of these guidelines, drawing upon expertise from legal professionals, social scientists, and representatives from diverse communities. Such measures would enhance the objectivity and predictability of sentencing, reinforcing the credibility of the criminal justice system.

#### 4. **Strengthening clemency and review mechanisms**

Articles 72 and 161 of the Constitution of India grant the President and Governors the power to pardon or reduce sentences, serving as tools to correct judicial errors and promote justice. However, these powers are subject to judicial review and must not be used arbitrarily or with bad intent, as clarified in **Epuru Sudhakar v. Govt. of Andhra Pradesh**<sup>74</sup>, The S.C has also directed state governments to actively consider early release of eligible convicts under remission policies, even without formal requests, to support rehabilitation and prevent unnecessary imprisonment.

To strengthen the clemency process, clear and transparent guidelines are needed to ensure fair and consistent decisions aligned with constitutional values. Establishing an independent review body can enhance accountability and public trust. These reforms would help prevent miscarriages of justice and better protect individual rights.

#### 5. **Establishing better forensic and legal aid support**

Forensic science plays a key role in connecting science with the legal system by offering solid, scientific evidence to prove guilt or innocence. Techniques like DNA testing, toxicology, and ballistics have improved the accuracy of court decisions and reduced reliance on unreliable witness statements. However, in India, forensic services face challenges like a lack of proper labs, trained experts, and standard procedures, causing delays and weakening the justice system. To fix this, India needs better infrastructure, expert training, and clear guidelines for better outcomes.<sup>75</sup>

At the same time, legal aid must also be strengthened to ensure that the fair access to justice, especially for the underprivileged and marginalized. While the National Legal Services Authority (NALSA) offers free legal help, it struggles with limited resources. Digital tools can help improve this by making legal aid more accessible and efficient. For example, in Surguja, Chhattisgarh, digital platforms helped legal aid services work better and faster.

Setting up legal aid clinics in prisons can also help inmates get timely legal help, file appeals, and reduce overcrowding. Overall, improving forensic science and legal aid together is essential for a more fair, fast, and equal justice system in India, ensuring everyone's rights and dignity are protected.

Such reforms not only enhance the credibility of judicial processes but also reaffirm the

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<sup>74</sup> Epuru Sudhakar v. Government of Andhra Pradesh, AIR 2006 SUPREME COURT 3385

<sup>75</sup> Guidelines for Assistant Legal Aid Defense, available at: <https://cdnbbsr.s3waas.gov.in/s3ec039c8661befae6dbcd08304dbf4dca/uploads/2024/09/2024091650.pdf> (last visited March 18, 2025).

commitment to upholding the rights and dignity of all individuals within the legal framework.<sup>76</sup>

**6. The right legislation ought to be established.**

Numerous statutes provide for the imposition of the death penalty. It was discovered that although there were numerous laws that allowed for the death sentence, none of them specified the circumstances in which the rarest of the rare case concept should be applied to impose such a punishment. This causes a great deal of uncertainty among jurists regarding the basis for the accused's punishment. It should be established properly to give grounds.

**7. The decisions by court must be made with due care and caution.**

India is a democratic nation where the general public's decision is final. By adhering to the rulings of a constitutional court, the defenders of our constitution have granted the discretionary authority to impose the death penalty. However, it is suggested that while giving the capital punishment, all the jurist should always consider if the accused and the gravity of the crime committed pose a danger to the society. If not, he should not be given the death penalty; this will depend on how he behaved in society just before committing the crime.

**8. The execution of death penalty should be prevented to get delayed**

According to the Supreme Court's ruling in Triveni Bai v. State of Gujarat, execution of death sentences must be postponed for justifiable reasons in order to provide the accused a fair trial. However, in this case, the researcher suggests that the jury not postpone the death penalty after it has been declared. This approach should be eliminated by requiring the constitutional guardians to thoroughly examine the relevant act in order to provide the accused with a fair trial. Only then should the jurist declare the death penalty, which should not be postponed. In this case, the researcher is not advocating that the accused should not have the right to appeal; rather, the right must be granted for a predetermined amount of time.

