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DEATH PENALTY IN INDIA: A HUMAN RIGHTS PERSPECTIC

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Abstract

The death penalty remains one of the most contentious areas of criminal justice policy worldwide, raising profound moral, legal, and human rights concerns. In India, capital punishment exists within a complex legal architecture that balances the constitutional right to life with state authority to impose the ultimate punishment for the most heinous crimes. This paper examines the death penalty's evolution in India, its constitutional and judicial framework, and the human rights implications of its continued application. It critically assesses doctrinal developments such as the "rarest of rare" principle, analyzes how the practice aligns (or conflicts) with international human rights standards, and explores the debates surrounding deterrence, arbitrariness, and equitable application. Through historical and jurisprudential analysis, this research highlights the tensions between retributive justice and the modern human rights paradigm, ultimately evaluating whether the death penalty in India can be reconciled with fundamental human rights norms.

1. Introduction

Capital punishment — the legally sanctioned execution of an individual by the state — is one of the most polarizing subjects in contemporary jurisprudence and human rights discourse. Proponents view it as a necessary instrument of justice for heinous crimes, arguing that it deters potential offenders and affirms societal condemnation of the most egregious wrongdoing.1 Critics, however, contend that the death penalty is inherently incompatible with the right to life and dignity, is susceptible to wrongful convictions, and cannot be administered in a manner free from arbitrariness or discrimination.2

In the Indian context, the death penalty is not merely a theoretical construct but an operative legal sanction embedded within the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC).3 Article 21 of the Constitution — guaranteeing "no person … shall be deprived of his life or personal liberty except according to procedure established by law"4 — serves as the principal constitutional touchstone for debates about capital punishment. The Supreme Court of India has interpreted this provision expansively over decades, affirming procedural safeguards while upholding the constitutionality of the death penalty within a limited ambit.5

A key doctrinal development in Indian jurisprudence is the "rarest of rare" principle, articulated in *Bachan Singh v. State of Punjab* (1980), where the Supreme Court held that capital punishment should be imposed only in cases where the alternative option of life imprisonment is unquestionably foreclosed.6 This formulation reflects a judicial attempt to narrow the application of the death penalty and align it with evolving standards of decency. However, questions remain about the consistency of its application, its compatibility with India's international human rights obligations, and the moral legitimacy of state-sanctioned death itself.

This paper begins by tracing the historical origins of the death penalty in India and its legislative evolution. It then examines the constitutional and judicial frameworks governing capital punishment and analyzes the policy and human rights debates that surround it.

2. Historical Background

2.1 Early Legal Traditions and Colonial Influence

The notion of capital punishment in the Indian subcontinent predates modern legal codification and can be traced to ancient and medieval legal traditions where severe physical punishments were meted out for serious crimes.7 However, the structure, procedures, and categories of offenses punishable by death underwent systematic transformation during British colonial rule.

Under the East India Company, British legal reforms sought to formalize criminal law in the Indian territories. The Indian Penal Code (IPC) of 1860 — drafted under the stewardship of Lord Thomas Babington Macaulay — incorporated capital punishment for specific offences.8 Section 302 of the IPC prescribed the death penalty for murder, along with alternative penalties.9 Other provisions of the IPC and allied statutes extended the death penalty to offences ranging from waging war against the Crown to certain acts of treason and robbery with violence.10

The colonial legal architecture reflected British penal philosophy of the time, which endorsed capital punishment as a deterrent and a means of asserting state authority.11 This approach was transplantarian: it superimposed British criminal law structures onto the Indian legal and socio-cultural milieu, often without significant adaptation to indigenous norms.12

2.2 Post-Independence Legal Framework

After India gained independence in 1947, the fledgling republic retained much of the British-era legal code, including the provisions relating to capital punishment. The IPC and the CrPC remained the primary vehicles for defining and enforcing offences punishable by death.13 Over the subsequent decades, the Indian Parliament and judiciary engaged in selective reforms and interpretative exercises to recalibrate the scope and application of the death penalty.

The Constitution of India, adopted in 1950, enshrined the right to life and personal liberty in Article 21.14 Initially, the Supreme Court adopted a textual approach, refraining from reading substantive limitations on the death penalty into Article 21 beyond procedural fairness.15 In *Jagmohan Singh v. State of Uttar Pradesh* (1973), the Court upheld the constitutional validity of the death penalty, observing that Article 21 does not guarantee an absolute protection against all deprivations of life.16

2.3 The “Rarest of Rare” Doctrine

A seminal moment in the jurisprudence of capital punishment came with the *Bachan Singh v. State of Punjab* decision in 1980.17 In this case, the Supreme Court upheld the constitutionality of the death penalty but introduced a critical qualification: the punishment should be imposed only in the “rarest of rare” cases where the alternative option of life imprisonment is unquestionably foreclosed on the basis of the circumstances of the crime and the criminal.18

