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# **THE SHADOW OF THE NOOSE: A JURISPRUDENTIAL CRITIQUE OF RETRIBUTIVE JUSTICE AND THE “RAREST OF RARE” DOCTRINE IN INDIA**

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## **Abstract**

*Global legal discourse remains deeply divided over the legitimacy of capital punishment, as it stands as one of the most contentious elements of modern criminal justice. While those in favour of the practice argue that it serves the dual purposes of retributive justice and crime deterrence, critics maintain that it constitutes a fundamental violation of the inalienable right to life and the inherent dignity of the individual.*

*This study provides a critical assessment of the death penalty by examining its foundations in retributive theory and evaluating its consistency with both the Indian Constitution and international human rights frameworks. The research traces the historical progression of penal sanctions, explores various philosophical justifications for punishment, and scrutinises the specific judicial approaches adopted within the Indian legal landscape.*

*A primary focus of this analysis is the "rarest of rare" doctrine, along with the landmark judicial precedents that have shaped its implementation. The findings indicate that although the Indian judiciary has established procedural safeguards to balance legal necessity with humanitarian values, the system is still plagued by sentencing inconsistencies and profound moral dilemmas. Consequently, the study suggests that the persistent issues of judicial arbitrariness and the conflict with human dignity necessitate a move toward legislative reform and eventual abolition, aligning India with evolving global human rights standards.*

**Keywords**– *Criminal Justice System, Human Rights, Retributive Theory, Capital Punishment, Criminal Jurisprudence.*

## INTRODUCTION

### **1.1 Concept of Crime**

Crime is a complex idea that reflects the moral, social, and cultural fabric of society and goes beyond simple legal boundaries. An act or omission that is forbidden by law and subject to state punishment is referred to as a crime. But its core is the damage it does to society's collective conscience as much as to individuals. The definition of illegal behavior changes throughout time due to shifting political beliefs, economic circumstances, and societal values. Actus reus and mens rea, the fundamental components of crime, guarantee that criminal culpability is only applied in cases when both a wrongdoing and a guilty mind are present. The fundamental idea of justice in criminal law is reflected in this dual necessity.

However, certain offences, particularly those involving strict liability, deviate from this principle, thereby raising questions about the nature and scope of criminal responsibility.

Throughout decades and legal systems, the question of whether the State should have the right to execute someone as a form of punishment has remained. The death sentence, which is frequently defended on the grounds of deterrence and retributive justice, is still a hotly debated topic in criminal law. Fundamentally, the argument over the death penalty is a reflection of a larger philosophical struggle between the requirements of human rights and the needs of justice. Criminal law must function within the bounds set by constitutional morality and the intrinsic value of human life while also attempting to uphold social order and shield citizens from damage.

It is impossible to comprehend crime as a legal and sociological term apart from the society in which it occurs. It stands for behavior that is thought to be detrimental enough to call for state action and punishment. The concept of crime is not universal nor unchanging; rather, it changes in response to shifting moral standards, political agendas, and societal conventions. Because crime is dynamic, the idea of punishment must also change. In the past, punishment was frequently motivated by retaliation and vengeance, which led to harsh and disproportionate sanctions. Nonetheless, contemporary legal systems have progressively shifted toward a more methodical and moral approach, stressing equity, proportionality, and the potential for change. Punishment, therefore, serves multiple functions within a legal system. It is not merely a reaction to wrongdoing but a mechanism for reinforcing societal norms and deterring future misconduct. Theories of punishment provide the intellectual framework through which these functions are understood and justified. The deterrent theory posits that punishment prevents crime by instilling fear of consequences, while the preventive theory focuses on incapacitating offenders to protect society. In contrast, the reformative theory emphasizes rehabilitation and

the reintegration of offenders, reflecting a more humane and progressive approach. The retributive theory, which forms the central focus of this study, is based on the principle that offenders deserve to be punished in proportion to their crimes. While this theory satisfies the moral intuition of justice, it raises significant ethical concerns when applied in its most extreme form, namely the death penalty.

