



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

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ISSN

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# **“DEATH PENALTY: A CRITICAL ANALYSIS”**

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## **ABSTRACT**

Along with the passing of time and the evolution of legal jurisprudence in history of the mankind, the death penalty, its usage, and purpose have always been a subject of ethical, philosophical, and legal debate worldwide. The death penalty is a form of punishment, also known as capital punishment. Many philosophers, political thinkers, and libertarians have talked about their views on whether capital punishment should be held eligible to serve as an effective deterrent. Proponents argue that it serves as a necessary evil, keeping all the heinous crimes in check and maintaining the scale of justice. On the other hand, opponents assert that it infringes upon fundamental rights, including the right to life and the prohibition of cruel, inhuman, or degrading treatment. Since the beginning of the 20th century, the application of the death penalty in India has been a highly heated matter in recent years, there has been a rising level of discussion in India over the efficacy and justice of the use of the death sentence. In the present time, the death sentence is applied for a variety of crimes, some of which include homicide, treason, and acts of terrorism. This paper deals with the overall concept of the death penalty while focusing mainly on the point of using an alternate type of punishment instead of the death penalty in the Indian legal system as it violates the culprit's right to life under Article 21<sup>1</sup>

## **KEYWORDS**

Death Penalty, Right to Life, Article 21, Capital Punishment, Judicial Interpretation and Global Perspective

## **INTRODUCTION**

The death penalty, or capital punishment, remains an encyclopedically contentious issue, raising questions about its alignment with the abecedarian right to life, elevated in article 21 of the Indian Constitution. This right is the foundation of civil and political liberties, emphasizing the essential worth of every individual anyhow of their circumstances. India's Supreme Court has played a

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<sup>1</sup> Article 21 of Indian constitution-Right to life

vital part in shaping the justice girding the death penalty. In the corner case of *Bachan Singh v. State of Punjab* (1980),<sup>2</sup> the Supreme Court ruled that the death penalty should be reserved for "the rarest of rare" cases where society's collaborative heart demands it. This judgment introduced a balancing test to help arbitrary or disproportionate operations. In a posterior case, *Machhi Singh v. State of Punjab* (1983)<sup>3</sup>, the court outlined specific aggravating and mitigating factors for sentencing, including the nature of the crime and the eventuality of reformation, emphasizing the significance of individual circumstances. still, enterprises persist, especially regarding unlawful persuasions and the violation of the right to life. In *Santosh Kumar Bariyar v. State of Maharashtra* (2009)<sup>4</sup>, the Supreme Court conceded the fallibility of the felonious justice system by assessing strict substantiation norms in death penalty cases, pressing the need for procedural safeguards to help unrecoverable loss of life. Encyclopedically, the trend has been towards the invalidation of the death penalty, reflecting enterprises about moral rights. numerous countries have limited or abolished capital discipline, fetching the ethical and moral dilemmas associated with taking a life as a punishment for a crime. This paper aims to give a comprehensive analysis of the death penalty in the environment of Article 21 of the Indian Constitution. It explores the legal frame, judicial interpretations, and global practices girding the death penalty. Through a critical examination of crucial legal precedents like *Bachan Singh*, *Machhi Singh*, and *Santosh Kumar Bariyar*, it assesses how the Supreme Court has shaped the understanding of the death penalty in relation to the right to life. The paper also delves into enterprises about unlawful persuasions, the significance of procedural safeguards, and the evolving global agreement against capital discipline. By slipping light on these aspects, it seeks to enhance understanding of the complications girding the death penalty and its counteraccusations for abecedarian rights. Eventually, it aims to contribute to an informed and rights-centric approach to the use of the death penalty, furnishing precious perceptivity for policymakers, legal interpreters, and society at large

### **RESEARCH PROBLEM**

To do an in-depth analysis about the applicability of the death penalty in the Indian judicial system and the validity of it getting awarded to criminals in the rarest of the rarest cases and whether or not it constitutes the factor that it doesn't violate the right to life of those particular criminals who got verdict to the death penalty

### **RESEARCH QUESTION**

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<sup>2</sup> *Bachan Singh v. State of Punjab* (1982) 3 SCC 24, 1983 1 SCR 145

<sup>3</sup> *Machhi Singh v. State of Punjab* 1983 AIR 957, 1983 SCR (3) 413

<sup>4</sup> *Santosh Kumar Bariyar v. State of Maharashtra* ca no. 1478 of 2005 with ca no. 452 of 2006

1. How has the Supreme Court interpreted Article 21 in relation to the death penalty, particularly with regard to mitigating factors, principles of proportionality, and the inherent quality of mercy?
2. Are there concerns raised regarding the death penalty's compatibility with the right to life, such as the risk of wrongful convictions, arbitrariness in sentencing, and potential biases?
3. Santosh Kumar Bariyar v. State of Maharashtra ca no. 1478 of 2005 with ca no. 452 of 2006 3. What is the global perspective on capital punishment, and how does India's approach compare to other countries that have abolished or limited the use of the death penalty?
4. What alternative approaches to capital punishment exist that respect the right to life while addressing the objectives of justice and security?