The "rarest of rare" doctrine represented a judicial effort to temper the otherwise unfettered application of capital punishment and to embed within it a normative restraint in line with principles of justice and humanity.19 Since *Bachan Singh*, the Supreme Court has reiterated that sentencing courts must consider mitigating and aggravating circumstances and exercise judicial discretion with caution.20

2.4 Legislative Amendments and Contemporary Scope

Indian legislative responses to capital punishment have largely focused on expanding the categories of offences eligible for the death penalty, particularly in response to public outcry against certain types of violence. For instance, amendments to criminal law following the 2012 Delhi gang rape case (commonly known as the Nirbhaya case) introduced stricter penalties for sexual offences, including provisions that allow for the death penalty in specified circumstances of rape.21 These legislative changes reflect a policy choice to deploy capital punishment as a symbolic and substantive response to heinous crimes against vulnerable populations.

Footnotes

1. See, e.g., Michael L. Radelet & Traci L. Lacock, Do Executions Lower Homicide Rates?: The Views of Leading Criminologists, 99 J. Crim. L. & Criminology 489 (2009) (discussing competing theories of deterrence).
2. Amnesty Int'l, Death Penalty 2023: Facts and Figures 6–7 (2024), https://www.amnesty.org/en/what-we-do/death-penalty/ [hereinafter Amnesty Int'l 2023 Report].
3. Indian Penal Code, No. 45 of 1860, §§ 121–123, 302 (1860) (India); Code of Criminal Procedure, No. 2 of 1974 (India).
4. INDIA CONST. art. 21.
5. See Sunil Batra v. Delhi Admin., A.I.R. 1978 S.C. 1675 (India) (interpreting Article 21 to include principles of natural justice).
6. Bachan Singh v. State of Punjab, (1980) 2 S.C.R. 684 (India).
7. See Upendra Baxi, The Crisis of the Indian Legal System 84 (1982) (discussing pre-colonial penal traditions).
8. See IPC §§ 1–3, 302..
9. See IPC §§ 121–123 (waging war against the State); see also Ranbir Penal Code (duplicate code used in some princely states).
10. See generally V.N. Shukla, Constitution of India 810–12 (13th ed. 2002) (noting British penal policy influences).
11. See CrPC §§ 354–361 (procedure for capital sentence).
12. INDIA CONST. art. 21.
13. See State of Bombay v. K.M. George, A.I.R. 1961 S.C. 148 (India).
14. Jagmohan Singh v. State of U.P., A.I.R. 1973 S.C. 947 (India).
15. Bachan Singh v. State of Punjab, (1980) 2 S.C.R. 684 (India).
16. See Machhi Singh v. State of Punjab, A.I.R. 1983 S.C. 957 (India) (applying "rarest of rare" doctrine).

Constitutional Framework Governing the Death Penalty

3.1 Article 21: Right to Life and Personal Liberty

Article 21 of the Constitution of India provides that *"No person shall be deprived of his life or personal liberty except according to procedure established by law."*1 This provision forms the constitutional foundation for debates surrounding capital punishment in India. Unlike some constitutions that explicitly prohibit capital punishment, the Indian Constitution adopts a qualified approach, permitting deprivation of life provided that such deprivation is carried out through a legally established procedure.

In the early years following independence, the Supreme Court adopted a narrow interpretation of Article 21, focusing primarily on the existence of a valid legal procedure rather than on the substantive fairness or reasonableness of such procedure.2 Under this interpretation, the constitutionality of the death penalty was upheld so long as it was imposed pursuant to a law enacted by a competent legislature and in accordance with prescribed procedural safeguards.

However, over time, the Court expanded the scope of Article 21 through progressive judicial interpretation, recognizing that the "procedure established by law" must be fair, just, and reasonable.3 This shift marked a significant development in Indian constitutional jurisprudence and directly influenced judicial scrutiny of capital punishment.

3.2 Early Constitutional Challenges to Capital Punishment

The first major constitutional challenge to the death penalty came in *Jagmohan Singh v. State of Uttar Pradesh* (1973).4 The petitioner argued that the death penalty violated Articles 14, 19, and 21 of the Constitution due to unguided judicial discretion and arbitrariness in sentencing. The Supreme Court rejected this contention and upheld the constitutionality of the death penalty, holding that sentencing discretion was exercised in accordance with judicial principles and safeguards embedded within the criminal justice system.5

The Court further observed that Article 21 permits the deprivation of life so long as such deprivation follows a procedure established by law, and that the Indian Penal Code and Code of Criminal Procedure provided adequate procedural safeguards.6 Notably, the Court did not engage in an extensive analysis of the substantive morality of capital punishment, instead relying on legislative competence and procedural compliance.