Capital punishment represents the ultimate assertion of State authority over the life of an individual. Its irreversible nature distinguishes it from all other forms of punishment and amplifies the consequences of judicial error. In India, the death penalty continues to be legally permissible for certain grave offences, including murder and acts of terrorism. However, its application is subject to strict judicial scrutiny and constitutional safeguards. The introduction of the “rarest of rare” doctrine by the Supreme Court reflects an attempt to limit its use to exceptional cases. Despite these safeguards, the continued existence of the death penalty raises fundamental questions about its compatibility with the right to life and human dignity.

This chapter sets the stage for a comprehensive examination of capital punishment by exploring the conceptual foundations of crime and punishment, the philosophical theories that justify penal sanctions, and the specific nature of the death penalty. It highlights the inherent tension between the objectives of criminal law and the principles of human rights, thereby establishing the central theme of the study. The subsequent chapters build upon this foundation to analyse the historical evolution, constitutional framework, judicial interpretations, and contemporary debates surrounding capital punishment in India.

## **1.2 Concept of Punishment**

Punishment is the State’s formal mechanism for responding to criminal behaviour and maintaining social order. It serves multiple functions, including deterrence, retribution, prevention, and rehabilitation. Historically, punishment was often brutal and disproportionate, reflecting a desire for vengeance rather than justice. Over time, legal systems have evolved to emphasize proportionality, fairness, and respect for human dignity.

Modern penology recognizes that punishment must not only address the offence but also consider the offender’s circumstances. This shift from a purely retributive approach to a more balanced framework reflects the growing influence of human rights principles. Nevertheless, the existence of capital punishment continues to challenge this evolution.

## **1.3 Theories of Punishment**

Theories of punishment provide the philosophical foundation for criminal justice systems and

influence sentencing policies.

The Deterrent theory posits that punishment prevents crime by instilling fear of consequences. While theoretically appealing, empirical evidence regarding its effectiveness remains inconclusive, particularly in the context of capital punishment.

The Preventive theory seeks to incapacitate offenders, thereby protecting society from future harm. Although effective in the short term, it does not address the root causes of criminal behaviour.

The Reformatory theory emphasizes rehabilitation and reintegration of offenders into society. It is grounded in the belief that individuals are capable of change and that punishment should facilitate this transformation.

The Retributive theory, central to this study, justifies punishment as a moral response to wrongdoing. It is based on the principle that offenders deserve to suffer in proportion to their crimes. While it satisfies societal demands for justice, it raises ethical concerns when applied in its extreme form, such as the death penalty.

#### **1.4 Capital Punishment: Meaning and Scope**

Capital punishment refers to the legally sanctioned execution of an individual as punishment for a crime. It is the most severe form of punishment and is irreversible in nature. Its justification has traditionally been rooted in retributive justice and deterrence.

In India, the death penalty is prescribed for offences such as murder, terrorism, and waging war against the State. However, its application is restricted by judicial guidelines and constitutional safeguards. Despite these limitations, the ethical and legal debates surrounding its legitimacy persist.

### **HISTORICAL EVOLUTION OF CAPITAL PUNISHMENT**

The historical development of capital punishment in India reflects the broader evolution of legal systems and societal values. In ancient India, punishment was deeply intertwined with religious and moral doctrines, and the concept of *Danda* was regarded as essential for maintaining social order. Ancient texts such as the *Arthashastra* and the *Manusmriti* prescribed severe penalties, including death, for offences that threatened the stability of the State or violated social norms. These early legal frameworks emphasized the role of punishment as a means of deterrence and retribution, often prioritizing the interests of the ruler and the social hierarchy over individual rights. The application of punishment was not uniform and frequently depended on factors such as caste and social status, thereby reflecting the inherent inequalities

of the time.

The medieval period witnessed the introduction of Islamic criminal law, which brought a more structured approach to punishment. Offences were categorized into distinct classes, and penalties were prescribed based on religious principles. The concept of *Qisas*, which allowed for retaliation, and *Diyat*, which permitted compensation, introduced elements of restorative justice alongside retribution. The death penalty continued to be imposed for serious offences, but the possibility of forgiveness by the victim's family provided a degree of flexibility. This period demonstrates a complex interplay between retributive and restorative principles, highlighting the evolving nature of punishment.