### **RESEARCH OBJECTIVES**

To analyze the interpretation of Article 21 by the Supreme Court of India in relation to the death penalty, particularly with regard to mitigating factors, principles of proportionality, and the inherent quality of mercy.

To investigate the concerns surrounding the compatibility of the death penalty with the right to life, including the risk of wrongful convictions, arbitrariness in sentencing, and potential biases.

To compare India's approach to capital punishment with other countries that have abolished or limited its use, considering the global perspective on this issue.

To investigate alternative approaches to capital punishment that respect the right to life while upholding the objectives of justice and security.

### **LITERATURE REVIEW**

#### **Kunal Ambasta, 2017:**

Kunal Ambasta's 2017 review critically examines the empirical foundations and legal implications of the Death Penalty India Report, a comprehensive study assessing the state of the death penalty in India. Ambasta questions the report's clarity and reliability, pointing out potential flaws in data collection and analysis processes. He emphasizes the need for a more coherent framework for data collection to avoid skewed conclusions. Ambasta argues that robust empirical analysis is crucial for informed discussions on capital punishment, as unclear methodologies can lead to misinterpretation or manipulation of findings. From a legal perspective, he raises concerns about how the report's empirical shortcomings could affect legal arguments and potential changes to the death penalty system. Ambasta also addresses the broader societal impact of the report, urging stakeholders to critically assess the information presented to promote informed public discourse. Building upon, further research could delve into the Death Penalty India Report's methodological shortcomings, examining their impact on legal arguments, policy changes, and

public perceptions. Comparative studies with other capital punishment studies could provide a broader perspective on methodological rigor. Investigating public understanding and ethical considerations in capital punishment research would enrich the discourse surrounding this sensitive issue.<sup>5</sup>

**Soumya Chopra, 2022:**

Soumya Chopra's 2022 analysis explores the ethical, practical, and legal implications of maintaining the death penalty during the COVID-19 pandemic. The pandemic raised concerns about inmates' rights, including their right to health and life, in overcrowded correctional facilities. Legal systems struggled to balance justice and public health, leading to delays in executions and debates over resumption. Chopra highlights the complexities of this situation, acknowledging the need to uphold justice while considering vulnerable conditions in prisons. The pandemic also compromised court proceedings and access to legal representation, jeopardizing the fairness of trials and overall integrity of capital punishment cases. These circumstances underscored the potential for irreversible errors in death penalty cases and reinforced arguments against its use. Public sentiment, influenced by the crisis, leaned towards reconsidering punitive measures, fostering discussions on restorative justice and alternatives to capital punishment. Chopra's analysis concludes by addressing the broader implications of the death penalty's reconsideration during the pandemic, emphasizing the need for adaptable legal systems and international cooperation. There are potential research gaps that could further explore this complex issue. One area for further investigation could be the impact of the pandemic on the mental health of inmates facing death sentences, considering the heightened isolation and uncertainty they experienced. Additionally, a comparative study across countries that maintained or suspended the death penalty during the pandemic could reveal varying approaches and their respective outcomes. Moreover, a deeper examination of public attitudes towards the death penalty in the post-pandemic era could shed light on potential shifts in sentiment and their implications for policy changes.<sup>6</sup>

**Autri Saha and Pritika Rai Advani, 2009:**

In 2009, Autri Saha and Pritika Rai Advani presented a comprehensive legal analysis challenging prevailing assumptions about capital punishment, focusing on the Santosh Bariyar case within the Indian legal system. The authors argue that this case raises significant questions about the

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<sup>5</sup> Kunal Ambasta, AN UNCLEAR EMPIRICISM: A REVIEW OF THE DEATH PENALTY INDIA REPORT, (August 21st, 2023, 10:00AM), [www.sconline.com](http://www.sconline.com)

<sup>6</sup> Soumya Chopra, REVISITING THE DEATH PENALTY IN COVID TIMES, (August 21st, 2023, 10:30AM), [www.sconline.com](http://www.sconline.com).