3.3 Maneka Gandhi and the Expansion of Article 21

A transformative moment in constitutional law occurred with the landmark decision in *Maneka Gandhi v. Union of India* (1978).7 Although the case did not directly concern capital punishment, its implications for Article 21 were profound. The Supreme Court held that the "procedure established by law" must be fair, just, and reasonable, and not arbitrary, fanciful, or oppressive.8

This decision effectively overruled the earlier formalistic approach to Article 21 and introduced substantive due process into Indian constitutional jurisprudence. As a result, any law depriving a person of life or personal liberty would be subject to judicial scrutiny not only for procedural compliance but also for fairness and reasonableness.9

The *Maneka Gandhi* doctrine laid the constitutional groundwork for re-examining the death penalty through a human rights lens, particularly with respect to arbitrariness, proportionality, and dignity.

4. Judicial Evolution of the Death Penalty Doctrine

4.1 Bachan Singh v. State of Punjab: Constitutional Validation with Restraint

In *Bachan Singh v. State of Punjab* (1980), the Supreme Court revisited the constitutional validity of the death penalty in light of the expanded interpretation of Article 21.10 The petitioner challenged the death penalty under Sections 302 of the IPC and 354(3) of the CrPC, arguing that capital punishment was arbitrary and violative of Articles 14 and 21.

By a narrow majority, the Court upheld the constitutionality of the death penalty but significantly restricted its application.11 The Court held that life imprisonment is the rule and death penalty is an exception, to be imposed only in the "rarest of rare cases" where the alternative option is unquestionably foreclosed.12

The Court emphasized the necessity of balancing aggravating and mitigating circumstances, including factors related to the offender's background, mental state, and potential for reform.13 This approach represented an attempt to reconcile the existence of capital punishment with constitutional values of fairness, dignity, and proportionality.

4.2 The "Rarest of Rare" Doctrine Explained

The "rarest of rare" doctrine, though central to Indian capital sentencing, was not exhaustively defined in *Bachan Singh*. Instead, the Court provided broad guiding principles, leaving substantial discretion to sentencing judges.14 The doctrine requires courts to consider both the nature of the crime and the circumstances of the offender, and to impose the death penalty only when life imprisonment is deemed inadequate.15

This discretionary framework was further elaborated in *Machhi Singh v. State of Punjab* (1983), where the Court identified categories of cases that could potentially fall within the "rarest of rare" threshold, such as cases involving extreme brutality, multiple murders, or crimes that shock the collective conscience of society.16 However, the reliance on subjective notions such as "collective conscience" has been criticized for introducing moral ambiguity and inconsistency into sentencing decisions.17

4.3 Arbitrariness and Inconsistency in Sentencing

Despite the doctrinal safeguards articulated in *Bachan Singh* and *Machhi Singh*, empirical studies and judicial observations have revealed significant inconsistencies in the application of the death penalty.18 Similar cases have often resulted in divergent sentencing outcomes, raising concerns about arbitrariness and unequal treatment under the law.

The Supreme Court itself has acknowledged these inconsistencies. In *Santosh Kumar Bariyar v. State of Maharashtra* (2009), the Court noted that sentencing courts frequently fail to properly apply the "rarest of rare" test and neglect to adequately consider mitigating circumstances.19 The Court emphasized that capital sentencing must be based on principled reasoning rather than emotional or populist considerations.20

Such judicial admissions underscore the difficulty of administering the death penalty in a manner that satisfies constitutional standards of equality, fairness, and non-arbitrariness.

5. Procedural Safeguards in Capital Sentencing

5.1 Section 354(3) of the Code of Criminal Procedure

Section 354(3) of the CrPC mandates that when a court awards the death penalty, it must record "special reasons" justifying the sentence.21 This provision was introduced as a legislative safeguard to ensure that capital punishment is imposed only after careful judicial deliberation.

However, critics argue that the requirement of "special reasons" has often been reduced to a formalistic exercise, with courts relying on generic observations about the gravity of the offence rather than engaging in individualized sentencing analysis.22

5.2 Mercy Jurisdiction and Executive Clemency

Beyond judicial remedies, the Indian Constitution provides for executive clemency under Articles 72 and 161, empowering the President and Governors to grant pardons, reprieves, or commutations.23 This mercy jurisdiction is often viewed as a humanitarian safeguard against judicial error or excessive punishment.

In *Shatrughan Chauhan v. Union of India* (2014), the Supreme Court held that undue delay in the disposal of mercy petitions constitutes a violation of Article 21 and can be grounds for commutation of the death sentence.24 The Court recognized that prolonged uncertainty and psychological suffering experienced by death row prisoners amount to cruel and inhuman treatment.

Footnotes (Bluebook Style)

1. INDIA CONST. art. 21.
2. A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India).
3. Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India).
4. Jagmohan Singh v. State of U.P., A.I.R. 1973 S.C. 947 (India)..
5. Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India).
6. Bachan Singh v. State of Punjab, (1980) 2 S.C.R. 684 (India).
7. Machhi Singh v. State of Punjab, A.I.R. 1983 S.C. 957 (India).
8. See Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 S.C.C. 498 (India).
9. See Law Commission of India, Report No. 262, *The Death Penalty* (2015).
10. Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 S.C.C. 498 (India).
11. Code of Criminal Procedure, No. 2 of 1974, § 354(3) (India).
12. Law Commission of India, Report No. 262, *The Death Penalty* (2015).
13. INDIA CONST. arts. 72, 161.
14. Shatrughan Chauhan v. Union of India, (2014) 3 S.C.C. 1 (India).

