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# INDIA'S DEATH PENALTY: A JURISPRUDENTIAL CRITIQUE

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## Abstract

The discourse concerning the abolition or retention of capital punishment within the Indian legal framework constitutes a complex and multifarious issue, engaging a confluence of jurisprudential, normative, sociological, and pragmatic considerations. This paper undertakes a systematic and critical analysis of this subject, interrogating it from an array of vantage points. Commencing with a historical exegesis, it traces the juridical evolution of the death penalty in India from its archaic origins to its contemporary statutory and constitutional positioning.

Substantive legal dimensions are scrutinized, encompassing an examination of prevailing penal statutes, seminal judicial pronouncements, and India's obligations under international human rights law and covenants. Normative and philosophical concerns are subjected to rigorous deliberation, articulating the competing moral doctrines underpinning advocacy for and opposition to the ultimate sanction. The analysis engages with foundational penal theories—including retribution, deterrence, and reformation—and contemplates the intrinsic value of human life through divergent ethical paradigms, thereby elucidating the ideological fissures that inform public contention and legislative deliberation.

Further, the paper appraises empirical data to assess the putative efficacy of capital punishment as an instrument of deterrence, juxtaposing it with alternative sentencing modalities such as life imprisonment. This entails a comparative juridical analysis of crime trends, judicial processes, and recidivism rates across jurisdictions with divergent policies on the death penalty.

Moreover, the paper surveys recent judicial authorities pertaining to the imposition of the death penalty, evaluating their consonance with constitutional mandates, particularly the guarantees of life, liberty, and equality before the law, and the prohibition of cruel and unusual

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punishment. It concludes by underscoring the imperative of a dispassionate public discourse, policy formulation anchored in evidentiary rigor, and the perpetual need for judicial and legislative oversight to ensure that the application of capital punishment, where retained, conforms to the principles of due process, substantive fairness, constitutional morality, and India's commitments under international human rights norms.

**Keywords:** Capital Punishment, Abolition, Retention, Jurisprudence, Normative Frameworks, Sociological Implications, Pragmatic Efficacy, Judicial Review, Constitutional Morality.

## Introduction

Capital punishment, as a penal sanction, persists as a subject of sustained jurisprudential and normative contestation across global legal systems, and the Republic of India occupies a significant position within this discourse. Situated at the confluence of constitutional law, penal philosophy, and societal conceptions of justice, the question of the abolition or retention of the death penalty in India presents a multi-jurisdictional and conceptually intricate matter warranting systematic legal scrutiny. This introduction establishes the framework for a comprehensive critical evaluation of capital punishment within the Indian legal order, examining its historical trajectory, statutory and constitutional foundations, ethical underpinnings, socio-legal consequences, and operational challenges.

India’s legal history demonstrates a prolonged engagement with the sanctioning of the ultimate penalty for the most grave offences. Archival and textual evidence indicates a varied penal landscape across historical periods, incorporating mechanisms ranging from execution to banishment and compensatory measures. The doctrinal evolution of capital punishment in India mirrors not merely procedural advancements in legal institutions, but also transformative societal values concerning the purposes of punishment, the principle of retribution, and the inviolability of human life.

The ethical dimension of the death penalty is fundamentally enmeshed with enduring philosophical divergences regarding the essence of justice, state authority, and the legitimate objectives of penal sanctions. Proponents, advancing a retributivist rationale, contend that it constitutes a proportionate response to crimes of exceptional gravity and affords a measure of vindication to affected parties. Conversely, opponents challenge its moral validity, invoking arguments pertaining to the fallibility of judicial processes and the potential for irrevocable

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miscarriage of justice, the risks of arbitrary or discriminatory application, and the inherent and inalienable dignity of all persons as a foundational legal principle.

The socio-legal ramifications of capital punishment in India transcend strictly juridical or ethical considerations, engaging broader inquiries into equity, access to justice, and the protection of fundamental rights. Academic commentary has drawn attention to its disproportionate imposition upon economically and socially disadvantaged groups, the influence of extralegal factors on prosecutorial and judicial discretion, and its purported role in reifying systemic inequities. Furthermore, the interplay of media representation, electoral politics, and public sentiment invariably shapes the normative and policy landscape within which the death penalty is administered and debated.

The subsequent analysis will undertake a detailed examination of these discrete yet interconnected facets, providing a layered and evidence-based assessment reflective of the enduring complexity inherent in the doctrine and practice of capital punishment under Indian law.