justness and reliability of capital punishment, exposing the potential for miscarriages of justice and highlighting the need for safeguards. They also examine evolving international human rights standards, emphasizing the Bariyar case's global significance. The authors address ethical considerations, particularly in situations of doubt or systemic biases affecting trial outcomes. Saha and Advani advocate for a reevaluation of the death penalty's role, emphasizing the importance of fairness, efficacy, and ethics. They propose exploring alternative forms of punishment that uphold human rights and address societal concerns. Autri Saha and Pritika Rai Advani's analysis provides a valuable critique of the death penalty in India, particularly in light of the Santosh Bariyar case. However, further research could explore the potential for reform within the existing death penalty system, focusing on practical measures to enhance its fairness, reliability, and consistency with human rights standards. This could include examining the effectiveness of proposed safeguards, such as stricter criteria for applying the death penalty and enhanced legal representation for defendants. Additionally, investigating the feasibility of implementing alternative forms of punishment that effectively address societal concerns while upholding human rights would provide valuable insights into potential pathways toward abolition.<sup>7</sup>

**Jyoti Rattan, 2013:**

In 2013, the death penalty remained a contentious issue globally and in India. Internationally, discussions revolved around the ethics and effectiveness of capital punishment, with growing support for its abolition. In India, a nuanced approach was taken, retaining the death penalty for the "rarest of the rare" cases. However, concerns about inconsistent sentencing, effectiveness as a deterrent, potential errors in the justice system, and the impact of lengthy legal processes on individuals emerged as key issues. The year 2013 marked a pivotal moment in the ongoing discourse on the death penalty within the international and Indian criminal justice systems. Global conversations centered on the abolition of the death penalty, while India grappled with maintaining a careful balance between punishment, deterrence, and the potential for miscarriages of justice. Ethical, moral, and practical considerations continued to be subjects of intense scrutiny and discussion. While the 2013 overview provides a comprehensive summary of the death penalty's contentious nature and the nuanced approach taken in India, further research could delve into the specific factors influencing the retention of the death penalty in India despite the growing global movement towards abolition. This could involve analyzing the role of public opinion,

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<sup>7</sup> Autri Saha and Pritika Rai Advani, THE DEATH PENALTY: A NEW PERSPECTIVE IN LIGHT OF SANTOSH BARIYAR CASE, (August 21st, 2023, 11:30AM), [www.scconline.com](http://www.scconline.com).

political considerations, and the interpretation of societal concerns within the Indian legal context. Additionally, investigating the potential impact of recent Supreme Court rulings on the death penalty, such as the 2018 Bachan Singh guidelines, could provide insights into evolving legal perspectives and potential shifts in the application of capital punishment.<sup>8</sup>

**Siddiqui Saima Jarrar Alam, 2013:**

Siddiqui Saima Jarrar Alam's 2013 analysis explored pragmatic measures to end the death penalty in India. The study discussed arguments against the death penalty, emphasizing the potential for wrongful convictions and moral concerns. It proposed a phased approach to abolish capital punishment, introducing alternative forms of punishment and legal reforms to prevent miscarriages of justice. Alam stressed the importance of raising awareness and shifting public opinion while aligning with international human rights standards. The analysis considered cultural and societal factors influencing public perception and called for a more humane justice system. Siddiqui Saima Jarrar Alam's analysis provides a valuable framework for ending the death penalty in India, outlining a phased approach and emphasizing the need for public awareness and legal reforms. However, further research could explore the specific challenges and potential obstacles to implementing this phased approach, considering the complexities of the Indian legal system and societal attitudes towards capital punishment. This could involve analyzing the feasibility of proposed alternative forms of punishment, identifying potential resistance from stakeholders, and developing strategies to address cultural and societal factors that influence public perception. Additionally, investigating the role of non-governmental organizations and advocacy groups in promoting abolition could provide valuable insights into effective strategies for social change.<sup>9</sup>

**Abhishek K. Singh, 2016:**

Abhishek K. Singh's 2016 article provides a comprehensive examination of death penalty sentencing in India. It traces the historical roots of the death penalty in India and highlights the lack of clarity and consistency in defining the "rarest of rare" criterion, leading to subjective interpretations and arbitrary sentencing. Singh discusses the impact of public opinion and political considerations on death penalty judgments and the socioeconomic dimensions of sentencing disparities. The article also scrutinizes the role of the Indian Supreme Court and advocates for a standardized approach to ensure fairness and transparency in capital punishment.