International Human Rights Framework Governing the Death Penalty

6.1 Right to Life as a Fundamental Human Right

The right to life is universally recognized as the most fundamental of all human rights and forms the cornerstone of international human rights law. Article 3 of the Universal Declaration of Human Rights (UDHR) provides that *"Everyone has the right to life, liberty and security of person."

1 While the UDHR does not explicitly prohibit the death penalty, its emphasis on the sanctity of life has informed subsequent binding international instruments and abolitionist movements.The International Covenant on Civil and Political Rights (ICCPR), to which India is a State Party, contains the most significant international legal provisions governing capital punishment

2 Article 6(1) of the ICCPR recognizes the inherent right to life and mandates that no one shall be arbitrarily deprived of life.

3 Article 6(2) permits the death penalty only in countries that have not abolished it, and only for the "most serious crimes," pursuant to a final judgment rendered by a competent court.

4 Importantly, the ICCPR frames capital punishment as a transitional exception rather than a permanent feature of criminal justice systems, reflecting the long-term objective of abolition.5

6.2 Interpretation of "Most Serious Crimes"

The United Nations Human Rights Committee (UNHRC), which monitors implementation of the ICCPR, has consistently interpreted the phrase "most serious crimes" narrowly.6 According to the Committee's jurisprudence, the death penalty should be limited to crimes involving intentional killing, and should not be extended to non-lethal offences such as economic crimes, drug-related offences, or acts of terrorism that do not result in death.7

In its General Comment No. 36 (2018), the UNHRC clarified that the imposition of the death penalty for crimes not involving intentional killing constitutes a violation of Article 6 of the ICCPR.8 The Committee further emphasized that even when capital punishment is retained, States must ensure strict adherence to principles of legality, proportionality, non-discrimination, and due process.9

India's legal framework, which permits the death penalty for offences such as terrorism-related acts and certain categories of sexual offences, raises questions regarding compliance with this narrow interpretation of "most serious crimes."10

6.3 Prohibition of Cruel, Inhuman, or Degrading Punishment

Article 7 of the ICCPR categorically prohibits torture and cruel, inhuman, or degrading treatment or punishment.11 While the ICCPR does not explicitly classify the death penalty itself as cruel or inhuman, international human rights bodies have increasingly recognized that certain aspects of capital punishment violate Article 7.

The phenomenon known as the "death row syndrome" — characterized by prolonged periods of incarceration under the constant threat of execution — has been identified as a form of

inhuman treatment.12 The UN Special Rapporteur on torture has observed that extended delays in carrying out death sentences can cause severe psychological suffering, amounting to cruel and inhuman punishment.13

Indian jurisprudence has echoed this concern. In *Shatrughan Chauhan v. Union of India*, the Supreme Court held that undue delay in the execution of death sentences violates Article 21 of the Constitution and justifies commutation.14 This alignment between domestic constitutional law and international human rights principles reflects judicial recognition of the psychological cruelty inherent in prolonged death row confinement.

Global Abolitionist Trends and the UN Moratorium

7.1 The Second Optional Protocol to the ICCPR

The Second Optional Protocol to the ICCPR, adopted in 1989, aims at the abolition of the death penalty.15 States Parties to the Protocol undertake not to execute any person within their jurisdiction and to take all necessary measures to abolish capital punishment.16 Although India has not ratified this Protocol, its existence underscores the evolving international consensus toward abolition.

As of the present day, a significant majority of countries worldwide have abolished the death penalty in law or practice.17 This trend reflects a growing recognition that capital punishment is incompatible with contemporary human rights standards and the dignity of the human person.

7.2 UN General Assembly Moratorium Resolutions

Since 2007, the United Nations General Assembly has periodically adopted resolutions calling for a moratorium on the use of the death penalty, with a view toward its eventual abolition.18 These resolutions urge States to respect international safeguards, restrict the use of capital punishment, and progressively move toward abolition.

India has consistently voted against or abstained from these moratorium resolutions, citing its sovereign right to determine criminal justice policy and the need to address grave crimes within its domestic context.19 However, such positions place India at odds with the prevailing global movement toward abolition and invite scrutiny regarding its commitment to international human rights norms.