The colonial era marked a significant transformation in the Indian legal system with the codification of criminal law. The enactment of the Indian Penal Code in 1860 formalized the death penalty as a legal sanction and introduced a more systematic approach to sentencing. Initially, the death penalty was widely applied, reflecting the colonial administration's emphasis on maintaining order and authority. However, over time, legal reforms introduced judicial discretion and procedural safeguards, laying the groundwork for a more balanced approach. The colonial legacy continues to influence contemporary Indian criminal law, particularly in the structure and provisions relating to capital punishment.

Following independence, India retained the death penalty but incorporated constitutional safeguards to prevent its arbitrary application. The adoption of the Constitution marked a shift toward a rights-based framework, emphasizing the protection of individual liberties and the rule of law. Legislative and judicial developments sought to reconcile the continued existence of capital punishment with the principles of fairness, due process, and proportionality. The introduction of the "rarest of rare" doctrine by the Supreme Court represented a significant milestone in this evolution, as it sought to restrict the use of the death penalty to exceptional cases.

The historical trajectory of capital punishment in India reveals a gradual shift from arbitrary and often brutal practices to a more regulated and principled system. However, it also underscores the persistence of retributive impulses and the challenges of aligning traditional notions of justice with contemporary human rights standards. This historical context is essential for understanding the current legal framework and the ongoing debates surrounding the death penalty.

## **INTERNATIONAL HUMAN RIGHTS PERSPECTIVE**

The acceptance of the right to life as a fundamental human right is at the core of the global conversation on the death penalty. This right, which is the cornerstone of contemporary human rights law, symbolizes each person's intrinsic dignity and is protected by a number of international instruments. The evolution of international human rights standards has had a major impact on how people around the world see the death sentence, resulting in more limitations on its application and a growing push for its repeal.

The Universal Declaration of Human Rights lays the moral groundwork for later legal documents by establishing the right to life as a fundamental entitlement of every person.

This right is further explained by the International Covenant on Civil and Political Rights, which only permits the death sentence under specific conditions and with stringent procedural protections. It highlights that the death penalty must be applied in compliance with fair trial norms and should only be used for the "most serious crimes." The international community's commitment to abolishing the death penalty is reflected in the Second Optional Protocol to the ICCPR.

The majority of nations have either outlawed the death penalty or stopped using it, indicating a strong global trend toward its abolition.

Despite this global movement, some countries continue to retain the death penalty, citing cultural, political, and security considerations. India, for instance, maintains capital punishment for certain serious offences but has sought to align its application with constitutional and human rights principles. The tension between national sovereignty and international human rights obligations remains a central issue in this context.

The international human rights perspective provides a critical framework for evaluating the legitimacy of the death penalty. It challenges traditional justifications based on retribution and deterrence, emphasizing instead the importance of dignity, fairness, and the sanctity of life. This perspective is essential for understanding the evolving standards of decency that shape contemporary legal systems.

## **CONSTITUTIONAL AND JUDICIAL ANALYSIS IN INDIA**

THE CRIMINAL PROCEDURE CODE (CR. P.C.) OF 1973/ THE BHARTIYA NAGARIK SURAKSHA (B.N.S.S.) OF 2023 "Cr.P.C./ B.N.S.S., is a thorough law that establishes protocols for the administration of criminal justice. A major amendment to the previous Code of 1898 resulted in the Code of 1973, which was then superseded by the B.N.S.S. 2023. The

Sanhita/Code covers a wide range of topics, including bail limitations, procedural safeguards, the registration of an offense, and the rights, responsibilities, and duties of several agencies involved in an investigation. The Code also describes in detail the procedures and guidelines governing the conduct of trials, the admissibility of evidence, and other pertinent issues, including clauses governing the decision-making process following a criminal trial.

