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THE DEATH PENALTY IN INDIA: A JUSTIFIED RESPONSE TO HEINOUS AND RECURRENT CRIMES

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ABSTRACT

Capital punishment, or the death penalty, remains the most severe form of legal sanction in India, reserved for the gravest and most egregious crimes. Under the Bharatiya Nyaya Sanhita (formerly the Indian Penal Code) and other special laws, it is applied as per stringent legal standards and constitutional safeguards. Executions are carried out primarily by hanging, as prescribed in Section 354(5) of the Criminal Procedure Code, 1973. The Supreme Court established the "rarest of rare" doctrine in *Bachan Singh vs. State of Punjab* (1980), which governs the application of the death penalty, ensuring that it is applied only when life imprisonment seems inadequate.

The Indian Judiciary and Legislature's stand on capital punishment shows a balance between deterrence, justice, and the protection of human dignity. The death penalty acts as a crucial deterrent. It also acts as an assurance for society that anyone who commits crimes such as terrorism, rape and, rape of minors, are repeat offenders involving extreme violence and heinous crime. Even with all the legal provisions, actual executions are rare. The last execution was carried out in 2020, involving four convicts in the Delhi gang rape case that took place in 2012 - acting as a landmark moment accentuating a public demand for justice in cases of brutal gender-based violence.

The latest data shows a rise in the number of death sentences, with 561 individuals on death row at the end of 2023, the highest number in almost two decades. This increase in the number of death sentences is attributed to the careful and cautious pace of appellate review and a growing tendency of trial courts to deliver capital punishment. While the number of executions remains low, the constant use of the death sentence in India's legal system affirms its role as a

justified response to the most heinous and recurrent crimes, protecting the peace, harmony, and order of society and granting justice.

INTRODUCTION

Capital punishment, also referred to as the death penalty, is the most severe form of criminal sentencing, involving the execution of an individual legally convicted of a capital offense. While many nations have abolished it in law or practice, several—including India—retain it under highly restricted circumstances. The use of capital punishment is one of the most controversial legal, moral, and ethical issues globally, starting arguments of justice, deterrence, and retribution against concerns of human rights, rehabilitation, and judicial errancy. In India, capital punishment is legally and constitutionally acceptable and permitted but it is applicable only in cases considered to be the "rarest of rare," showing a conscious and careful stance by the judiciary and legislature.

India's approach to capital punishment finds its roots in a complex legal tradition. The country's main law, the Bharatiya Nyaya Sanhita (formerly the India Penal Code), describes the death penalty for crimes such as murder, terrorism, treason, and heinous and aggravated sexual violence. Section 354(5) of the Criminal Procedure Code (CrPC), 1973 clearly describes hanging as the method of execution, stating that "When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead." The Supreme Court of India, in the landmark judgment of *Bachan Singh vs the State of Punjab* (1980), laid down the "rarest of rare" doctrine, under which the death penalty can be awarded but only when the alternative of life imprisonment is undoubtedly inadequate. This ensures a rigorous threshold that aims to protect against arbitrary or excessive punishments.

The Indian judicial system incorporates multiple procedural safeguards to prevent miscarriage of justice. A High Court must confirm every death sentence and is subject to review, appeal, and curative petitions at the Supreme Court level. Additionally, the **President of India** and the **Governors of States** hold discretionary powers to commute, pardon, or remit capital sentences under Articles 72 and 161 of the Constitution. Thus, while capital punishment is legally valid, its execution is embedded within a multilayered system of judicial scrutiny and executive clemency.

The relevance of capital punishment in contemporary India is underscored by the **rise in violent**

and heinous crimes, including acts of terrorism, gang rapes, serial murders, targeted killings, and even instances of cannibalism, which are extremely rare but deeply disturbing. Such crimes often involve a level of cruelty and moral depravity that shocks the conscience of society. The public outcry following high-profile cases—most notably the 2012 Delhi gang rape and murder—illustrates the widespread demand for stringent punitive measures. In these circumstances, the death penalty serves not only as a legal remedy but as a societal declaration of zero tolerance for the most grotesque violations of human dignity.

The public outcry following high-profile cases—most notably the **2012 Delhi gang rape and murder**—illustrates the widespread demand for stringent punitive measures. The execution of the four convicts in that case in 2020 marked a rare use of the death penalty and highlighted its role as a tool of justice in particularly brutal crimes. Proponents argue that the death penalty in such instances restores public confidence in the justice system and provides closure to victims' families.