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<sup>8</sup> Jyoti Rattan, DEATH PENALTY UNDER CRIMINAL JUSTICE SYSTEM: INTERNATIONAL AND NATIONAL SCENARIO WITH SPECIAL REFERENCE TO INDIA, (August 21st, 2023, 12:30PM), [www.scconline.com](http://www.scconline.com).

<sup>9</sup> Siddiqui Saima Jarrar Alam, ANALYSIS OF PRAGMATIC MEASURES TO END DEATH PENALTY IN INDIA, (August 21st, 2023, 1:30PM), [www.scconline.com](http://www.scconline.com).

Singh concludes by calling for a comprehensive reevaluation of the death penalty in India and a well-informed national discourse to guide reforms and judicial decisions. Abhishek K. Singh's 2016 article provides a valuable overview of the death penalty sentencing process in India, highlighting the challenges of defining the "rarest of rare" criterion and ensuring fairness and transparency in capital punishment judgments. However, further research could focus on developing a more objective and standardized approach to defining and applying the "rarest of rare" criterion. This could involve analyzing the sentencing patterns of different courts in India and identifying common factors that contribute to inconsistencies in death penalty decisions. Additionally, investigating the potential for incorporating mitigating factors and proportionality principles into the sentencing guidelines for capital punishment could provide a more nuanced framework for applying the death penalty.<sup>10</sup>

### **RESEARCH HYPOTHESIS**

Death penalty even though awarded only in the rarest of the rare cases still violates the culprits right to life under article 21

### **RESEARCH METHODOLOGY**

The research methodology that had been used in this paper is doctrinal research methodology because of the following reasons from all the primary sources

1. **assaying Legal Principles** The doctrinal exploration methodology is well- suited for assaying and interpreting legal principles, similar as indigenous vittles, bills, and judicial precedents. In the case of the death penalty, it's essential to examine the applicable vittles of the Constitution of India, felonious laws, and Supreme Court judgments that have shaped the legal frame girding capital discipline.
2. **Interpreting Court opinions** Death penalty cases frequently involve complex legal arguments and bear thorough understanding of the principles laid down by the courts. Doctrinal exploration allows for a good analysis of judicial opinions, including the logic behind the court's interpretation of indigenous vittles, mollifying factors, principles of proportionality, and the essential quality of mercy.
3. **Legal Analysis and conflation** the doctrinal exploration methodology involves assaying and synthesizing legal accoutrements, including primary and secondary sources. It enables the experimenter to examine different perspectives, arguments, and legal logic on the death penalty, both within India and internationally. This approach ensures a comprehensive review of

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<sup>10</sup> Abhishek K. Singh, THE MEANDERING COURSE OF DEATH PENALTY SENTENCING IN INDIA: A CRITICAL ANALYSIS, (August 21st, 2023, 2:30PM), [www.sconline.com](http://www.sconline.com)

applicable legal literature to support the exploration thesis.

4. assessing Legal fabrics Doctrinal exploration allows for an evaluation of the being legal frame girding the death penalty, including its comity with abecedarian rights and transnational mortal rights norms. It enables the experimenter to critically assess the effectiveness, fairness, and proportionality of the death penalty's operation and indispensable approaches. 5. Contributing to Legal converse by exercising the doctrinal exploration methodology, the exploration paper can make a precious donation to the ongoing legal converse on the death penalty. It can offer perceptivity into the interpretations of indigenous vittles, legal principles, and the evolving justice girding capital discipline. This can help shape unborn legal developments and reforms.

## **DEATH PENALTY**

Capital punishment according to the Black dictionary is defined as the punishment of death.<sup>11</sup> Capital punishment, commonly known as the death penalty, is the execution of a person condemned to death after being found guilty of a criminal offence by a court of law. Extrajudicial executions carried out without due process of law should be separated from capital punishment. The terms death sentence and capital punishment are occasionally used interchangeably. The word "Capital Punishment" refers to the worst kind of punishment. It is the punishment to be meted out for the most egregious, severe, and despicable acts against humanity. While the meaning and scope of such offences differ from nation to country

## **HYSTORIC BACKGROUND**

The meaning of capital punishment has always remained the same from country to country, state to state, and generation to generation. The earliest recognized death penalty regulations were formalized in the Code of King Hammurabi of Babylon in the Eighteenth Century B.C., which imposed the death sentence for 25 separate offenses<sup>12</sup>. The death penalty was also part of the Hittite Code from the fourteenth century B.C., the Draconian Code of Athens from the seventh century B.C., which made death the only punishment for all offenses,

