

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 9 | Issue 3

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Constitutional Validity of Death Penalty: Judicial Reforms and Changing Norms

SANTOSH KUMAR PANIGRAHI* AND SWATI KUMARI**

ABSTRACT

The constitutional validity of the death penalty remains one of the most debated issues in criminal jurisprudence, involving a balance between the State's authority to punish and the fundamental rights of the individual. In India, the death penalty has been held constitutionally valid by the Supreme Court, subject to the doctrine of the "rarest of rare" cases established in Bachan Singh v. State of Punjab. Ongoing arguments over evolving constitutional values and international human rights standards have, however, reopened debate on its continued legitimacy. This paper examines the constitutional validity of capital punishment in India through the lens of Articles 14, 19 and 21 and other relevant provisions of the Constitution, and explores the judicial principles that regulate its imposition. It further analyses significant judicial reforms, including procedural safeguards for the accused and the growing emphasis on reformatory justice. The paper also considers changing global norms, international trends towards abolition, and the influence of human rights discourse on Indian jurisprudence.

Keywords: *Death penalty, Constitutional validity, Right to life, Rarest of rare doctrine, Criminal justice.*

I. INTRODUCTION

The constitutional validity of capital punishment has been the subject of significant scrutiny before the Supreme Court of India. India is among the countries that have yet to abolish the death penalty, and it has not enacted legislation that expressly examines the constitutionality or legality of capital punishment. In the Indian context, the imposition of the death penalty is structured around the principle of the "rarest of rare" cases. The first legal challenge to the death penalty in India arose in 1973 in *Jagmohan Singh v. State of Uttar Pradesh*. The judgment was rendered before the re-enactment of the Code of Criminal Procedure in 1973, under which the death penalty came to be treated as an exceptional and seldom-used form of punishment. The challenge concerned the legitimacy of capital punishment, particularly its alleged infringement

* Author is a Research Scholar at the School of Law and Governance, Central University of South Bihar, Gaya, Bihar, India.

** Author is a Research Scholar at the School of Law and Governance, Central University of South Bihar, Gaya, Bihar, India.

of Articles 19 and 21 of the Constitution. The Supreme Court held that the death penalty is imposed in accordance with the procedure established by law. It further observed that the Court decides between a life sentence and a death sentence by taking into account various factors, including the nature of the offence, the notion of culpability, and the contextual information placed before it during the trial. The development of the Court's reasoning while adjudicating heinous crimes has prompted numerous inquiries into earlier rulings.

II. CONSTITUTIONALITY

In *Jagmohan Singh v. State of Uttar Pradesh*,¹ the legitimacy of the death penalty was initially called into question on the ground that it contravened Articles 19 and 21 owing to the absence of procedural safeguards. It was argued that the procedure laid down in the Code of Criminal Procedure was confined to the determination of guilt and did not extend to the imposition of capital punishment. The Supreme Court held that the imposition of the death penalty adheres to the procedure prescribed by the Constitution. The judge assesses the circumstances, facts and nature of the offence presented during the trial in deciding whether to impose the death penalty or life imprisonment. Accordingly, a Bench of five judges held that the death sentence did not contravene Articles 14, 19 and 21 of the Constitution and was therefore legally permissible. After this ruling, there was no longer any ambiguity regarding the constitutionality of the death penalty.

In *Rajendra Prasad v. State of Uttar Pradesh* (1979),² the Supreme Court held that the imposition of the death penalty must be contingent upon establishing, through legal proceedings, that the offender poses an enduring and substantial risk to the well-being of society. Justice Krishna Iyer reasoned that the death penalty should be limited to three categories of offenders: those engaged in white-collar offences, persons who pose a substantial risk to society as habitual killers, and those who commit crimes that undermine the established social structure. Following the trial, the Supreme Court held that the imposition of the death penalty on a person convicted of murder under Section 302 of the Indian Penal Code did not contravene any essential tenet of the Constitution.

Later, in *Bachan Singh v. State of Punjab*,³ a five-judge Bench of the Supreme Court upheld the reasonableness of the death penalty, holding that it does not contravene Articles 14, 19 and 21 of the Constitution. By a majority of 4:1, the Bench overruled the decision in *Rajendra Prasad*. The majority held that the death sentence is to be applied only in cases that are exceptionally

¹ *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947 (India).