## Historical Evolution and Jurisprudence of Capital Punishment in India

The historical antecedents of capital punishment within the Indian subcontinent are deeply embedded in ancient legal and religious traditions. Archival and textual evidence from canonical texts such as the *Manusmriti* and the *Arthashastra* indicates the sanctioning of various modes of execution—including decapitation, hanging, and stoning—for grave offences considered inimical to the social and political order. The historical trajectory of this sanction reflects a complex evolution, shaped successively by indigenous *dharmic* jurisprudence, Islamic law under various Sultanates, and finally, the codified positivist system introduced during British colonial rule.

## Colonial Codification and the Modern Legal Framework

The advent of British colonial administration marked a pivotal shift towards a systematized penal regime. Capital punishment was strategically employed as an instrument of state power to maintain colonial authority and suppress dissent. The principal legislative instrument of this era, the Indian Penal Code, 1860 (IPC), drafted under the stewardship of Lord Macaulay, provided the first comprehensive codification of criminal law. It enumerated specific offences

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attracting the death penalty, most prominently under Section 302 for murder, Section 121 for waging war against the State, and provisions related to sedition and terrorist acts. This colonial-era statute established the enduring substantive foundation for capital sentencing in India, later complemented by procedural safeguards in the Code of Criminal Procedure, 1973 (CrPC).

## Constitutional Scrutiny and the "Rarest of Rare" Doctrine

The adoption of the Constitution of India in 1950, with its fundamental rights chapter guaranteeing the right to life and personal liberty under Article 21, precipitated a new era of judicial review for capital punishment. The Supreme Court of India has since engaged in a nuanced and evolving constitutional interpretation to delineate the permissible boundaries of this sanction.

1. ***Rajendra Prasad v. State of Uttar Pradesh* (1979) 3 SCC 646**

   This judgment represented a critical turning point in capital sentencing jurisprudence. A Constitution Bench of the Supreme Court, led by Justice V.R. Krishna Iyer, moved beyond a purely crime-centric analysis. The Court mandated that sentencing courts must conduct a holistic appraisal, giving due weight to the "personal circumstances" of the offender, including socio-economic background, mental health, and potential for reform. It held that the death penalty could not be imposed merely because a capital crime was proven; it required a further finding that the offender was beyond rehabilitation and constituted a continuing threat to societal order. This case sowed the seeds for a more restrictive application of the death penalty.

2. ***Bachan Singh v. State of Punjab* (1980) 2 SCC 684**

   Building upon *Rajendra Prasad*, a five-judge Constitution Bench in *Bachan Singh* authoritatively settled the constitutional validity of the death penalty. The Court upheld its validity under Article 21, ruling that the procedure established by law for its imposition was not *per se* unconstitutional. However, the judgment crystallized the **"rarest of rare" doctrine**. The Court held that the death penalty is an exception, not the rule, and must be confined only to those exceptional cases where the alternative option of life imprisonment is "unquestionably foreclosed." It prescribed a **"balance-sheet" approach** for sentencing, requiring courts to meticulously weigh aggravating circumstances (related to the crime) against mitigating circumstances (related to the criminal). This framework mandated that the death sentence could only be justified when the aggravating factors overwhelmingly outweighed the mitigating factors.

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## Post-Bachan Singh Jurisprudential Development

Subsequent judgments have further refined this doctrine. In *Machhi Singh v. State of Punjab* (1983) 3 SCC 470, the Supreme Court elaborated on categories of crimes that may fall within the "rarest of rare" ambit, focusing on the extreme brutality, depravity, or societal impact of the act. Conversely, in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498 and *Shatrughan Chauhan v. Union of India* (2014) 3 SCC 1, the Court has emphasized the necessity for heightened procedural fairness, the importance of considering mitigating circumstances with great care, and the imperative to avoid arbitrary or freakish imposition of the penalty, reinforcing the doctrine's restrictive intent.

Thus, the history of capital punishment in India is a narrative of transition from an ancient retributive sanction to a colonial instrument of control, and finally to a constitutionally constrained penalty, its application narrowly circumscribed by a rigorous and evolving judicial doctrine that seeks to reconcile state power with the inviolable dignity of the individual.

## Definition and Jurisprudential Scope of Capital Punishment

An examination of the definition and jurisprudential scope of capital punishment is facilitated by a comparative analysis of its treatment across distinct legal systems. Such an analysis elucidates doctrinal variations and provides essential context for a comprehensive understanding of the subject.