According to Section 354(3) of the Criminal Procedure Code/ 393(3) B.N.S.S., "where the conviction is for an offence punishable by life in prison, the judgement should state the reasons for the sentence granted, and in the case of sentencing of death, the exceptional circumstances for such punishment." If the court finds that an alternative penalty would not be in keeping with the interests of justice, it must provide "special grounds" to back up the sentence. Commenting on this provision of the code, Mr. Justice V.R. Krishna Iyer of India's Supreme Court pointed out that the special justifications to which section 354(3) / 393(3) B.N.S.S. refers provide reasonableness as contemplated. In Article 19<sup>1</sup> as a relative connotation dependent on a number of variables, including cultural, social, economic, and other factors" The distinction between general criminal law and special laws imposing the death penalty. The processes outlined in the Cr.P.C. / B.N.S.S. are followed in respect to the investigation and prosecution of offences under the aforementioned statutes, unless specific provisions are provided within them. Importantly, a number of these laws modify the regulations governing the evaluation of evidence at the trial stage. For instance, under a variety of statutes pertaining to suspected acts of "terrorism," a suspect's admissions to a police officer may be used as evidence. Because of worries about police using torture to get confessions, such confessions are not admissible and have no value as evidence under regular criminal law. Even if confessions made by one accused against another coaccused are not admissible under conventional criminal law, the law has allowed certain presumptions to be drawn incriminating other accused individuals under certain special legislation, such as TADA and POTA. There is ample evidence that the implementation of many of these laws has been marred by abuse and misuse, which only serves to raise concerns for those who have received the death penalty under such laws, despite the Supreme Court of India having questioned and upheld the constitutionality of many of these risky provisions.

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<sup>1</sup> INDIAN CONSTITUTION, Art. 19

## **REPORT(S) OF THE LAW COMMISSION**

Since independence numerous reports has been published by the Law Commission of India. These reports extensively discussed about death penalty and its components Including analysis of capital punishment around the world as well as in India.

### **1. 35th Law Commission Report 1967 titled ‘Capital Punishment’**

The Commission began work on its 35th Report on "Capital Punishment" in December 1962 and final report came in 1967. The Report was the consequence of a reference by the Parliament, when the third Lok Sabha debated on the resolution moved by Shri Raghunath Singh, Member, Lok Sabha for the abolition of capital punishment. After considering the arguments of the abolitionists and retentionists, the state of the death penalty in various countries and objectives of the capital punishment, the commission recommended that the death penalty be retained in India.

It is challenging to discount the strength or legitimacy of many of the abolitionist arguments. In highlighting more profound issues of human values, the Commission did not take lightly the argument that the death penalty is irreversible, the harshness of the death penalty, and the strong sentiment expressed by some segments of the public. India cannot risk the experiment of abolishing the death penalty given the country's current circumstances, which include the wide range of social upbringings of its citizens, the disparity in morality and educational attainment, the size and diversity of its population, and the critical need to uphold law and order.

The Commission added that the deterrent object of capital punishment was its "most important object", saying it constituted "its strongest justification". The Commission also commented on the discretion courts had in terms of imposing the death penalty or life imprisonment, finding that the vesting of such discretion is necessary and the provisions conferring such discretion are working satisfactorily.

### **2. 187th law commission report 2003 titled “Mode of Execution of Death Sentence and Incidental Matter”**

Death penalty has been a mode of punishment since time immemorial. This report identifies the mode of execution of Death sentences through ages in India and around the world. However, in India not much has been debated on the issue of mode of execution of death sentence. The matter of mode of execution is, to a certain extent, one of medical opinion, but a method which is certain, humane, quick and decent should be adopted , commission said. Since Middle Ages death sentence was the common practice throughout the world and was

inflicted in the case of conviction for large number of crimes, including petty offences involving property. Various modes and methods of inflicting death sentence upon the convict as practiced in different societies. The methods of execution of death sentences involved torture, burning at the stake, breaking on the wheel, slow strangulation, crushing under elephant's feet, throwing from a cliff, boiling in the oil, stoning to death etc. With passing time number of offences punishable by death was reduced in all leading countries. Also, penalties involving torture disappeared with the idea that punishment by way of death sentence should be swift and humane, whether by guillotine, hanging, the garotte, or the headman's axe.

The commission also focuses on comparing execution procedure of different states of USA and also compared with India. The execution of death sentence in India is carried out by two modes namely hanging by neck till death and being shot to death. The jail manuals of various States provide for the method of execution of death sentence in India. Section 354(5) of criminal procedure code reads as under - "When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead." Commission report also suggested that jail manuals should be strictly followed by superintendent and other subordinate officers in matter of person who is convicted for execution.

The law commission also included The Army Act and Air Force Act which also provide for the execution of the death sentence. Section 34 of The Air Force act, 1950 empowers the court martial to award the death sentence for the offences mentioned in section 34 (a) to (o). SECTION 163 provides for the form of the sentence of death as: -

"In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead or shall suffer death by being shot to death". The Army Act, 1950, The Navy Act 1957 also provide for similar provisions like The Air Force Act, 1950. Commission recommended that these above mentioned sections are right and be retained.