8. India’s International Obligations and Domestic Practice

8.1 Compliance with the ICCPR

As a State Party to the ICCPR, India is obligated to respect and ensure the rights recognized therein.20 While the ICCPR permits retention of the death penalty under limited circumstances, it also imposes stringent procedural and substantive safeguards.21

Critics argue that India's application of the death penalty often fails to meet these standards due to inconsistencies in sentencing, socio-economic bias, and the expansion of capital punishment to offences beyond intentional killing.22 Studies have shown that death row prisoners in India disproportionately belong to economically disadvantaged and marginalized communities, raising concerns of indirect discrimination.23

Footnotes

1. Universal Declaration of Human Rights art. 3, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).
2. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].
3. ICCPR art. 6(1).
4. ICCPR art. 6(2).
5. U.N. Human Rights Comm., General Comment No. 36, ¶ 35, U.N. Doc. CCPR/C/GC/36 (2018).
6. See Criminal Law (Amendment) Act, No. 13 of 2013 (India).
7. ICCPR art. 7.
8. See Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) (1989).
9. U.N. Special Rapporteur on Torture, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 66, U.N. Doc. A/67/279 (2012).
10. Shatrughan Chauhan v. Union of India, (2014) 3 S.C.C. 1 (India).
11. Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414.
12. Id. art. 1.
13. Amnesty Int'l, Global Report on Death Sentences and Executions (2023).
14. G.A. Res. 62/149 (Dec. 18, 2007).
15. See U.N. GA Voting Records on Death Penalty Moratorium Resolutions.
16. ICCPR art. 2.
17. ICCPR art. 6.
18. Law Commission of India, Report No. 262, *The Death Penalty* (2015).
19. See Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.
20. World Conference on Human Rights, Vienna Declaration and Programme of Action (1993).
21. General Comment No. 36, supra note 6.

8.2 Sovereignty versus Universality of Human Rights

A recurring justification offered by retentionist states, including India, is the principle of sovereignty — the notion that criminal justice policy falls within domestic jurisdiction.24 While international law recognizes state sovereignty, it also affirms the universality and indivisibility of human rights.25

The tension between sovereignty and universality becomes particularly pronounced in the context of the death penalty, where cultural, political, and social considerations are often

invoked to resist abolition. However, international human rights law increasingly views capital punishment not as a legitimate exercise of sovereignty, but as a human rights issue subject to international scrutiny.26

Here is **Part 4**, continuing seamlessly in **formal academic style**, with **Bluebook footnotes**, focusing on **case studies, empirical data, and socio-economic bias** — a crucial section from a **human rights perspective**.

Case Studies, Empirical Data, and Socio-Economic Dimensions of the Death Penalty in India

9. Empirical Overview of the Death Penalty in India

9.1 Death Sentences and Executions: Trends and Patterns

India is classified as a "retentionist" state, though executions are relatively rare compared to the number of death sentences imposed annually.1 Since independence, India has carried out a limited number of executions, with long gaps between them, reflecting judicial and executive hesitation in enforcing capital punishment.2 Despite this, trial courts continue to impose death sentences with notable frequency, many of which are later commuted or overturned by higher courts.3

According to data compiled by the National Law University, Delhi (Project 39A), India has consistently had several hundred prisoners on death row at any given time.4 A significant proportion of death sentences imposed by trial courts are overturned by High Courts and the Supreme Court, indicating systemic inconsistencies and potential arbitrariness in capital sentencing.5 This high reversal rate raises serious concerns about the reliability of the death penalty as a punishment compatible with constitutional and human rights standards.

9.2 Geographic and Judicial Disparities

Empirical studies reveal substantial geographic disparities in the imposition of death sentences across Indian states.6 Certain states have recorded disproportionately high numbers of death sentences, while others rarely impose capital punishment.7 These variations cannot be explained solely by differences in crime rates and instead suggest inconsistencies in judicial approaches, prosecutorial practices, and local socio-political factors.8

Additionally, sentencing outcomes often vary depending on the individual judge or bench hearing the case, further reinforcing concerns about subjectivity.9 From a human rights perspective, such disparities undermine the principle of equality before the law and weaken the legitimacy of capital punishment as a fair and uniform penal sanction.10

10. Socio-Economic Bias and Marginalization

10.1 Class, Caste, and Vulnerability

One of the most troubling findings in empirical research on the death penalty in India is the disproportionate representation of individuals from economically and socially marginalized communities on death row.11 Studies indicate that a majority of death row prisoners belong to economically disadvantaged backgrounds, religious minorities, or historically oppressed caste groups.12 Limited access to quality legal representation, lack of awareness of legal rights, and systemic discrimination contribute significantly to this pattern.13

From a human rights standpoint, such disparities implicate both Article 14 (equality before law) and Article 21 (right to life and dignity) of the Constitution.14 When the most severe punishment is disproportionately imposed on vulnerable populations, it raises the specter of structural injustice rather than individualized culpability.15

10.2 Quality of Legal Representation

The quality of legal representation plays a decisive role in capital cases.16 Many death row prisoners are represented by under-resourced legal aid counsel at the trial stage, leading to inadequate investigation, failure to present mitigating evidence, and procedural lapses.17 The Supreme Court has repeatedly emphasized that sentencing courts must consider mitigating factors such as poverty, mental health, and the possibility of reform.18 However, such factors often remain unarticulated due to ineffective legal assistance.

In *Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi)*, the Supreme Court recognized that denial of effective legal representation violates the right to a fair trial under Article 21.19 In capital cases, such deficiencies can have irreversible consequences, underscoring the incompatibility of the death penalty with unequal access to justice.