² *Rajendra Prasad v. State of Uttar Pradesh*, AIR 1979 SC 916 (India).

³ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898 (India).

rare. In his dissenting opinion, Justice Bhagwati considered the death sentence unconstitutional as violative of Articles 14 and 21, and objectionable on other grounds as well. According to the majority, the challenge to the constitutionality of Section 302 of the Indian Penal Code, 1860 in relation to the death penalty, and the challenge to the constitutionality of Section 354(3) of the Code of Criminal Procedure, 1973, both failed and were dismissed.⁴

In *Deena v. Union of India*,⁵ the validity of Section 354(5) of the Code of Criminal Procedure, 1973 was challenged on the ground that the execution method of hanging prescribed by that section was cruel, inhuman and degrading, and therefore contravened Article 21. It was suggested that the State provide a humane and dignified process for carrying out the death penalty. The majority held that execution by hanging by rope, as prescribed in Section 354(5), did not violate the rights protected by Article 21. The Court upheld the constitutionality of Section 354(5), holding that it establishes a fair, just and reasonable procedure consistent with Article 21.

The Court concluded that hanging by rope is the most efficient and least painful method of carrying out the death penalty, relying on the conclusions of the U.K. Royal Commission of 1949, the opinion of the Director General of Health Services of India, and the 35th Report of the Law Commission.⁶

III. PROCEDURE AFTER IMPOSITION OF THE DEATH PENALTY

A. Confirmation by the High Court

Under Section 407 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Court of Session must submit the proceedings to the High Court of the appropriate State for confirmation of the sentence after it has been imposed. The Court has a duty to ensure that a person sentenced to death and committed to jail custody under warrant remains so until the High Court confirms the sentence.

B. Further inquiry and additional evidence

Under Section 408 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the High Court has the power to direct further inquiry into the incident, or the collection of additional evidence, at any time on any point bearing upon the guilt or innocence of the convicted person.

⁴ *Constitutional Validity of Death Penalty in India*, FREELAW (Apr. 6, 2023).

⁵ *Deena v. Union of India*, (1983) 4 SCC 645 (India).

⁶ Somesh Kumar Gupta, *Method of Execution and Human Rights in India: A Critical Study of the Supreme Court's Recent Judgment Upholding Hanging Till Death*, 5(5) INDIAN J. INTEGRATED RSCH. L. (2022).

C. Power of the High Court to confirm convictions or impose sentences

Under Section 409 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the High Court is empowered to confirm a conviction, impose any alternative sentence that the law permits, or amend the charges and order a fresh trial. The Court cannot proceed with confirmation of the sentence until the period allowed for filing an appeal has elapsed.

D. Confirmation of a newly framed sentence

Under Section 410 of the Bharatiya Nagarik Suraksha Sanhita, 2023, any order or sentence submitted to the High Court for confirmation must be made, passed and signed by at least two judges. This requirement applies whether the sentence under consideration is a new sentence or one already passed by the High Court.

E. Transmission of the order to the Court of Session

Section 412 of the Bharatiya Nagarik Suraksha Sanhita, 2023 requires the prompt transmission of the confirmation of the sentence, or any other order issued by the High Court, to the Court of Session. The document must bear the seal of the High Court and the signature of its officer.

IV. REMEDIES AVAILABLE TO THE CONVICT

Such cases may be adjudicated in several types of courts, including a Sessions Court, trial court, fast-track court or special court. Thereafter, the Supreme Court must affirm the death warrant. In effect, the convict may file up to four petitions challenging a death sentence imposed against them. These are of four kinds.

Appeal to the Supreme Court: after confirmation of the death sentence by the High Court under Section 407 of the Bharatiya Nagarik Suraksha Sanhita, 2023,⁷ the convict may approach the Supreme Court challenging the High Court's decision.

Review petition: after the Supreme Court's decision, the convict may file a review petition. A review petition is filed under Article 145 of the Constitution⁸ and lies where the convict identifies an error in the judgment of the Supreme Court.

Curative petition: after the dismissal of a review petition, the convict may file a curative petition. In ordinary cases, a curative petition is the last resort available for redress before the Court. In a death penalty case, however, the convict may thereafter file a mercy petition before the President of India or the Governor of the State.

⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, s. 407 (India).

⁸ INDIA CONST. art. 145.