### I. Position in the United States of America

The legal history of capital punishment in the United States is characterized by doctrinal complexity and sustained controversy. While its application remains constitutionally permissible at the federal level and within a plurality of states, its operational parameters have undergone significant jurisprudential evolution, shaped by successive legislative enactments and constitutional adjudication.

A pivotal development occurred with the Supreme Court's decision in *Furman v. Georgia* (1972) 408 U.S. 238. This landmark ruling imposed a de facto nationwide moratorium on executions. The Court held that the arbitrary and capricious imposition of the death penalty, as then administered, constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution. This judgment precipitated widespread legislative revision of state capital sentencing statutes.

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The moratorium was effectively lifted by the Court's subsequent decision in *Gregg v. Georgia* (1976) 428 U.S. 153. Herein, the Court upheld the constitutionality of Georgia's revised statutory framework, which instituted a bifurcated trial process featuring distinct phases for the determination of guilt and sentencing. The Court ruled that such structured sentencing guidelines, designed to curb arbitrariness, brought the penalty within constitutional bounds. This ruling provided a constitutional model for states, leading to the reinstatement of capital punishment under new procedural safeguards.

## II. Position in the United Kingdom

Historically, the legal framework of the United Kingdom provided for the extensive application of the death penalty. During the 17th and 18th centuries, a period jurisprudentially termed the “Bloody Code,” the number of capital offences expanded dramatically, encompassing over two hundred crimes.

While not a capital case per se, the precedent established in *R v. Dudley and Stephens* (1884) 14 QBD 273 remains a cornerstone of English criminal law doctrine. The defendants, having killed and consumed a fellow castaway to survive, were convicted of murder. The court conclusively rejected the defence of necessity as a justification for homicide, affirming the absolute nature of the prohibition against murder.

In the modern context, the principle of joint enterprise in homicide cases was critically re-examined in *R v. Jogee (Appellant)* [2016] UKSC 8. The Supreme Court corrected a longstanding misapplication of the law, acknowledging that its previous interpretation had led to wrongful convictions and disproportionately severe sentences. This rectification held significant implications for individuals previously convicted under the erroneous doctrine, particularly for those whose offences predated the statutory abolition of capital punishment in the UK.

## III. Position in India

The constitutional architecture of India incorporates influences from various jurisdictions, including the United States and the United Kingdom. Consequently, foundational guarantees, such as the protection of the right to life, reflect a shared philosophical heritage. It is imperative to note that the borrowed element is primarily the structural and textual formulation of the right; the right to life itself is recognized as an inherent, inalienable entitlement which the Constitution affirms and secures, rather than creates.

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The principal substantive criminal law is codified in the Indian Penal Code, 1860 (IPC), recently re-enacted as the Bharatiya Nyaya Sanhita, 2023. This code prescribes the death penalty as a sentencing option for specific, narrowly defined offences. These include murder under Section 302, waging war against the Government of India under Section 121, and kidnapping for ransom under Section 364A, among other aggravated crimes.

The procedural administration of capital cases is governed by the Code of Criminal Procedure, 1973 (CrPC). This statute delineates the trial process, sentencing hearings, and subsequent appellate and review mechanisms specific to cases involving the potential imposition of the death penalty.

The constitutional validity of capital punishment has been expressly upheld by the Supreme Court of India. While Article 21 of the Constitution guarantees the fundamental right to life and personal liberty, the Court has interpreted this provision to permit the death penalty in the "rarest of rare" cases, establishing a judicially crafted doctrine that seeks to balance the state's punitive authority with the fundamental rights of the accused.

## IV. Position in Japan

The Japanese legal system retains the death penalty as a lawful sanction under its Penal Code, primarily for the crime of homicide under aggravated circumstances. Its application is characterized by a high degree of secrecy and bureaucratic discretion. Executions are carried out by hanging, following a protracted and non-transparent process. A distinctive feature is the practice of *shikei*, where inmates are typically notified of their execution only on the morning it is to be carried out, a method justified by authorities as necessary for maintaining order but widely criticized internationally for its psychological cruelty. The Supreme Court of Japan has consistently upheld the constitutionality of capital punishment, rejecting arguments that it violates the constitutional prohibition of "cruel punishments" contained in Article 36. The death penalty enjoys considerable, though not unanimous, public support, and its retention is often framed within a cultural context emphasizing retribution and atonement (*shokuzai*).