Recent data underscores the cautious yet persistent application of capital punishment in India. According to the **Project 39A** report by National Law University, Delhi, trial courts in India imposed **120 death sentences in 2023**, and the number of individuals on death row rose to **561**, the highest in nearly two decades. However, actual executions remain infrequent, suggesting a judicial tendency toward commutation and restraint. The gap between sentencing and execution reflects India's emphasis on due process and measured application rather than indiscriminate use.

Supporters of the death penalty present several compelling arguments. Firstly, the **deterrent effect**—though debated—remains a central rationale. The possibility of facing the ultimate punishment may discourage potential offenders from committing egregious crimes, especially in a society where gender-based violence and terrorism have become grave concerns. Secondly, the death penalty is often viewed through the lens of **retributive justice**—the principle that punishments should be proportionate to the severity of the crime. In cases involving torture, rape, or mass murder, anything less than capital punishment may be seen as inadequate.

Another key justification is the **prevention of recidivism**. Life imprisonment does not guarantee that dangerous offenders will never pose a threat again—escape, parole, or in-prison violence are real risks. Executing such individuals ensures permanent incapacitation.

Furthermore, the death penalty is perceived to satisfy the **collective conscience** of society, serving as a symbolic affirmation of justice when a crime has shocked the moral and ethical foundations of the public.

Critics often cite the fallibility of the justice system, the potential for wrongful convictions, and human rights violations as reasons to abolish the death penalty. While these concerns are valid and warrant robust legal safeguards, India's legal system addresses them through a series of rigorous checks. Multiple levels of appeal, review mechanisms, and executive powers of mercy exist precisely to prevent irreversible errors. Moreover, by restricting the death penalty to the rarest of cases, India avoids the risk of systemic misuse while retaining a vital tool of justice.

In the context of rising crime rates and repeated offenses, especially against vulnerable populations, capital punishment continues to serve a **legitimate penal function**. It upholds the gravity of the state's response to extreme violations of law and morality. Unlike countries where abolition is politically or culturally feasible, India's unique socio-legal context necessitates a more cautious and calibrated approach. Therefore, India's current legal framework finds a middle ground in maintaining capital punishment as an exceptional remedy by supporting its application with strong judicial and constitutional safeguards.

The central argument of this paper is that the death penalty remains a necessary and justified legal tool in India for addressing the most heinous, brutal, and repeated crimes.

It acknowledges the essential role of constitutional safeguards and the judiciary's limited and controlled use of capital punishment and the need to preserve this ultimate punishment for circumstances where no other punishment suffices. This paper defends the continuous use of capital punishment in maintaining justice, discouraging crimes, and protecting society, which is backed up by a proper analysis of India's legal and constitutional structure, case laws, statistics, and ethical debates.

LEGAL FRAMEWORK OF CAPITAL PUNISHMENT IN INDIA

Capital punishment, or the death penalty, represents the most severe and irreversible form of legal punishment in India. It is applied to crimes of an exceptionally heinous nature, including acts of terrorism, brutal sexual assaults, and murders committed under aggravating circumstances. While a global movement toward abolition is evident, India continues to uphold capital punishment under a highly structured and cautious legal framework. This retention

signifies not only the importance placed on retributive and deterrent justice but also the nation's commitment to ensuring that the penalty is used only when necessary. The framework encompasses statutory law, constitutional provisions, judicial precedents, and executive oversight, all of which together preserve the balance between justice, public safety, and human rights.

The statutory foundation for the death penalty in India is established by the Bharatiya Nyaya Sanhita, 2023 (formerly the Indian Penal Code, IPC), and the Code of Criminal Procedure, 1973 (CrPC). Section 302 of the IPC is central to this framework, allowing for the imposition of either the death penalty or life imprisonment for the offense of murder. In addition, other offenses such as waging war against the state, causing death during an act of terrorism, and certain egregious forms of sexual violence are punishable by death. These statutes form the core legal basis for capital punishment in India.