The commission also did comparative analysis of the Hanging, Intravenous Lethal Injection and Shooting. The commission suggested the most humane, least painful mode, with no mutilation of body and easy to execute. Whether discretion should be given to the court or to the convict in choosing the mode of execution of death sentence. The Commission is of the view that discretion should be given to the Court which can decide the mode of execution of death sentence after taking various relevant factors into consideration. The Commission further recommends that the Supreme Court bench while hearing the case where death punishment has been awarded should consist of at least five judges. Accordingly, the Supreme Court Rules may be amended.

### **3. 262nd Law Commission Report 2015 titled “The Death Penalty”**

The Law Commission of India chaired by Justice A.P. Shah submitted its 262nd report on 31st August 2015 on the issue of death penalty in India. The commission, in its 262nd report, discussed issues ranging from death penalty being a deterrent, to changing International & National scenario to arbitrariness in the decision making & existence of bias as some of the reasons for recommending abolition of death penalty except in cases of terrorism related offences. The commission recommended that the death penalty should be abolished for all crimes except for terrorism related offences and waging war. The commission came to this conclusion based on the following reasons:-

Changing International & National Situation towards abolition of death penalty. Death Penalty as a Deterrent is a Myth Complete Arbitrariness in sentencing in Capital Offences leading to high number of rejections (more than 95%) of trial court decisions in higher courts Geographical Variations in imposition of death penalty, Structural Issues & existence of a bias Evolving Jurisprudence.

Accordingly realising that death penalty is an issue of a very sensitive nature, the Commission decided to undertake an extensive study on the issue. The Commission after studying the issue extensively said that the death penalty does not serve the penological goal of deterrence any more than life imprisonment. In fact it fails to achieve any constitutionally valid penological goals.

Finally the Commission recommended that it is essential that the State establish effective victim compensation schemes to rehabilitate victims of crime. At the same time, it is also essential that courts use the power granted to them under the Code of Criminal Procedure, 1973 (now B.N.S.S.) to grant appropriate compensation to victims in suitable cases. The voices of victims and witnesses are often silenced by threats and other coercive techniques employed by powerful accused persons. Hence it is essential that a witness protection scheme is established. The need for police reforms for better and more effective investigation and prosecution has also been universally felt for some time now and measures regarding the same need to be taken on a priority basis.

### **THE DOCTRINE OF RAREST OF RARE CASE**

In **Bachan Singh's**<sup>2</sup> case, the Supreme Court amended this phrase and noted: "A real and abiding concern for the dignity of human life postulates resistance to taking a life through the

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<sup>2</sup> (1980) 2 SCC 684

law's instrumentality." That ought to be done, save in the rarest of rare cases when the alternative option is unquestionably foreclosed. The court has entire discretion over whether or not a case qualifies as one of the rarest of rare cases. However, the top court has established a few guidelines that must be followed while determining the appropriate sentence. One of the key ideas is the distinction between situations that are aggravating and those that are mitigating. The court has held that before deciding on a punishment, a balance sheet containing aggravating and mitigating factors specific to that case must be created. Even if there are mitigating factors, the court should consider them all. However, if the court believes that any other punishment would not be fair, only the death penalty should be given. The Supreme Court says that the following situations would be the rarest of rare cases to support the use of the death penalty.

- ❖ When the murder is committed in such a cruel, hideous, evil, repulsive, or despicable manner that the community feels deep and severe outrage;
- ❖ The murder was perpetrated for a reason that shows utter depravity and malice.
- ❖ When a member of a scheduled caste or minority group is murdered;
- ❖ When there are a large number of murders, that is, when many people are killed,
- ❖ When an innocent youngster, a vulnerable lady, an elderly person, or a disabled person is the murder victim.

The court again ruled in **Machhi Singh v. State of Punjab**<sup>3</sup> that: The following inquiries and responses may be made in order to implement these principles, among other things:

- Is there anything unusual about the offence that makes a life sentence in prison insufficient and necessitates the death penalty?
- Are the crime's circumstances such that, even after giving the most weight to the mitigating factors that speak in the defendants' favour, there is no other option except to impose a death sentence?