## V. Position in the People's Republic of China

In the People's Republic of China, capital punishment remains a frequently applied sanction for a wide range of offences, encompassing not only violent crimes like murder and robbery but also numerous non-violent economic and corruption-related crimes. It

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is administered under a legal framework where judicial independence is circumscribed, and the process is often expedited. The Supreme People's Court regained exclusive review authority for all death sentences in 2007 in an effort to standardize application, yet concerns regarding due process, fair trial standards, and the use of the death penalty for political purposes persist. Execution is primarily by lethal injection or shooting. Official statistics on executions are classified as a state secret, making independent assessment of its scope and application difficult. The penalty is rationalized officially as a necessary tool for maintaining social stability and combating serious crime.

## VI. Position in South Africa

South Africa presents a seminal example of constitutional abolition. The death penalty was a feature of the apartheid-era legal system. Following the democratic transition, the Constitutional Court of South Africa, in the landmark case of *State v. Makwanyane and Another* (1995), declared capital punishment unconstitutional. The Court held that it violated the right to life and the right to be free from cruel, inhuman, or degrading punishment as enshrined in the interim Constitution (1996). The judgment, drawing on domestic experience and international human rights norms, concluded that the death penalty was irreconcilable with the values of human dignity and the creation of a new society based on freedom and equality. This judicial abolition was subsequently entrenched in the final Constitution of the Republic of South Africa, 1996.

## VII. Position in Germany

Germany represents a model of post-conflict constitutional prohibition. Capital punishment was abolished in West Germany in 1949, with its prohibition explicitly codified in Article 102 of the Basic Law (*Grundgesetz*). This abolition was a direct response to the abuses of the Nazi regime and formed a cornerstone of the new democratic state's commitment to human dignity (*Menschenwürde*), the inviolable core of the German constitutional order. The prohibition is absolute and extends to all circumstances, including times of war or national emergency. Following reunification in 1990, this constitutional ban was extended to the territory of the former East Germany. Germany is also a staunch advocate for the global abolition of the death penalty in its foreign policy.

## VIII. Position in Saudi Arabia

In Saudi Arabia, capital punishment is applied as a *hadd* punishment under a strict interpretation of Sharia law. It is mandated for crimes including murder, apostasy, adultery, and certain drug offences. Execution is typically carried out by public

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beheading, though firing squad is also used. The legal process is governed by Islamic jurisprudence, with trials often occurring without formal codified criminal procedures common in secular legal systems, raising significant international concern regarding fair trial guarantees. Recent years have seen reforms under the Vision 2030 plan, including a moratorium on executions for drug-related offences, indicating a potential, though limited, shift in application. The penalty is justified domestically as a divinely ordained deterrent and a necessary instrument of justice.

## Legislative Framework for Capital Offences Beyond the Indian Penal Code

The statutory architecture governing capital punishment in India extends beyond the Indian Penal Code, 1860 (IPC), encompassing several specialized enactments designed to address grave threats to national security, public order, and vulnerable sections of society. These statutes establish distinct substantive offences and procedural regimes, within which the death penalty operates as an extraordinary sanction.

1. **The Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA)**
   Enacted to confront the exigencies of terrorism and insurgency, TADA provided for an enhanced penal framework. Section 3(2)(i) of the Act stipulated that any terrorist act, as defined under the Act, which resulted in the death of any person, was punishable with death. The Act established designated courts with specific procedures for the trial of scheduled offences, creating a distinct legal track for cases involving terrorist violence.
2. **The Prevention of Terrorism Act, 2002 (POTA)**
   Promulgated in the wake of heightened terrorist threats, POTA constituted a subsequent legislative response. Section 3(2)(a) of POTA prescribed the death penalty for a person who committed a terrorist act that resulted in the loss of any life. Furthermore, Section 3(4) rendered conspiracy or an attempt to commit, advocate, abet, advise, or facilitate a terrorist act punishable, with the sentence for such conspiracy or attempt being commensurate with the punishment prescribed for the actual commission of the offence, thereby potentially attracting capital punishment in certain contexts.
3. **The Unlawful Activities (Prevention) Act, 1967 (UAPA)**
   As the principal contemporary legislation for combating terrorism and unlawful activities, the UAPA, through successive amendments, incorporates capital provisions. Section 16(1) of the Act mandates that a terrorist act which results in death shall be punishable with death or imprisonment for life. This provision is triggered upon the

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establishment of a causal link between the terrorist act and a fatal consequence. The Act's procedural mechanisms, including extended detention periods and strict bail conditions, frame the legal context for prosecuting such capital offences.