Procedurally, the CrPC mandates a rigorous and multi-layered process to ensure fairness in death penalty cases. Sections 366 to 371 of the CrPC require that any death sentence imposed by a Sessions Court must be reviewed and confirmed by the High Court. The High Court possesses the authority to confirm, modify, or annul the sentence and can even call for a retrial or further inquiry. This review is not merely procedural but involves a substantive re-examination of the evidence, legal reasoning, and appropriateness of the sentence. Furthermore, Section 354(5) of the CrPC prescribes the method of execution as hanging by the neck until death, reinforcing the solemnity and seriousness of this punishment. Additional procedural safeguards include Section 415, which allows for postponement of execution if an appeal to the Supreme Court is pending, and Section 416, which mandates deferral of execution if the convict is a pregnant woman. These provisions emphasize the judiciary's careful and humane approach to capital cases.

At the constitutional level, Article 21 of the Indian Constitution guarantees the right to life and personal liberty but permits its deprivation through a fair, just, and reasonable legal procedure. The Supreme Court has affirmed the constitutionality of the death penalty, provided it is imposed under a legally valid and procedurally sound framework. Articles 72 and 161 of the Constitution grant the President and the Governors the authority to grant pardons, reprieves, respites, or remissions of sentences, including those involving the death penalty. These executive clemency powers act as an essential final check, allowing for consideration of

humanitarian grounds, potential miscarriages of justice, or excessive delays in execution. Although the exercise of these powers is discretionary, it is subject to limited judicial review to ensure fairness, transparency, and the absence of arbitrariness.

A pivotal element of India's capital punishment regime is the 'rarest of rare' doctrine, laid down by the Supreme Court in *Bachan Singh v. State of Punjab* (1980). According to this doctrine, the death penalty may be imposed only when the alternative of life imprisonment is unquestionably foreclosed. The Court emphasized that life imprisonment should be the norm and the death penalty the exception. This doctrine acts as a safeguard against arbitrary or excessive sentencing. The principles were further clarified in *Machhi Singh v. State of Punjab* (1983), wherein the Court laid out specific criteria to guide sentencing decisions. These include the manner of commission of the crime, the motive, the magnitude in terms of victims and social impact, and a comprehensive balancing of aggravating and mitigating circumstances. Mitigating factors might include the offender's age, mental health, background, or potential for rehabilitation while aggravating circumstances often involve premeditation, extreme cruelty, or threat to public safety.

The Indian judicial system is equipped with a comprehensive review structure designed to minimize the possibility of wrongful execution and to uphold the integrity of capital sentencing. A death sentence pronounced by a Sessions Court is automatically referred to the High Court for confirmation. Once confirmed, the convict may appeal to the Supreme Court. Furthermore, even after the Supreme Court's final decision, the convict retains the right to file review and curative petitions, which allow the judiciary to re-examine the case in light of new evidence, legal errors, or violations of procedural fairness. Additionally, the provision of filing mercy petitions to the President under Article 72 and to the Governor under Article 161 ensures a final opportunity for clemency.

This layered and multi-tiered process ensures that each capital case is subjected to exhaustive scrutiny before any execution is carried out. It not only reflects procedural thoroughness but also India's deep respect for the sanctity of life. The death penalty, while legally permissible, is imposed with great caution, ensuring that its application aligns with both legal principles and moral considerations.

India's legal stance on capital punishment, therefore, is marked by a careful balance between

justice and restraint. The judicial and constitutional provisions are structured in such a way that the death penalty serves not just as a punitive measure, but also as a moral and legal statement against crimes of extreme brutality. The system emphasizes procedural fairness, multiple layers of review, and opportunities for clemency, all aimed at preventing the misuse of this irreversible punishment. Importantly, capital punishment in India is not viewed as a routine penalty, but as an extraordinary measure necessitated only in the most egregious circumstances that shock the conscience of society.

In essence, the legal framework of capital punishment in India is principled, cautious, and deeply rooted in constitutional values. It reflects a justice system that recognizes the gravity of taking a human life and imposes stringent checks to ensure that the death penalty is reserved for the gravest offenses. Through its robust statutory structure, extensive judicial oversight, and humanitarian safeguards, India continues to uphold a capital punishment regime that seeks to serve justice while safeguarding human dignity.

RECENT LEGAL DEVELOPMENTS: BHARTIYA NYAYA SANHITA (BNS), 2023

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023 marks one of the most significant transformations in India's criminal justice framework in recent history. Replacing the colonial-era Indian Penal Code (IPC) of 1860, the BNS introduced a series of comprehensive reforms, including substantial changes to how capital punishment is prescribed and implemented. Among these changes is the expansion in the number of offenses eligible for the death penalty—from 12 to 18—reflecting a more stringent approach to dealing with crimes that are considered extremely grave and injurious to public safety.