11. Case Studies of Capital Punishment in India

11.1 Bachan Singh and Machhi Singh: Doctrinal Foundations

As discussed earlier, *Bachan Singh v. State of Punjab* and *Machhi Singh v. State of Punjab* laid the doctrinal foundation for capital sentencing in India.20 However, subsequent application of these principles has revealed interpretative ambiguities and inconsistencies.21 Courts have often relied on subjective assessments of societal outrage or brutality without a rigorous analysis of mitigating circumstances, thereby diluting the human rights safeguards envisioned in *Bachan Singh*.22

11.2 Yakub Abdul Razak Memon v. State of Maharashtra

The execution of Yakub Memon in 2015 for his role in the 1993 Bombay bombings represents one of the most controversial applications of the death penalty in recent Indian history.23 The case involved complex questions of terrorism, national security, and procedural fairness. While the Supreme Court upheld the death sentence, critics argued that the case highlighted the difficulties of ensuring absolute fairness in capital trials involving intense public and political pressure.24

Human rights advocates raised concerns regarding the timing of hearings, access to remedies, and the broader implications of imposing the death penalty in terrorism-related cases.25 The

case underscores the tension between state security interests and individual human rights in capital punishment jurisprudence.

11.3 Shabnam v. State of Uttar Pradesh

In *Shabnam v. State of Uttar Pradesh*, the Supreme Court upheld the death sentence of a woman convicted of multiple murders, marking one of the rare instances where a woman was sentenced to death in independent India.26 The case is often cited to demonstrate that gender does not serve as a categorical bar to capital punishment.27 However, it also raised questions about the extent to which courts adequately consider gendered experiences, coercion, and socio-economic vulnerability as mitigating factors.28

12. Wrongful Convictions and the Irreversibility Problem

Perhaps the most compelling human rights argument against the death penalty is the risk of executing innocent persons.29 While India does not maintain comprehensive data on wrongful convictions in capital cases, judicial reversals and commutations suggest that errors at the trial stage are not uncommon.30

The irreversible nature of the death penalty distinguishes it from all other forms of punishment.31 From a human rights perspective, the possibility of error — however remote — is unacceptable when the consequence is the permanent deprivation of life.32 This concern has been repeatedly emphasized by international human rights bodies and abolitionist scholars

Comparative Perspectives, Deterrence Debate, and Critical Evaluation of Capital Punishment

13. Comparative Perspectives on the Death Penalty

13.1 Global Abolitionist and Retentionist Models

Comparative analysis reveals stark differences in how legal systems across the world approach capital punishment. A majority of countries have abolished the death penalty either in law or in practice, particularly in Europe, Latin America, and parts of Africa.1 The European Union categorically prohibits the death penalty and makes abolition a prerequisite for membership, reflecting its strong commitment to human rights and human dignity.2

In contrast, a small number of countries — including the United States, Japan, and some Asian and Middle Eastern states — retain the death penalty.3 Even among retentionist states, the frequency of executions and the scope of capital offences vary significantly.4 These comparative models offer valuable insights into alternative approaches to addressing serious crime without resorting to capital punishment.

13.2 The United Kingdom and European Model

The United Kingdom abolished the death penalty for murder in 1965 and for all offences in 1998.5 This shift was grounded in evolving human rights norms and concerns about wrongful convictions.6 The UK's abolitionist stance has not resulted in a demonstrable increase in serious crime, challenging the deterrence-based justification for capital punishment.7

Similarly, the European Convention on Human Rights (ECHR) and its Protocols 6 and 13 prohibit the death penalty in all circumstances.8 The European Court of Human Rights has consistently held that capital punishment is incompatible with the values of a democratic society.9

Footnotes

1. Amnesty Int'l, Global Report on Death Sentences and Executions (2023).
2. Law Commission of India, Report No. 262, *The Death Penalty* (2015).
3. Project 39A, National Law University, Delhi, *Death Penalty in India: Annual Statistics Report* (2022)..
4. Law Commission of India, supra note 3.
5. Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 S.C.C. 498 (India).
6. INDIA CONST. art. 14.
7. Project 39A, supra note 4.
8. INDIA CONST. arts. 14, 21.
9. Law Commission of India, supra note 3.
10. Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi), (2012) 9 S.C.C. 408 (India).
11. Bachan Singh v. State of Punjab, (1980) 2 S.C.R. 684 (India).
12. Mohd. Hussain @ Julfikar Ali, (2012) 9 S.C.C. 408.
13. Bachan Singh, supra note 18; Machhi Singh v. State of Punjab, A.I.R. 1983 S.C. 957 (India).
14. Santosh Kumar Bariyar, supra note 9.
15. Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 S.C.C. 1 (India)..
16. See Amnesty Int'l, India: Concerns Regarding Capital Punishment (2015).
17. Shabnam v. State of Uttar Pradesh, (2015) 6 S.C.C. 632 (India).
18. See Project 39A, Gender and Capital Punishment in India (2019).
19. Radelet & Lacock, supra Part 1 note 1.
20. Law Commission of India, supra note 3.
21. General Comment No. 36, supra Part 3 note 6.