## **HISTORIC BACKGROUND IN INDIA**

the debate about the validity of the death penalty in Indian laws goes way back to 1931 the debates in British India's Legislative Assembly reveals that no issue of capital punishment was raised in

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<sup>11</sup> Henry Campbell Black, M.A, Black's law dictionary (4<sup>th</sup> edn, West publishing co, 1968)

<sup>12</sup> Death penalty information Centre([penaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty](http://penaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty))

the Assembly until 1931, when one of the Members from Bihar, Shri Gaya Prasad Singh, sought to introduce a Bill to abolish the death penalty for offences under the Indian Penal Code. However, the proposal was defeated after the then-Home Minister responded to it. Prior to independence, the Government's position on death punishment in British India was explicitly expressed twice in Legislative Assembly debates by then-Home Minister Sir John Thorne. "The Government does not think it wise to abolish capital punishment for any type of crime for which that punishment is now provided "After independence, India kept some British colonial-era legislation, including the CrPC<sup>13</sup> and the IPC<sup>14</sup>. The IPC specified six penalties, including death, that might be inflicted under its statute. Section 367(5) of the CrPC 1898 required courts to record reasons why the death penalty was not imposed for offenses where the death penalty was an option: If the accused is convicted of an offense punishable with death and the court sentences him to any punishment other than death, the court shall state in its judgment the reason why the sentence of death was not passed. The Parliament abolished Section 367(5) of the CrPC 1898 in 1955, dramatically affecting the law. The death sentence was no longer the norm, and judges did not require extraordinary justifications for not applying it in circumstances when it was a mandated punishment. In 1973, the Code of Criminal Procedure ('CrPC') was re-enacted, and significant amendments were made, most notably to Section 354(3): When a conviction is for an offence punishable by death or, in the alternative, life imprisonment or a number of years, the judgement must indicate the grounds for the punishment issued, as well as the exceptional reasons for the death penalty. This was a substantial change from the position following the 1955 amendment<sup>15</sup> (when periods of imprisonment and the death sentence were both options in a court of law). capital case), and a reversal of the position under the 1898 statute (where the death penalty was the standard and any alternative punishment had to be justified). Judges were now required to establish extraordinary reasons for imposing the death penalty. Section 235(2)<sup>16</sup>, states: If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360,<sup>17</sup> hear the accused on the question of sentence, and then pass sentence on him according to law, also introduced the possibility of a post-conviction hearing on sentence, including the death sentence

## **CONSTITUTIONAL PROVISIONS AND OTHER LAWS RELATED TO DEATH**

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<sup>13</sup> Code of Criminal Procedure 1898

<sup>14</sup> Indian Penal Code 1860

<sup>15</sup> The 4<sup>TH</sup> amendment act, 1955

<sup>16</sup> Sec 235(2) of IPC 1860

<sup>17</sup> Sec 360 of IPC 1860

**PENALTY**

The Indian Penal Code, the Code of Criminal Procedure, and the Indian Constitution all play a role in the country's intricate legal structure, which oversees the implementation of the death sentence. The legal framework has evolved throughout time, including numerous key opinions by the Supreme Court. India is defining the scope of the death sentence and how it is implemented. Concerns about the Death Penalty of it is A Necessary Evil or a Human Rights Violation, the legal framework's fairness and consistency, as well as the role of the court system in the application of the death penalty in the passing of a verdict

Here are the laws that include the death penalty as the method of punishment for the crimes committed as of 2015

**CAPITAL OFFENCES IN IPC**

Sl. No.	Section Number	Description
1.	Section 121	Treason, for waging war against the Government of India
2.	Section 132	Abetment of mutiny actually committed
3.	Section 194	Perjury resulting in the conviction and death of an innocent person
4.	Section 195A	Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person
5.	Section 302	Murder
6.	Section 305	Abetment of a suicide by a minor, insane person or intoxicated person
7.	Section 307 (2)	Attempted murder by a serving life convict
8.	Section 364A	Kidnapping for ransom
9.	Section 376A	Rape and injury which causes death or leaves the woman in a persistent vegetative state
10.	Section 376E	Certain repeat offenders in the context of rape
11.	Section 396	Dacoity with murder

**CAPITAL OFFENCES IN OTHER LAWS**

Sl. No.	Section Number	Description
1.	Sections 34, 37, and 38(1)	The Air Force Act, 1950
2.	Section 3(1)(i)	The Andhra Pradesh Control of Organized Crime Act, 2001
3.	Section 27(3)	The Arms Act, 1959 (repealed)
4.	Sections 34, 37, and 38(1)	The Army Act, 1950