The BNS, while retaining the death penalty, modernizes its application by contextualizing it within the evolving needs of Indian society. Crimes such as organized crime-related murders, mob lynching with intent to terrorize, and sexual violence resulting in death are now explicitly recognized as death-eligible offenses. These additions aim to address emerging criminal trends and to provide a clear deterrent to would-be offenders, particularly in a society witnessing a rise in complex and organized violent crimes.

One of the noteworthy reforms under the BNS is the procedural clarity provided concerning

mercy petitions. Before the BNS, inconsistencies, and delays in the consideration of mercy petitions led to prolonged periods of uncertainty for convicts, raising concerns of mental agony and procedural injustice. The BNS introduces specific timelines and structured procedures for filing, reviewing, and deciding mercy petitions, thereby improving transparency and expediting the process. This ensures that both the state and the convict are aware of the time-bound progression of the legal process, enhancing the fairness and accountability of capital sentencing.

The new legal provisions also emphasize the responsibility of the judiciary to assess whether the death penalty is indeed the most appropriate sentence. While the 'rarest of rare' doctrine remains intact, its application is reinforced by codified statutory language, ensuring greater uniformity across trial and appellate courts. This not only fortifies judicial discretion but also protects against arbitrariness.

Another major impact of the BNS is the increased focus on **repeat offenders and organized crime syndicates**. The law now categorically lists circumstances under which repeat offenders may be considered for the death penalty, particularly when the repeat offense involves violence, sexual brutality, or threats to national security. This serves the dual purpose of deterrence and incapacitation, signaling that habitual engagement in heinous crimes will attract the gravest punishment available under Indian law.

Moreover, the BNS seeks to modernize the Indian criminal justice system by aligning sentencing policies with contemporary criminal behaviour patterns. It recognizes the societal demand for stricter punishments in cases where collective conscience is severely affected, such as gang rapes, communal violence, and terrorism. By embedding these into the legal architecture as death-eligible offenses, the BNS addresses both preventive and punitive aspects of criminal law.

In essence, the Bharatiya Nyaya Sanhita, 2023 strengthens India's capital punishment regime through legal clarity, procedural integrity, and a heightened response to modern criminal challenges. It reaffirms the state's commitment to delivering justice in the gravest cases while ensuring that constitutional principles and human dignity are preserved throughout the legal process. By expanding the scope of capital punishment and streamlining its procedural framework, the BNS ensures that justice remains both effective and equitable in a rapidly

evolving legal and social environment.

CRIMES JUSTIFYING THE DEATH PENALTY

In India, the death penalty is applied in accordance with the "rarest of rare" doctrine and is reserved for offenses considered extraordinarily grave and morally reprehensible. This doctrine ensures that capital punishment is used sparingly and only in cases where alternative sentences, such as life imprisonment, would be inadequate. The Bharatiya Nyaya Sanhita (BNS), 2023, which replaced the Indian Penal Code (IPC), along with other specific legislation, outlines a comprehensive list of crimes that justify the death penalty.

Murder remains the most common crime for which the death penalty is imposed, particularly when committed with aggravating circumstances such as extreme cruelty, multiple victims, or targeting of vulnerable individuals. Under Section 302 of the IPC and Section 101 of the BNS, murder involving exceptional brutality or depravity warrants the highest form of punishment. Similarly, crimes against the state, such as waging war against the Government of India under Section 121 IPC or Section 113 of the BNS, are punishable by death because they pose a direct threat to national integrity and sovereignty.

Further, abetment of mutiny, as outlined in Section 132 IPC, if it results in violence, is also a death-eligible offense. Fabricating false evidence that leads to the wrongful execution of an innocent person under Section 194 IPC can attract capital punishment due to the egregious miscarriage of justice it represents. Kidnapping for ransom, particularly when it leads to serious harm or death (Section 364A IPC and BNS equivalent), is also punishable by death as it combines elements of premeditated violence, extortion, and public fear.

Sexual offenses have increasingly come under the ambit of capital punishment following public outrage over crimes like the 2012 Nirbhaya case. Sections 376A and 376E IPC, now reflected in the BNS, allow for the death penalty in cases where rape results in death or is committed by repeat offenders. Similarly, the abetment of suicide, particularly in vulnerable victims such as minors or individuals with mental incapacities, is punishable under Section 305 IPC and its BNS counterpart.