13.3 The United States: Retention with Constraints

The United States presents a complex picture. While the federal government and several states retain the death penalty, others have abolished it or imposed moratoria.10 The U.S. Supreme Court has placed constitutional constraints on capital punishment, particularly concerning juvenile offenders and persons with intellectual disabilities.11

Despite these safeguards, the U.S. system has been criticized for racial bias, wrongful convictions, and prolonged death row incarceration.12 These criticisms closely mirror concerns raised in the Indian context, suggesting that structural issues are inherent to capital punishment across jurisdictions.

13.4 South Asian Context

Within South Asia, countries such as Pakistan, Bangladesh, and Sri Lanka retain the death penalty, though with varying degrees of use.13 India's approach is often described as "abolitionist in practice but retentionist in law," due to infrequent executions but continued sentencing.14 This position places India at a crossroads between regional retentionist practices and global abolitionist trends.

14. The Deterrence Debate

14.1 Deterrence as a Justification for Capital Punishment

One of the most frequently cited arguments in favor of the death penalty is its purported deterrent effect.15 Proponents argue that the severity and finality of capital punishment deter potential offenders from committing serious crimes.16 This rationale has historically influenced legislative and judicial attitudes toward capital punishment in India and elsewhere.

14.2 Empirical Evidence on Deterrence

Empirical studies conducted across jurisdictions have failed to establish conclusive evidence that the death penalty is more effective as a deterrent than long-term imprisonment.17 Research comparing homicide rates in abolitionist and retentionist countries reveals no consistent correlation between the presence of capital punishment and lower crime rates.18

In India, there is a lack of reliable empirical data demonstrating that executions reduce the incidence of heinous crimes such as murder or terrorism.19 The Law Commission of India, in its 262nd Report, explicitly concluded that there is no conclusive evidence to support the deterrence theory in the Indian context.20

14.3 Judicial Recognition of the Deterrence Myth

Indian courts have increasingly acknowledged the limitations of deterrence-based arguments. In *Bachan Singh*, the Supreme Court cautioned against relying solely on deterrence as a justification for imposing the death penalty.21 Subsequent judgments have emphasized the need to prioritize individualized sentencing and constitutional values over abstract deterrence claims.22

From a human rights perspective, the absence of demonstrable deterrent effect weakens the moral and legal justification for retaining a punishment that irreversibly deprives individuals of life.23

15. Critical Human Rights Evaluation

15.1 Arbitrariness and Discretion

A central human rights critique of the death penalty is its inherent arbitrariness.24 Despite doctrinal safeguards, capital sentencing involves a high degree of judicial discretion,

influenced by subjective assessments of brutality, public outrage, and moral culpability.25 Such discretion increases the risk of inconsistent outcomes and unequal treatment.26

International human rights law requires that any deprivation of life be non-arbitrary.27 The persistent inconsistencies observed in capital sentencing thus raise serious concerns about India's compliance with this standard.

15.2 Proportionality and Human Dignity

The principle of proportionality demands that punishment correspond to the gravity of the offence and the culpability of the offender.28 Critics argue that the death penalty, by its very nature, extinguishes the possibility of reform and redemption, thereby undermining human dignity.29

The Supreme Court has recognized dignity as an intrinsic component of Article 21.30 From this perspective, the death penalty appears increasingly incompatible with constitutional and human rights norms that prioritize rehabilitation over retribution.

15.3 The Law Commission's Abolitionist Recommendation

In 2015, the Law Commission of India recommended the abolition of the death penalty for all crimes except terrorism-related offences and waging war against the state.31 The Commission cited arbitrariness, lack of deterrence, and risk of miscarriage of justice as key reasons for its recommendation.32

While the Commission stopped short of advocating total abolition, its findings represent a significant institutional acknowledgment of the human rights deficiencies inherent in capital punishment.33

Footnotes

1. Amnesty Int'l, Global Report on Death Sentences and Executions (2023).
2. Charter of Fundamental Rights of the European Union art. 2.
3. Amnesty Int'l, supra note 1.
4. Murder (Abolition of Death Penalty) Act 1965 (U.K.).
5. Roger Hood & Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* 312 (5th ed. 2015).
6. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1983); Protocol No. 13 (2002).
7. Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) (1989).
8. Death Penalty Information Center, *State by State Death Penalty Data* (2023).
9. Roper v. Simmons, 543 U.S. 551 (2005); Atkins v. Virginia, 536 U.S. 304 (2002).
10. Bryan Stevenson, *Just Mercy* 18–25 (2014).
11. Amnesty Int'l, supra note 1.
12. Law Commission of India, Report No. 262, *The Death Penalty* (2015).
13. Radelet & Lacock, supra Part 1 note 1.
14. Hood & Hoyle, supra note 7.
15. Law Commission of India, supra note 14.
16. Bachan Singh v. State of Punjab, (1980) 2 S.C.R. 684 (India).

17. Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 S.C.C. 498 (India).
18. General Comment No. 36, supra Part 3 note 6..
19. Machhi Singh v. State of Punjab, A.I.R. 1983 S.C. 957 (India).
20. Law Commission of India, supra note 14.
21. ICCPR art. 6.
22. Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India).
23. Hood & Hoyle, supra note 7.
24. K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).
25. Law Commission of India, supra note 14.

.Conclusion, Recommendations, and Final Bibliography:

16. Conclusion

The death penalty in India exists at the intersection of constitutional law, criminal justice policy, and international human rights norms. As this paper has demonstrated, while capital punishment remains constitutionally valid in India, its application raises profound and persistent human rights concerns. The judicially evolved "rarest of rare" doctrine was intended to function as a safeguard against arbitrary deprivation of life; however, empirical evidence and judicial acknowledgment reveal that this doctrine has failed to ensure consistency, predictability, or fairness in sentencing.

From a constitutional perspective, Article 21 of the Indian Constitution has undergone expansive interpretation, transforming the right to life into a repository of substantive due process, dignity, and fairness. Yet, the continued retention of the death penalty sits uneasily with these values. Judicial discretion in capital sentencing, coupled with socio-economic disparities and inconsistent application, undermines the principles of equality and non-arbitrariness enshrined in Articles 14 and 21.

From an international human rights standpoint, India's obligations under the ICCPR impose stringent limitations on the use of capital punishment and emphasize its eventual abolition. Global trends, UN resolutions, and comparative legal experiences increasingly treat the death penalty as incompatible with modern human rights standards. Although international law does not yet impose an absolute prohibition, it clearly positions abolition as the normative goal.

The empirical realities examined in this paper — including high reversal rates, disproportionate impact on marginalized communities, inadequate legal representation, and the risk of irreversible miscarriages of justice — collectively reinforce the human rights critique of capital punishment. These findings suggest that the death penalty, even when applied sparingly, cannot be reconciled with a justice system committed to human dignity, fairness, and the sanctity of life.

17. Recommendations

17.1 Gradual Abolition of the Death Penalty

In light of constitutional values and international human rights obligations, India should move toward the **complete abolition of the death penalty**. At a minimum, Parliament

should adopt a legislative moratorium on executions as an interim measure, aligning India with global abolitionist trends and UN General Assembly resolutions.1

17.2 Restrictive Legislative Reform

Pending abolition, the scope of capital punishment should be **strictly limited** to offences involving intentional killing, in conformity with Article 6 of the ICCPR and the UN Human Rights Committee's interpretation of "most serious crimes."2 The expansion of capital punishment to non-lethal offences should be reconsidered and repealed.

17.3 Sentencing Reform and Judicial Guidelines

Clear and binding sentencing guidelines should be developed to minimize arbitrariness in capital cases.3 Courts must be mandated to conduct rigorous and individualized sentencing hearings, with a presumption in favor of life imprisonment and an obligation to exhaust all mitigating factors before considering the death penalty.

17.4 Strengthening Legal Aid and Fair Trial Guarantees

The quality of legal representation in capital cases must be significantly improved.4 Specialized and adequately funded legal aid mechanisms should be established for death penalty cases to ensure competent defense at all stages of the criminal process. Effective legal assistance is indispensable to safeguarding the right to a fair trial under Article 21.

17.5 Transparency and Data Collection

The absence of comprehensive and publicly accessible data on death sentences and executions hampers informed policy-making.5 The State should institutionalize transparent data collection and publication on capital punishment, including demographic and socio-economic information, to enable accountability and research-based reform.

17.6 Ratification of International Instruments

India should consider ratifying the **Second Optional Protocol to the ICCPR**, thereby committing itself to the abolition of the death penalty.6 Such ratification would signal India's alignment with international human rights standards and reinforce its global leadership in constitutional democracy.

18. Final Observations

The question of the death penalty is ultimately a question about the kind of society a constitutional democracy aspires to be. While the demand for retribution in response to heinous crimes is understandable, human rights law insists that justice must not be achieved at the cost of human dignity and irreversible error. As constitutional jurisprudence continues to evolve toward a rights-centric and dignity-based framework, the moral and legal justification for retaining the death penalty grows increasingly untenable.

India stands at a critical juncture where it must choose between preserving a colonial-era punishment fraught with arbitrariness and embracing a criminal justice system rooted in

reform, proportionality, and respect for human life. From a human rights perspective, the path forward points decisively toward abolition.

19. REFERENCE

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Footnotes

1.G.A. Res. 62/149 (Dec. 18, 2007).

2.ICCPR art. 6; U.N. Human Rights Comm., General Comment No. 36, U.N. Doc. CCPR/C/GC/36 (2018).

3.Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 S.C.C. 498 (India).

4.Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi), (2012) 9 S.C.C. 408 (India).