In its decision, **Sushil Murmu v. State of Jharkhand**, the Supreme Court emphasised the following principles: "In the rarest of rare cases, when the collective conscience of the community is so shocked that it will expect the holders of judicial power centres to inflict the death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining the death penalty, a death sentence can be awarded." Such circumstances have been examined by the SC in a number of decisions. These conditions include: Murder carried out in a way that is very violent, hideous, evil, vile, or despicable so as to provoke the community's

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<sup>3</sup> (1983) 3 SCC 470

acute and severe outrage.

1. Murder—for a reason that shows utter depravity and cruelty.
2. Murder of a Scheduled Caste or Scheduled Tribe (not for personal reasons). Bride burning or dowry death.
3. Murderer in a position of authority, a position of trust, or while betraying the homeland where it is enormous in proportion.

Victims include defenseless women, elderly or disabled people, and prominent figures who are well-liked and respected in the community. The court would go ahead and give the death sentence if, after looking at all the facts from a wide angle and taking into account the answers to the questions asked by the test of the rarest of rare cases, it is clear that the case calls for it.

The **State of Maharashtra v. Shankar Kisanrao Khade** (2013), A juvenile girl was abducted, repeatedly raped, and strangled to death by Shankar Kisanrao Khade and his wife, Mala Shankar Khade. These crimes are punishable under Sections 363, 366-A, 376, 302, and 201 read with Section 34 of the Indian Penal Code, 1860". The appellant was found guilty and given the death penalty for the rape and murder of the kid with intellectual disability. The Supreme Court changed the punishment to life in prison.

Supreme Court Observations Justices K.S. Radhakrishnan and Madan B. Lokur, who made up a two-judge bench of the Supreme Court of India, said the following-

It was decided that the "crime test," "criminal test," and "R-R test" should be used for determining the appropriate penalty rather than the "balance test." This meant that the court had to use the "rarest of the rare" rule before giving the death penalty, even if there were as many aggravating factors as possible and no mitigating factors in the accused's favor. The Court said that the application of the "rarest of rare" threshold depended on whether or not society would approve the imposition of the death sentence. In his concurring opinion, Justice Lokur said that the Indian Law Commission may examine whether the death penalty serves as a deterrent punishment, retributive justice, or accomplishes an incapacitative goal. It's important to remember that Bachan Singh case, which issued a warning against interpreting aggravating and mitigating factors as watertight compartments, may be at odds with the conclusions made in Shankar Kisanrao Khade case.

**State of Maharashtra v. Rajendra Pralhadrao Wasnik.** In the current case, Rajendra Pralhadrao Wasnik v. the State of Maharashtra, the Supreme Court was talking about a review petition from a man who was sentenced to death for raping and killing a child. Supreme Court Observations, The Court came to this conclusion after looking at a number of previous Supreme Court decisions. "Before giving the death penalty, the courts must carefully and honestly weigh

the likelihood (not the possibility, improbability, or impossibility) that a criminal can be reformed and rehabilitated in society."

It continued by stating that the prosecution must prove to the court that the prisoner cannot be changed or rehabilitated in order to fulfil this responsibility. The Court made the significant decision that the offender might also speak about his or her attempts to improve. Also voted upon was the admissibility of choosing a longer term even if the convict's social reintegration was difficult. Because of this, the court commuted the death sentence to life in prison without the chance of release until the end of the victim's natural life.

**Manoharan v. State by Police Inspector**, The Supreme Court of India was debating the appeal of a prisoner who had been given the death penalty for the rape and murder of a young girl as well as the murder of his younger brother in the current case. The prosecution questioned a large number of witnesses. The appellant was later found guilty by the trial court under Sections 120-B, 364-A, 376, 302 read with Section 34, and 201 of the Indian Penal, 1960. According to Sections 376 and 302 of the Indian Penal Code, the appellant was given a death sentence as well as a life term. The High Court of Madras reversed the appellant's convictions under Sections 120-B and 364-A of the Penal Code and affirmed the sentences under Sections 376 and 302 read along with Section 34 of IPC. After looking at both things that made the situation worse and things that made it better, the High Court decided to let the lower court carry out the death sentence.