Beyond the general penal code, special legislations also authorize the death penalty. Under the Unlawful Activities (Prevention) Act (UAPA) and the previously applicable Terrorist and

Disruptive Activities (Prevention) Act (TADA), terrorist acts that cause death or aim to destabilize the nation are punishable by death. These laws underscore the government's resolve to combat terrorism with the gravest consequences.

The Narcotic Drugs and Psychotropic Substances (NDPS) Act authorizes the death penalty for repeat offenders engaged in large-scale drug trafficking. This is justified by the severe social and health implications of the drug trade. Similarly, under military laws such as the Army, Navy, and Air Force Acts, offenses like desertion, mutiny, and giving intelligence to enemies are capital crimes due to their implications for national security.

The BNS has also recognized the serious threat posed by repeat offenders. When a criminal has a history of violent conduct or grievous offenses, especially those that endanger public safety or involve public officials, courts are empowered to consider the death penalty as a just response. While not all repeat offenses automatically merit capital punishment, when they involve grievous hurt, criminal intimidation, or repeated violent conduct, they serve as aggravating factors in sentencing.

The application of the "rarest of rare" doctrine, established in *Bachan Singh v. State of Punjab* (1980), continues to be the bedrock principle guiding the imposition of the death penalty. Courts are required to balance aggravating factors—such as premeditation, multiple victims, or heinous motives—against mitigating factors like mental illness, lack of prior criminal record, or potential for rehabilitation. This balance ensures that the death penalty is imposed with judicial caution and moral responsibility.

Aggravating circumstances that may lead to a death sentence include murders that are premeditated and exceptionally brutal, the killing of public servants in the line of duty, terrorist acts with mass casualties, and crimes motivated by depraved intent or greed. On the other hand, mitigating factors include the offender's mental or emotional instability, young or old age, no prior criminal history, and the possibility of reform.

In conclusion, the crimes justifying the death penalty in India are clearly defined across multiple legal frameworks. These offenses represent the gravest threats to individual and public safety and reflect society's collective condemnation. The combination of statutory specificity, procedural safeguards, and judicial oversight ensures that capital punishment remains a lawful

yet carefully administered tool for justice—applied only when the crime demands the strongest possible societal response.

SAFEGUARDS AGAINST MISUSE

India's capital punishment framework is structured to prevent arbitrary or unjust imposition of the death penalty. Recognizing the irreversible nature of this ultimate punishment, the legal system has embedded a range of statutory, constitutional, and procedural safeguards to ensure that it is applied only in the most deserving cases. These protections are designed to maintain the integrity of the justice system and to uphold the constitutional promise of fairness, due process, and human dignity.

At the core of this system is the **“rarest of rare” doctrine**, laid down in *Bachan Singh v. State of Punjab* (1980). This principle acts as a judicial filter that demands courts exhaustively evaluate whether life imprisonment is unquestionably inadequate before choosing the death penalty. It mandates a balance between **aggravating circumstances**—such as brutality, premeditation, or public impact—and **mitigating factors** like age, mental health, lack of prior criminal history, or potential for reform.

Additionally, **multiple layers of judicial review** serve as critical safeguards. A death sentence pronounced by a Sessions Court must mandatorily be confirmed by the High Court under Sections 366–371 of the Code of Criminal Procedure (CrPC). The High Court reviews the full record of the trial to confirm whether the punishment is just and proportionate. If confirmed, the convict has the right to appeal to the **Supreme Court of India**, followed by the option to file **review** and **curative petitions**. These provisions ensure that no person is sentenced to death without thorough and multi-level judicial scrutiny.

Further protection is offered by the **executive clemency powers** enshrined in Articles 72 and 161 of the Constitution. The President and the Governors have the authority to grant pardons, reprieves, respites, or commutations of sentences, including death sentences. This power functions as a final check against miscarriage of justice, accounting for humanitarian and socio-legal considerations that may not be fully addressed in court proceedings. The Supreme Court has also made it clear that **delays in deciding mercy petitions**, especially prolonged and unjustified ones, can be grounds for commutation to life imprisonment.

Importantly, the CrPC includes additional procedural safeguards tailored to specific vulnerabilities. For instance, **Section 416** mandates the postponement of the execution of pregnant women, while **Section 415** allows deferment if the convict intends to appeal. Moreover, **Section 354(3)** of the CrPC requires courts to record “special reasons” for imposing the death penalty, further discouraging routine or mechanical use.