**9. Age limit shouldn't be prescribed for awarding the death penalty**

No law in our nation allows for the execution of minors, but if an adult commits a heinous crime—such as rape, murder, etc.—that falls under the category of rarest of rare cases, it indicates that he had sufficient knowledge of the act he was committing at the time of the offense and, for that reason, he must be executed.

**10. Terrorist should not be pardoned**

Indian Constitution grants the President and the Governors, the power to pardon. However, However, the accused must not be granted the ability to appeal for a pardon if it is determined that he is a terrorist who has impacted the general public.

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<sup>76</sup> Forensic Evidence in Criminal Investigations in India, available at: <https://recordoflaw.in/forensic-evidence-in-criminal-investigations-in-india/> (last visited March 21, 2025).

**11. The death penalty must never be imposed hastily.**

Before imposing the death penalty, constitutional courts should carefully consider all relevant factors from a panel of experts and refrain from making a quick decision.

**12. The Act should be followed while giving punishment.**

In our nation, the only way to carry out the death punishment is through judicial hanging. In India, the death sentence is only applied in extremely rare circumstances and is not given for minor offenses. The severity of the accused's act must determine if the death penalty is applied, which will deter criminals from committing similar crimes and endangering the public.

**6.3 CONCLUSION**

The Indian Constitution, through the phrase "We the people of India," emphasizes democratic values, justice and dignity for all, and while capital punishment is the harshest form of punishment, India retains it constitutionally but limits its use to the *rarest of rare* cases., as defined in landmark judgments like *Macchi Singh and Bachan Singh*. Although India supports international human rights principles, it has not abolished the death penalty due to public sentiment and the need to deter heinous crimes. Landmark cases like *Macchi Singh v. State of Punjab and Bachan Singh* laid down criteria for awarding the death penalty, considering the brutality and societal impact of the crime. These cases set guidelines to ensure capital punishment is only awarded when the crime is exceptionally brutal and poses a danger to society.

Despite these legal safeguards, the Supreme Court itself has admitted inconsistencies in applying the death penalty, highlighting that sentencing often depends on judges' personal views rather than established legal standards. Cases such as *Swamy Shraddhananda, Sangeet, and Khade* highlight these arbitrary trends, raising concerns about uniformity and fairness in sentencing. Thus, while capital punishment may be justified in extreme cases, its implementation in India remains a subject of ongoing judicial and ethical debate. However, courts have at times opted for life imprisonment instead, especially when the convict was not seen as a danger to society, as in *Shiv Balakal and Absar Ahmed cases*.

India's criminal justice system requires urgent and comprehensive **reforms to enhance its efficacy, fairness, and adherence to human rights standards**. A critical step in this direction is replacing the death penalty with life imprisonment without parole. This shift would mitigate the risk of wrongful executions and align with the global trend toward more humane punishments. Additionally, reforming sentencing policies by introducing strict and structured sentencing guidelines is essential to ensure uniformity and prevent judicial arbitrariness.

**Strengthening clemency and review mechanisms is another vital reform.** The current system of presidential pardons and judicial reviews should be made more transparent, consistent, and accessible to ensure justice is not denied due to procedural inefficiencies. Moreover, improving forensic infrastructure and evidence collection mechanisms can significantly enhance the accuracy and reliability of criminal investigations, reducing wrongful convictions and ensuring that justice is based on scientific proof rather than circumstantial evidence.

**Equally important is the need to enhance legal aid services,** particularly for marginalized communities. Many accused individuals lack access to competent legal representation, leading to unfair trials and prolonged pre-trial detentions. By investing in public defenders, expediting legal processes, and ensuring equal legal support, the system can uphold the constitutional promise of justice for all.

These reforms collectively contribute to a more **transparent, consistent, and humane criminal justice system.** By aligning legal frameworks with national and international human rights principles, India can reinforce public trust in its justice system while ensuring that punishment is both fair and effective.

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