4. **The Protection of Children from Sexual Offences Act, 2012 (POCSO Act)**

   While the POCSO Act is fundamentally oriented towards the protection of children and prescribes rigorous punishments, including life imprisonment for aggravated penetrative sexual assault under Section 6, it does not expressly prescribe the death penalty. However, the sentencing court retains judicial discretion under the general penal law. An offence prosecuted under the POCSO Act may concomitantly attract charges under relevant sections of the IPC, such as Section 302 (murder) or Section 376A (rape causing death or persistent vegetative state), for which the death penalty remains a statutory sentencing option under the "rarest of rare" doctrine. Consequently, in cases involving extreme brutality, homicide, or repeat offences against children, the imposition of the death penalty remains a legal possibility through the application of the IPC, albeit not directly under the POCSO Act itself.

   Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act This act, enacted in 1989 and subsequently amended, aims to prevent atrocities against members of Scheduled Castes and Scheduled Tribes in India. While the act primarily focuses on providing protection and remedies for victims of atrocities, it also includes provisions for enhanced penalties, including the death penalty, for certain offenses committed against members of marginalized communities.

## Nature and Mode of Imposition of Capital Punishment in India

The principal penal statute in India, the Bharatiya Nyaya Sanhita, 2023 (BNS), prescribes death penalty and life imprisonment as alternative sentences for specific, statutorily enumerated offences. It is a salient feature of the legislative scheme that no provision within the BNS *mandates* the imposition of the death penalty for any offence, and the erstwhile Section 104 (pertaining to reasons for sentence) of the Indian Penal Code, 1860, has been omitted. Within the stipulated categories of offences, capital punishment constitutes the maximum available penal sanction. The statutory framework, however, does not provide explicit legislative criteria or a prescriptive formula to guide judicial discretion in electing between the death penalty and life imprisonment, or in determining whether a lesser sentence of life imprisonment is warranted.

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Consequently, the sentencing authority is vested with a structured but discretionary power to exercise its judicial reasoning in the sentencing phase. The judiciary is obligated to undertake a holistic and individualized sentencing determination. This process necessitates a judicial balancing of aggravating circumstances (pertaining to the crime) against mitigating circumstances (pertaining to the offender), as articulated by the Supreme Court in *Machhi Singh & Ors. v. State of Punjab* (1983) 3 SCC 470. The exercise of this discretion must be guided by the overarching "rarest of rare" doctrine established in *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, ensuring that the death penalty is reserved only for those exceptional cases where the alternative option of life imprisonment is "unquestionably foreclosed."

| **Section under BNS or other law** | **Nature of crime** |
|---|---|
| Section 61 of BNS | Being involved in any sort of criminal conspiracy |
| Section 147 of BNS | Waging, or attempting to wage, or abetting waging of war, against Government of India |
| Section 160 of BNS | Abetment of mutiny, if mutiny is committed in consequence thereof |
| Section 230 of BNS | Giving or fabricating false evidence with intent to procure conviction of capital offense |
| Section 103,104 of BNS | Punishment for murder and punishment for murder by life convict. |
| Section 107 of BNS | Abetment of suicide of child or person of unsound mind |
| Part II section 4 of prevention of sati act | Aiding or abetting an act of sati |
| Section 140 of BNS | Kidnaping or abducting in order to murder or for ransom etc. |
| 31A of the narcotic Drugs and psychothropic substances Act | Drug trafficking in case of repeat offences |
| Section 66 of BNS | Punishment for causing death or resulting in persistant vegetative state of victim |

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## Method of Execution and Procedural Context in India

In India, the statutorily prescribed method of execution is hanging by the neck until death. Section 354(5) of the Code of Criminal Procedure, 1973 (CrPC) mandates that "when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead." This method, rooted in colonial-era legislation, remains the sole mode of carrying out a capital sentence. Executions are conducted within designated enclosures inside central prisons, typically during the early hours of the morning, in accordance with established prison manuals and protocols aimed at maintaining security and order.