5.	Sections 21, 24, 25(1)(a), and 55	The Assam Rifles Act, 2006
6.	Section 65A(2)	The Bombay Prohibition (Gujarat Amendment) Act, 2009
7.	Sections 14, 17, 18(1)(a), and 46	The Border Security Force Act, 1968
8.	Sections 17 and 49	The Coast Guard Act, 1978
9.	Section 4(1)	The Commission of Sati (Prevention) Act, 1987
10.	Section 5	The Defence of India Act, 1971
11.	Section 3	The Geneva Conventions Act, 1960
12.	Section 3 (b)	The Explosive Substances Act, 1908
13.	Sections 16, 19, 20(1)(a), and 49	The Indo-Tibetan Border Police Force Act, 1992
14.	Section 3(1)(i)	The Karnataka Control of Organized Crime Act, 2000
15.	Section 3(1)(i)	The Maharashtra Control of Organized Crime Act, 1999
16.	Section 31A(1)	The Narcotics Drugs and Psychotropic Substances Act, 1985
17.	Sections 34, 35, 36, 37, 38, 39, 43, 44, 49(2)(a), 56(2), and 59	The Navy Act, 1957
18.	Section 15(4)	The Petroleum and Minerals Pipelines (Acquisition of rights of user in land) Act, 1962
19.	Sections 16, 19, 20(1)(a), and 49	The Sashastra Seema Bal Act, 2007
20.	Section 3(2)(i)	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
21.	Section 3(1)(i)	The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002;
22.	Sections 10(b)(i) and Section 16(1)(a)	The Unlawful Activities Prevention Act, 1967 <sup>18</sup>

## JUDICIAL HISTORY OF DEATH PENALTY

<sup>18</sup> The Indian law commission, report number 262 on death penalty, aug 2015

In India, the death sentence, often known as capital punishment, has seen substantial legal innovation. The Indian legal system has witnessed key instances that have affected the use of the death sentence and established rules for its implementation. This article will look at the judicial history of the death sentence in India, covering significant cases and their influence on its use, as well as altering cultural attitudes towards this difficult topic.

**Bachan Singh v. Punjab State (1980):**

Bachan Singh v. State of Punjab is a historic Supreme Court of India decision that established the idea of "rarest of rare" circumstances for applying the death penalty. The Court ruled that the death sentence should be reinstated. The Court ruled that the death sentence should be used only in extreme instances where the alternative punishment would be plainly insufficient and where society's collective conscience is seriously outraged. This decision gave lower courts advice in considering the propriety of the death punishment and emphasized the requirement for an individualized investigation into each case.

**Machhi Singh v. Punjab State (1983):**

The Supreme Court clarified the principles established in Bachan Singh v. State of Punjab in Machhi Singh v. State of Punjab. The Court established a list of aggravating and mitigating elements to be considered in awarding a death sentence. This decision attempted to increase consistency and uniformity in the implementation of the death penalty and emphasized the importance of the significance of balancing aggravating and mitigating circumstances.

**Rajendra Prasad v. Uttar Pradesh (1979):**

Rajendra Prasad v. State of Uttar Pradesh is another major case in the growth of the death sentence in India. The Supreme Court ruled that the judge's sole discretion in establishing the punishment was insufficient and that the jury system should be used in instances where the death penalty maybe imposed. However, the jury system was later abolished in India, and the decision to inflict the death penalty now lies with the judge after examining all sides' arguments and evidence.<sup>19</sup>

**Shatrughan Chauhan v. Union of India:**

Shatrughan Chauhan v. Union of India is a noteworthy case that addressed the significance of balancing aggravating and mitigating circumstances. India's execution system is both lawful and fair. In the process of executing death row convicts, the Supreme Court adopted criteria to promote openness and conformity to constitutional rights. The Court emphasized that inmates should have access to legal counsel, the ability to question the legality of their sentence, and the right to make one final request before being executed. This case highlighted the need to preserve

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<sup>19</sup> Rajendra Prasad v. Uttar Pradesh C No. 62460 of 2006

the dignity and humanity of death row inmates during the execution procedure.<sup>20</sup>

Significant landmark cases have affected the judicial history of the death sentence in India. From Bachan Singh's presentation of the idea of "rarest of rare" situations to rules for identifying aggravating and mitigating factors, these cases have had an influence on the application and process of the death sentence due to the circumstances in Machhi Singh and issues of justice and transparency in Shatrughan Chauhan. As public views and legal perspectives develop, the Indian legal system must maintain a fair and balanced approach while assessing the implementation of the death sentence.