India’s cautious approach is also reflected in its **execution statistics**. Despite handing down several death sentences annually, the actual number of executions is minimal, signifying judicial restraint. For example, while over 100 individuals were sentenced to death in 2023, only a handful have been executed since 2000, and only one execution has occurred since 2015—the Nirbhaya case in 2020.

Finally, **legal aid and fair trial rights** are integral to these safeguards. All accused persons facing capital charges are entitled to free legal representation at every stage of the trial and appeal process. Courts are required to ensure that the accused understands the charges, the implications of the trial, and the avenues available for redress or appeal.

In summary, the Indian legal system has instituted a comprehensive framework to guard against the misuse of the death penalty. From judicial safeguards to constitutional provisions and procedural requirements, every measure is oriented toward ensuring that this irreversible punishment is applied only with the utmost caution, after a meticulous and multi-tiered review. These mechanisms not only uphold the rule of law but also reinforce the ethical and moral foundations of justice in India.

STATISTICAL AND JUDICIAL TRENDS

Statistical data and judicial behaviour over recent decades reveal that while India retains the death penalty, its actual implementation is rare and subject to considerable judicial restraint. The contrast between the number of death sentences awarded and those carried out illustrates a deliberate and cautious approach by the Indian judiciary. This trend underlines the gravity with which capital punishment is treated and supports the argument that its existence serves as a necessary deterrent and moral standard rather than a frequently executed sentence.

According to Project 39A at the National Law University, Delhi, a leading authority tracking death penalty statistics in India, the number of individuals sentenced to death has seen a gradual

rise in recent years. In 2023, Indian trial courts awarded 120 death sentences—the highest annual figure in over two decades. By the end of that year, 561 prisoners were reported to be on death row, the highest number since 2004. However, no executions took place in 2023, highlighting the judiciary’s continued reliance on appellate review and commutation over immediate execution.

The most recent execution in India occurred on March 20, 2020, when four individuals convicted in the 2012 Delhi gang rape and murder case (commonly referred to as the Nirbhaya case) were hanged. Before that, executions had become increasingly infrequent, with only eight recorded since 2000. These figures affirm that while courts continue to award death sentences in appropriate cases, actual implementation remains a rare event—often following extensive legal, constitutional, and executive review.

High Courts in India have demonstrated notable caution in capital cases. A large proportion of death sentences awarded by trial courts are either commuted to life imprisonment or overturned entirely during the appellate process. Data from Project 39A indicate that over 70% of death sentences are commuted or reversed by higher courts, which reflects the intense judicial scrutiny applied at each level. Furthermore, the Supreme Court has emphasized in multiple rulings that capital punishment must only be applied after a thorough consideration of both aggravating and mitigating circumstances, in line with the “rarest of rare” doctrine.

The clemency mechanism also plays a crucial role in delaying or preventing executions. As per Articles 72 and 161 of the Constitution, mercy petitions to the President and Governors offer convicts on death row a final avenue for relief. Delays in processing these petitions, often due to the sheer volume of legal documentation and humanitarian considerations, add to the already cautious pace of death sentence implementation. In some cases, prolonged delay in the disposal of mercy petitions has led the Supreme Court to commute death sentences to life imprisonment on grounds of mental agony and the violation of fundamental rights.

Judicial trends further indicate that Indian courts are increasingly attentive to evolving societal values and global human rights standards. While the judiciary acknowledges the deterrent and retributive value of capital punishment, it also stresses the need to protect against arbitrariness, ensuring consistency in sentencing practices. This balancing act underscores India’s judicial maturity, where the death penalty is preserved as a legal instrument but wielded with great care.

In summary, the statistical and judicial trends surrounding the death penalty in India reveal a deeply cautious and morally grounded system. The courts and executive branches provide multiple layers of review, ensuring that no death sentence is executed without exhaustive scrutiny. This system not only prevents miscarriages of justice but also reaffirms the legal and ethical legitimacy of capital punishment in dealing with the gravest offenses. The rarity of executions, despite the presence of death sentences, is not indicative of inefficacy but of a deliberate commitment to justice, proportionality, and the protection of human rights within the framework of Indian constitutional law.

ARGUMENTS IN FAVOUR OF THE DEATH PENALTY

The retention of the death penalty in India continues to spark debate among legal scholars, policymakers, and human rights advocates. However, a strong case can be made for its continued existence, particularly in a society grappling with rising violent crimes, terrorism, and crimes against vulnerable populations. Proponents argue that the death penalty serves essential legal, moral, and practical functions within the criminal justice system.