## Incidence and Procedural Delays

Despite its retention as a lawful penalty, the imposition of the death penalty in India operates within a framework of extreme judicial restraint and protracted legal processes. The application of capital punishment is infrequent, a consequence of the restrictive "rarest of rare" doctrine established by the Supreme Court. The period between the pronouncement of a death sentence and its potential execution is characteristically prolonged. This interval is attributable to an exhaustive and multi-layered appellate review process, encompassing appeals to the High Court and the Supreme Court, followed by curative petitions and, ultimately, petitions for clemency to the President of India and the Governor of the relevant State under Articles 72 and 161 of the Constitution. These extensive procedural safeguards, while integral to due process, invariably result in a significant temporal gap between sentencing and execution. Consequently, the number of death sentences actually carried out remains substantially lower than the number judicially imposed.

## Contested Legitimacy and Ongoing Discourse

The retention and application of the death penalty in India persist as subjects of profound legal, ethical, and political contention. Proponents of retention advance arguments grounded in the theories of retributive justice and deterrence, positing that the sanction is a necessary and proportionate response to crimes of exceptional depravity and serves to protect societal order. Conversely, abolitionists challenge its legitimacy on multiple fronts: questioning its efficacy as a unique deterrent, highlighting the irreversible nature of the punishment in light of potential judicial error, critiquing its potential for arbitrary or discriminatory application, and contesting its compatibility with evolving standards of human dignity and the right to life. This dialectic ensures the continued scrutiny of capital punishment within India's legal and constitutional

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discourse.

## Conclusion

In summation, the legal and normative status of capital punishment within the Indian jurisprudential framework remains a complex and deeply contested subject. Notwithstanding its constitutional validation under the "rarest of rare" doctrine, the administration of the death penalty is fraught with substantive and procedural concerns, including the potential for judicial error, socio-economic disparities in its application, and contentious alignment with international human rights obligations.

While retentionist arguments are predicated on principles of retributive justice and purported deterrence, abolitionist advocacy is grounded in ethical objections, empirical challenges to its efficacy, and the irrevocable nature of the sanction in the face of potential miscarriages of justice. This enduring dichotomy underscores a critical juncture in India's penal policy, necessitating a rigorous re-examination of the sanction's role and legitimacy.

The substantive provisions for capital punishment under the Bharatiya Nyaya Sanhita, 2023 (BNS) and the procedural safeguards within the Code of Criminal Procedure, 1973 (CrPC) establish the legal parameters for its imposition. Landmark judicial precedents, notably *Bachan Singh v. State of Punjab* (1980) and *Machhi Singh v. State of Punjab* (1983), have sought to standardize sentencing through the "balance-sheet" approach and the "rarest of rare" doctrine. Despite this jurisprudential scaffolding, inconsistencies in judicial interpretation and application persist across jurisdictions, highlighting the inherent subjectivity and risk of arbitrariness in capital sentencing.

Concurrently, evolving standards of human dignity, as reflected in international human rights law and comparative constitutional practice, increasingly challenge the moral and ethical foundations of state-sanctioned execution. This global trend, coupled with a domestic emphasis on restorative justice and rehabilitation, amplifies calls for abolition.

Consequently, there exists an imperative for comprehensive criminal justice reform. Such reform must encompass the enhancement of legal aid mechanisms, the stringent scrutiny of evidentiary standards, the mitigation of systemic biases, and the fostering of greater transparency in judicial proceedings. The discourse surrounding capital punishment in India

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thus transcends mere legal technicality; it constitutes a fundamental reflection of the nation's commitment to the constitutional values of justice, equity, and the protection of inalienable human rights in a contemporary democratic society.

## References


- https://www.amnesty.org/en/what-we-do/death-penalty/
- https://indiankanoon.org/
- The Death Penalty: A Worldwide Perspective (4th edn) https://academic.oup.com/ Death penalty articles from The Hindu, Print, The Gaurdian, Manupatra etc. Constitutional laws in India- JN Pandey
- Wikipidea
- www.legalserviceindia.com
- "Furman v. Georgia." Oyez, www.oyez.org/cases/1971/69-5003.
- British Library ( https://www.bl.uk/ )
- Indian Kanoon - Legal Database (https://indiankanoon.org/ 1980 SCC(CRI)
- Legislative Department, Ministry of Law and Justice, Government of India (http://legislative.gov.in/)
- Indian Kanoon - Legal Database (https://indiankanoon.org/)
- Supreme court of United kingdom ( https://www.supremecourt.uk/) UKSC 2015/0015
- National Human Rights Commission of India (https://nhrc.nic.in/)
- Law Cosmmission of India (http://www.lawcommissionofindia.nic.in/)