### **INTERNATIONAL CONVENTIONS, HUMAN RIGHTS AND DEATH PENALTY**

The International Covenant on Civil and Political Rights<sup>21</sup> is a major treaty in international human rights law that discusses the application of the death sentence. The ICCPR does not outright prohibit the use of the death sentence, but Article 6 does. protects the right to life and offers critical protections to be implemented Signatories who support the death penalty are next

The Second Optional Protocol to the ICCPR, aiming to abolish the death penalty is the only treaty specifically concerned with its abolition. is accessible to signatures from every country on the planet. It went into effect in 1991. includes 81 signatures and 3 state parties, India, expressly bans the use of the death sentence on people under the age of 18. age of 18. The CRC13 had been ratified by 195 nations as of July 2015.

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ('the Torture Convention') and the UN Committee Against Torture have both been established. been sources of jurisprudence for death penalty restrictions as well as precautions are required. The imposition of torture is not considered under the Torture Convention. The death penalty is a kind of torture or cruel, barbaric, or humiliating treatment or punishment disciplinary action ('CIDT'). However, various execution strategies and the phenomena of The UN consider death row to be a type of CIDT. Article 37(a) of the Convention on the Rights of the Child is similar to the ICCPR. ('CRC') expressly bans the use of the death sentence on people under the age of 18. The CRC13 had been ratified by 195 nations as of July 2015.

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ('the Torture Convention') and the UN Committee Against Torture have both been established. been sources of jurisprudence for death penalty restrictions as well as precautions are required. The imposition of torture is not considered under the Torture Convention. The death

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<sup>20</sup> Shatrughan Chauhan v. Union of India 3 SCC 1 of 2014

<sup>21</sup> The International Covenant on Civil and Political Rights 1976 (ICCPR)

penalty is a kind of torture or cruel, barbaric, or humiliating treatment or punishment disciplinary action ('CIDT'). However, various execution strategies and the phenomena of The UN consider death row to be a type of CIDT. bodies the death sentence was a permissible option in the formation of international criminal law. The Nuremberg and Tokyo tribunals, both of which were formed, imposed penalties. Following World War II. However, international criminal tribunals have since ruled that the death penalty is a legal punishment

The ICCPR and the CRC are the only two treaties that India has ratified. The country has signed the Torture Convention but has not ratified it. Treaties are governed by international law. Once a state has ratified a treaty, its obligations become legally obligatory. Even where a pact has been signed If a treaty is signed but not ratified, the state is obligated to "refrain from acts that would defeat the treaty." treaty's goal and purpose"

### **DEATH PENALTY VS RIGHT TO LIFE**

The death penalty is an extreme act in nature, the reason an offender is given punishment is to do justice to the victim and to let others know that if they ever do the same offense they are going to be facing the same kind of punishment and the second biggest reason is the person who ever had committed the offense will learn from his mistake and will not repeat the same mistake and will choose the way of retribution but death penalty does not leave any kind of scope for the retribution of the said criminal

Another very big problem that is associated with the death penalty is the very thin line between punishment and brutality, and sometimes death penalty can be used in oppressive ways by punishing the innocent, and if done so there will be no scope for getting the lost person back. Even though the Supreme Court had held that the death penalty will only be awarded in the rarest of the rare cases, the court not defining the criteria for a case to come under the ambit of the arrest of the rare will definitely be rising inconsistencies in the upcoming future. Also awarding the death penalty to some not to others for the same crime will be considered outrageous and will make the public eventually lose faith in the judiciary.

Even though some people suggest that when the crime is very heinous in nature and there is no other punishment other than the death penalty that can be sufficed with the cruelty there are no recording proofs and supporting statistics that can be used to support this argument

### **USAGE OF ALTERNATE PUNISHMENT**

As a result of challenges raised in death cases in recent years, the Supreme Court has cemented the punishment of "full life" or a life sentence of a certain number of years. The Supreme Court,

in a three-judge bench ruling in the Swamy Shraddhanand case<sup>22</sup>, provided the groundwork for this developing criminal alternative of giving the punishment of imprisonment for life instead of the death penalty. The observations in the Swamy Shraddhanand case were followed by the Court in a number of cases, including Haru Ghosh v. State of West Bengal<sup>23</sup>, State of Uttar Pradesh v. Sanjay Kumar<sup>24</sup>, Sebastian v. State of Kerala<sup>25</sup>, and Gurvail Singh v. State of Punjab<sup>26</sup>, where full life or a sentence of a certain number of years was awarded instead of the death penalty