One of the primary arguments in favour of the death penalty is its role as a deterrent. Although empirical evidence on deterrence remains contested, the fear of capital punishment may prevent some individuals from committing heinous crimes. The idea is that the severity and finality of the punishment can serve as a powerful psychological barrier, particularly for premeditated offenses. High-profile executions, such as those of the 2012 Delhi gang rape convicts, are often cited as examples where the death penalty reasserts the rule of law and public order.

Retribution is another cornerstone argument. The principle of proportionality in punishment requires that the most grievous crimes receive the most severe penalties. For victims' families and society at large, the death penalty can serve as a form of moral and legal justice, reaffirming that certain crimes are so egregious that they forfeit the offender's right to life. This sense of retributive justice aligns with societal expectations and promotes public confidence in the legal system.

The death penalty also serves the purpose of incapacitation. For offenders deemed incapable of reform and rehabilitation, particularly repeat offenders and those involved in terrorism or organized crime, the death penalty ensures that they can never again pose a threat to society. Life imprisonment, while severe, may not always guarantee that an individual cannot influence

criminal activity from behind bars. In such cases, the finality of the death sentence can serve a preventive function.

Public opinion in India has generally supported the use of the death penalty in egregious cases. This is particularly true in crimes involving sexual violence, terrorism, or crimes against children. The public perception is that the death penalty delivers swift and decisive justice in cases where societal norms are violently violated. While legal systems must not be solely driven by public sentiment, the alignment of legal provisions with collective moral values reinforces the legitimacy of criminal law.

Another argument stems from the symbolic value of the death penalty. It serves as a societal condemnation of acts that exceed the bounds of human decency. In retaining capital punishment for crimes like terrorism and aggravated rape, the state underscores its commitment to upholding justice and deterring attacks on civil order. The presence of the death penalty in the legal arsenal reflects a nation's resolve to protect its most fundamental values.

Furthermore, the moral counter-argument that the death penalty is inhumane overlooks the plight of the victims. When a person causes irreparable harm—whether through murder, rape, or grievous assault—they irreversibly damage another human being's life. If the law were to protect only the rights of the offender and not recognize the depth of suffering inflicted on the victim, justice would not be truly served. Victims who survive such crimes must live with lifelong trauma—physical, mental, and emotional. Therefore, offenders who knowingly inflict such pain must be held to the highest level of accountability.

Retribution is not just a legal principle, but also a reflection of a fundamental law of human existence—that every action has a reaction. If individuals can destroy lives without fearing consequences, they will likely repeat such behaviour. Fear of death as a consequence may deter some and at least reinforce the gravity of the offense. If a person, fully aware of the consequences, still chooses to harm others through actions such as rape, murder, terrorism, or cannibalism, they demonstrate a complete disregard for human life and deserve the most severe punishment available.

Moreover, the value of human life must be contextualized within the behaviour of the offender. Only those who demonstrate genuine remorse and capacity for reform should be spared. But

when an individual shows no intention to change or accept responsibility, their continued existence may pose a threat to society. Human life, including that of the offender, is sacred—but its sanctity is contingent upon respecting the lives of others.

The Indian legal system offers numerous safeguards and opportunities for appeal and reconsideration—Sessions Court trial, High Court confirmation, appeal to the Supreme Court, review and curative petitions, and mercy pleas to the President and Governors. These layers ensure that no one is sentenced to death without exhaustive legal scrutiny. Thus, practical or systematic concerns cannot be reasonably used to argue against the penalty when the system itself ensures maximum fairness.

Lastly, societal safety and moral order require the imposition of the death penalty in certain cases. People need to feel secure and confident that the law will protect them and punish those who violate it egregiously. The death penalty assures the public that acts of extreme violence, particularly those involving murder, rape, child abuse, kidnapping for murder, and terrorism, are met with the harshest retribution. It sends a strong message to potential offenders that such acts will not be tolerated under any circumstances.

In conclusion, while the ethical and practical debates surrounding capital punishment are complex, the arguments in favour of its retention in India are grounded in deterrence, retribution, public security, and justice. The presence of strong procedural safeguards further supports the view that capital punishment, when judiciously applied, remains a necessary and justified legal tool in India's response to the most heinous crimes.