**Chhannulal Verma v. State of Chhattisgarh**, After finding the appellant guilty of murder under Section 302, attempted murder under Section 307, threatening to kill under Section 506 (2), and house invasion under Section 450 of the Indian Penal Code, 1860, the Sessions Court sentenced him to life in prison, fines, and the death penalty.

Further evidence that the offence was intentional came from the appellant's choice of targets and the victims they chose to do significant injury. Because the appellant was brutal throughout the process and, as a result, received the death sentence, the court classified the case as one of the rarest of the rare. The High Court upheld the judgement and the death sentence after taking into account the incident's aggravating and mitigating circumstances. In the opinion of the appellant's knowledgeable senior counsel, the conviction and sentencing hearings should not have occurred on the same day, and the appellant should have had enough time to offer mitigating evidence before being heard on the punishment issue.

Justice Kurian of the Supreme Court of India upheld the appellant's conviction but changed his sentence to life in prison for the following reasons: The appellant did not get a thorough psychological or psychiatric assessment, although his behaviour while inside was exemplary.

The procedural injustice of not holding a separate hearing for punishment at the trial stage was disregarded by the High Court. Separating the conviction and punishment hearings is critical. The appellant was denied the chance to introduce evidence relevant to punishment and mitigating circumstances because the trial court erred in scheduling the sentencing hearing on the same day as the hearing on the appeal.

### **Constitutional Validity**

The Indian Constitution guarantees the right to life under Article 21 but allows its deprivation through a procedure established by law. The constitutional validity of the death penalty in India has been the subject of extensive judicial scrutiny. Article 21 of the Constitution guarantees the right to life and personal liberty, but it permits deprivation of life in accordance with a procedure established by law. The interpretation of this provision has been central to determining the legitimacy of capital punishment. The Supreme Court has consistently upheld the constitutionality of the death penalty, emphasizing that it is imposed through a fair and just procedure.

The evolution of judicial interpretation in this area is marked by a series of landmark judgments that have shaped the application of the death penalty. In *Jagmohan Singh v. State of U.P.*<sup>4</sup>, the Court upheld the constitutionality of capital punishment, relying on the existence of judicial discretion as a safeguard against arbitrariness. However, the absence of clear sentencing guidelines at the time raised concerns about inconsistency and unpredictability.

A significant shift occurred with the decision in *Bachan Singh v. State of Punjab*<sup>5</sup>, where the Supreme Court introduced the “rarest of rare” doctrine. This judgment established that the death penalty should be imposed only in exceptional cases where life imprisonment is inadequate. The Court emphasized the need to balance aggravating and mitigating circumstances, thereby ensuring a more individualized approach to sentencing. This doctrine has since become the cornerstone of capital punishment jurisprudence in India.

Subsequent decisions have sought to refine and apply this doctrine. In *Machhi Singh v. State of Punjab*<sup>6</sup>, the Court elaborated on the criteria for determining “rarest of rare” cases, identifying factors such as the manner of commission, motive, and magnitude of the crime. While these guidelines provide a framework for judicial decision-making, they also introduce a degree of subjectivity, leading to inconsistencies in sentencing.

<sup>4</sup> <https://indiankanoon.org/doc/1837051/>

<sup>5</sup> <https://indiankanoon.org/doc/1235094/>

<sup>6</sup> <https://indiankanoon.org/doc/545301/>

The judiciary has also addressed issues relating to procedural safeguards and the humane treatment of death row prisoners<sup>7</sup>. In *Mithu v. State of Punjab*<sup>8</sup>, the Court struck down mandatory death sentences as unconstitutional, emphasizing the importance of judicial discretion. In *Shatrughan Chauhan v. Union of India*<sup>9</sup>, it recognized that undue delay in execution and mental illness could justify commutation of death sentences. These decisions reflect a growing awareness of the need to align capital punishment with human rights principles.

The constitutional and judicial framework in India represents an attempt to balance the demands of justice with the imperatives of human rights. While significant safeguards have been established, challenges remain in ensuring consistency, fairness, and transparency in the application of the death penalty.

### **Judicial Safeguards**

Indian courts have developed several safeguards, including pre-sentencing hearings, consideration of mitigating factors, and mandatory appellate review. These measures aim to ensure fairness and prevent arbitrary sentencing.

Despite these safeguards, inconsistencies in their application remain a concern.