### **POWERS OF CLEMENCY**

If the Supreme Court rejects an appeal against the capital penalty, a convicted prisoner may petition the President of India and the Governor of the State for compassion. The President and Governors have the authority under Articles 72<sup>27</sup> and 161<sup>28</sup> to "grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of any offense." These are not personal powers of the holders of the Office but are to be exercised (under Articles 74 and 163, respectively) with the assistance and advice of the Council of Ministers. While clemency powers can be used for a variety of reasons and at a variety of times, they also serve as the last protection against the danger of judicial mistake or miscarriage of justice. This places a heavy burden on those who wield this power and necessitates a full application of mind, scrutiny of judicial records, and wide-ranging inquiries in adjudicating a clemency petition, particularly one from a prisoner facing execution under a judicially confirmed death sentence. 9 The Government of India's Ministry of Home Affairs has established the "Procedure Regarding Petitions for Mercy in Death Sentence Cases" to help state governments and prison officials in dealing with mercy applications made by death sentence prisoners.

### **JUDICIAL REVIEW OF MERCY POWERS EXERCISE**

In the Shatrughan Chauhan case, the Supreme Court said that the Home Ministry considers the following considerations when evaluating mercy petitions:

- a) The accused's personality (such as age, gender, or mental weakness) or the facts of the case

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<sup>22</sup> Swamy Shraddhananda@murali vs state of Karnataka ca no.454 of 2006

<sup>23</sup> Haru Ghosh v. state of west Bengal ca no. 1173\_of 2008

<sup>24</sup> State of Uttar Pradesh v. Sanjay Kumar slp (crl.) no.6467/2012(crl.m.p.no. 17082/2012)

<sup>25</sup> Sebastian v. state of Kerala crl.mc.no. 6675 of 2015

<sup>26</sup> Gurvail Singh v. state of Punjab (2013) 2 scc 713 , (2013) 2 scc (cri) 864

<sup>27</sup> Article 72 of the Indian constitution

<sup>28</sup> Article 161 of the Indian constitution

(such as provocation or equivalent reasoning);

b) Cases in which the appellate Court expressed skepticism about the credibility of the evidence but upheld the conviction;

c) Cases in which it is claimed that new information is available, primarily to determine whether a new investigation is warranted;

d) Where the High Court revoked an acquittal or increased the sentence on appeal;

e) Is there any disagreement among the High Court Judges that requires a hearing of a higher Bench;

f) Evidence consideration in determining blame in a gang murder case;

h) Prolonged inquiry and trial delays, etc. When the actual performance of the Ministry of Home Affairs (on whose recommendations mercy petitions are considered) is examined, however,

It has been observed that these recommendations are not always followed. Writ Courts have questioned the way in which the Executive has treated mercy pleas in a number of situations. In reality, as part of the Shatrughan Chauhan case, the Supreme Court considered 11 writ petitions last year contesting the Executive Supreme Court's denial of the mercy appeal. According to the Law Commission of India, Report No.262 on the Death Penalty, August 2015

## CONCLUSION

To summarize, the death penalty remains a problematic subject due to its harsh character and attendant ethical quandaries. Advocates say that it contributes to justice by offering closure to victims and serving as a deterrence to horrible acts. The notion is that the harshness of the penalty sends a strong message to potential offenders, discouraging them from committing similar crimes in the future. This theory, however, lacks empirical backing, with no clear data establishing a consistent deterrent impact.

Furthermore, the death sentence raises questions regarding the possibility of injustice. When contemplating the permanent nature of death as a penalty, the fine line between punishment and cruelty becomes increasingly clear. Wrongful convictions, a dismal reality of judicial systems across the world, highlight the dangers of killing innocent people. The absence of precise criteria for establishing "the rarest of the rare cases" adds to these problems, allowing for variations in its implementation.

The legitimacy of the legal system is jeopardized, since the arbitrary use of the death penalty may undermine public faith. Without well stated criteria, there is a possibility of subjective interpretations, resulting in discrepancies in sentence for those who commit identical offences.

Such contradictions might be interpreted as a violation of the legal principles of fairness and equal justice, weakening public trust in the judicial system.

While some believe that certain acts are so horrific that no punishment other than death is adequate, the lack of specific evidence supporting this argument necessitates a reconsideration of the ethical, legal, and societal implications. sociocultural ramifications of the death sentence. As nations cope with these issues, a balanced discourse must address the underlying values that support the judicial system and assess the possible implications on people, society, and the legal system's integrity.