COUNTER-ARGUMENTS AND REBUTTALS

Opponents of the death penalty often argue that it is inhumane and degrading, constituting a violation of the fundamental right to life. They cite international human rights standards and point out the risk of executing innocent individuals due to flaws in the legal process. Critics also argue that capital punishment does not serve as an effective deterrent and is applied disproportionately, influenced by socioeconomic status, quality of legal representation, or systemic biases.

However, while these concerns are valid in theory, they often overlook the extensive procedural safeguards present in the Indian legal system. Every death sentence in India is subjected to

multiple levels of judicial review, including mandatory confirmation by the High Court, the right to appeal to the Supreme Court, and access to review and curative petitions. Additionally, the constitutional provisions for mercy petitions to the President and Governors offer further humanitarian checks. These mechanisms drastically reduce the risk of wrongful execution and ensure that capital punishment is reserved for only the most egregious cases.

A frequently cited concern is the possibility of executing an innocent person. While such a possibility can never be completely ruled out, the Indian judicial system has multiple layers of checks to prevent this from occurring. If wrongful executions were common, one would expect a higher number of executions; however, this is not the case. India has one of the lowest execution rates globally, and the penalty is applied only in the most heinous and clear-cut cases, as evidenced by the last known execution in the 2020 Nirbhaya case. The inhumane brutality inflicted on the victim in that case left no ambiguity in the court's mind. In such scenarios, life imprisonment is inadequate, and invoking the "rarest of rare" doctrine was both justified and necessary.

Another common argument is that the death penalty is a cruel and unusual punishment that violates fundamental human rights and dignity. However, when a perpetrator has knowingly inflicted the same—or worse—upon another human being, it is morally justifiable to enforce the highest legal sanction. Justice demands accountability, and in cases of extreme cruelty, failing to impose an appropriate punishment further deepens the victim's suffering and erodes societal trust in the legal system.

Some argue that no government should have the authority to take a life, regardless of the crime. But if that argument is taken to its logical end, it must also apply to individuals—no human being should take another's life or inflict irreversible harm. The government, acting on behalf of society, uses the legal framework to uphold justice and restore moral balance. The state does not act out of vengeance, but out of duty to protect its citizens and ensure public order.

There is also a perception that the death penalty is disproportionately applied to marginalized communities. However, in India, this claim does not hold ground when scrutinized against the actual data and judicial protocols. The multilayered judicial process—spanning trial courts, High Courts, the Supreme Court, and the possibility of presidential mercy—ensures that every convict, regardless of social status, is given ample opportunity to defend themselves. The

system is designed to focus on the severity of the crime, not the background of the accused.

In conclusion, while the abolitionist perspective emphasizes human rights and the potential for judicial error, the Indian legal system incorporates rigorous procedural safeguards and moral reasoning to uphold the death penalty in the most severe cases. When applied judiciously and with caution, capital punishment serves justice, deters potential offenders, ensures societal safety, and provides a sense of closure and moral balance.

CONCLUSION

The death penalty in India remains one of the most debated elements of its criminal justice system. While numerous voices call for its abolition on moral or human rights grounds, the legal, judicial, and social frameworks of India continue to uphold capital punishment as a necessary sanction for the most heinous crimes. Its existence is not a relic of punitive justice, but a carefully moderated and constitutionally sanctioned response to offenses that deeply violate the moral fabric of society.

Throughout this research, it has been demonstrated that India maintains one of the world's most cautious and legally rigorous capital punishment systems. From its statutory basis in the Bharatiya Nyaya Sanhita and various special laws to its application under the "rarest of rare" doctrine and extensive procedural safeguards—including judicial oversight, appellate review, and executive clemency—the death penalty is applied sparingly and with considerable deliberation. Each layer of review ensures that justice is not only done but is seen to be done, preserving both the dignity of the law and the rights of the individual.

India's approach is rooted in balance, it upholds the sanctity of life, while also preserving the state's duty to deliver justice, maintain social order, and deter future crimes. In cases involving terrorism, brutal rape and murder, serial killings, and other atrocities that shock the collective conscience, the death penalty serves as a powerful statement that such acts will not be tolerated. It affirms the rights of victims, respects societal expectations, and strengthens the public's faith in the justice system.

Rather than being a tool of vengeance, capital punishment in India is a measure of last resort, invoked only when life imprisonment would be manifestly inadequate. It is guided by judicial restraint, moral reasoning, and constitutional principles. In this light, the death penalty is not

only legally justified but ethically and socially imperative in addressing the gravest offenses that threaten the foundation of a civilized society.

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