### **Clemency Powers**

The Constitution provides the President and Governors with the power to grant clemency, serving as a final safeguard against miscarriage of justice. This reflects the principle that justice must incorporate mercy.

However, delays and lack of transparency in the exercise of these powers have been criticized.

## **CRITICAL ANALYSIS AND DEBATE**

### **Arbitrariness, Bias, and Delay**

Despite these judicial frameworks, the application of capital punishment in India remains plagued by systemic issues:

- **Sentencing Disparities:** The subjective nature of the "rarest of rare" doctrine leads to geographical and judicial inconsistencies, where similar crimes result in different sentences depending on the bench.
- **Socio-Economic Bias:** There is a significant concern that the death penalty disproportionately affects those from marginalised backgrounds with limited access to

<sup>7</sup> <https://indiankanoon.org/doc/590378/>

<sup>8</sup> (1983) 2 SCC 277

<sup>9</sup> (2014) 3 SCC 1

quality legal representation.

- **The Irreversibility Factor:** The fallibility of the judicial system means that any error leads to an irretrievable violation of human rights.
- **Executive Delay:** Prolonged delays in the exercise of clemency powers by the President or Governors have been recognised as a form of mental torture, often leading to the commutation of sentences

The debate on capital punishment is characterized by deeply entrenched positions, reflecting divergent views on justice, morality, and the role of the State. Proponents of the death penalty argue that it serves as a necessary deterrent against serious crimes and provides a sense of justice to victims and society. They contend that certain offences are so heinous that they warrant the ultimate punishment, and that the failure to impose it may undermine public confidence in the legal system.

However, empirical evidence regarding the deterrent effect of the death penalty remains inconclusive. Studies have failed to establish a clear correlation between the existence of capital punishment and lower crime rates. This raises questions about its effectiveness as a tool for crime prevention. Furthermore, the irreversible nature of the death penalty makes the risk of wrongful convictions particularly troubling. Instances of miscarriages of justice highlight the fallibility of the criminal justice system and the potential for irreversible harm.

Critics also emphasize the arbitrariness and inconsistency in the application of the death penalty. Factors such as socio-economic status, quality of legal representation, and judicial discretion can significantly influence sentencing outcomes. This undermines the principle of equality before the law and raises concerns about discrimination and bias.

From a human rights perspective, the death penalty is increasingly viewed as incompatible with the principles of dignity and the right to life. The global movement toward abolition reflects a growing consensus that punishment should focus on reform and rehabilitation rather than retribution. The Indian approach, while incorporating safeguards, continues to grapple with these issues, highlighting the need for further reform.

## **CONCLUSION**

### **Toward a More Humane Jurisprudence**

The death penalty in India stands as a relic of retributive justice struggling to coexist with a constitutional framework predicated on human dignity. While the judiciary has attempted to circumscribe its use through the "rarest of rare" doctrine, the persistence of arbitrariness and the lack of deterrent evidence suggest that procedural safeguards may be insufficient. In

alignment with global human rights trends, India must consider a gradual movement toward abolition. The pursuit of justice must eventually evolve from a focus on retribution to a system that prioritises fairness, rehabilitation, and the inviolable sanctity of human life.

The death penalty remains a legally valid but morally contested form of punishment in India. While judicial safeguards have reduced its arbitrary application, significant challenges persist. The tension between retributive justice and human rights continues to shape the debate. The analysis undertaken in this study reveals that the death penalty occupies a complex and contested position within the Indian legal system. While it remains constitutionally valid and is supported by judicial precedent, its application raises significant ethical, legal, and practical concerns. The “rarest of rare” doctrine represents an important attempt to limit its use, but inconsistencies in its application continue to undermine its effectiveness.

There is a growing need to re-evaluate the role of capital punishment in light of evolving human rights standards and empirical evidence. Strengthening procedural safeguards, ensuring access to quality legal representation, and promoting transparency in sentencing can help address some of the existing concerns. However, these measures may not fully resolve the fundamental issues associated with the death penalty.

In the long term, a gradual movement toward abolition may be necessary to align the Indian legal system with global trends and constitutional values. Such a transition would require careful consideration of societal concerns and the development of alternative mechanisms for addressing serious crimes. Ultimately, the pursuit of justice must be guided by principles of fairness, humanity, and respect for the inherent dignity of all individuals.

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