Mercy petition: after the High Court or the Supreme Court finalises the capital sentence, the convict may file a mercy petition before the President of India under Article 72 of the Constitution,⁹ or the Governor of the State under Article 161 of the Constitution,¹⁰ depending on the circumstances of the case. The President or the Governor may grant a pardon, postpone the execution, reduce the punishment, or uphold the original sentence. The execution may be carried out only if the Governor and the President reject the mercy petition filed before either of them.

V. POWERS OF THE PRESIDENT AND THE GOVERNOR IN DEATH SENTENCE CASES

The power to suspend, remit or commute sentences in specific circumstances is conferred on the President and the Governors by Articles 72 and 161 of the Constitution. The President and the Governors may reduce or revoke penalties only after the courts have convicted the accused and imposed a sentence. The authorities under Articles 72 and 161 are required to act fairly and rationally. The scope of the power vested in the President under Article 72 is wider than that of the Governor, as it enables the President to grant pardons to persons sentenced to death and to persons sentenced by court martial.¹¹

In *Kuljeet Singh alias Ranga v. Lt. Governor of Delhi*,¹² the Supreme Court rejected a petition contending that the President had violated his power to grant mercy under Article 72 of the Constitution by refusing to grant it.

Where a mercy petition is pending before the President of India, an application for a stay of execution is not maintainable before the Supreme Court; to obtain a stay of execution, a formal plea must be submitted to the President of India.

VI. RATIONALE BEHIND THE DEATH PENALTY

When a crime occurs, not only does the victim suffer, but the conscience of the entire nation is disturbed. There is a strong demand that the offender be held accountable. Punishment also acts as a remedy for the wounded sentiments of society, because the victim is not the only person who suffers harm. The State serves as a remedy for the harm inflicted upon society by punishing the wrongdoer. Unlike murder driven by primal instinct, death as a means of punishment is distinct from the act of killing.

⁹ INDIA CONST. art. 72.

¹⁰ INDIA CONST. art. 161.

¹¹ Archisha Singh, *Capital Punishment in India: Constitutional Validity of Capital Punishment*, BRILLOPEDIA (July 29, 2022).

¹² *Kuljeet Singh alias Ranga v. Lt. Governor of Delhi*, AIR 1982 SC 774 (India).

The death sentence is often regarded as one of the most severe and punitive measures that may be imposed. Owing to its profound implications for human life itself, the penalty is of the utmost gravity. The institution of capital punishment can be attributed to the desire for a well-ordered society, as it represents a form of legalised and justifiable homicide. Its primary objective is to address instances of severe disorder and the conduct of anti-social individuals in accordance with societal norms. Throughout history, the death penalty has been justified on the principles of retribution and deterrence.

The expression "an eye for an eye, and a tooth for a tooth" denotes a form of retribution ascribed to humanity since ancient times, before the establishment of a cohesive community of accountable individuals. The institution of the death sentence for murder and other secular offences can be attributed to the modern State's growing recognition of its duty to uphold peace and order. In this view, the death penalty stands as one instrument within the repertoire of developed nations and a means available to those who bear the duty of upholding legal and social order.

On this view, it is the sole method of removing hardened offenders who are irredeemable and who pose a persistent danger to humanity, society, and the government's duty to safeguard life, property and the welfare of the community.

VII. RECENT RULINGS ON CAPITAL PUNISHMENT

A. *Mukesh v. State (NCT of Delhi)* (the Nirbhaya case)

Bench: Justice Dipak Misra, Justice Ashok Bhushan and Justice R. Banumathi.¹³

Facts of the case: a 22-year-old woman was subjected to severe physical assault, sexual assault and torture by the perpetrators, which ultimately led to her death. These acts took place inside a private bus while she was travelling.

Course of the proceedings: on 2 January 2013, the then Chief Justice of India, Altamas Kabir, inaugurated a Fast Track Court to accelerate the trial of sexual offences. Proceedings commenced on 17 January 2013 against five accused who were identified as adults. Ram Singh, one of the accused, was found dead at Tihar Jail on 11 March 2013. The trial court imposed the death penalty on the four remaining accused on 13 September, while the fifth accused, a minor, was sentenced to a three-year term at a probation home. The trial court's decision was upheld by the High Court, which confirmed the death penalty for all four convicts on 13 March 2014. The matter was then taken to the Supreme Court, which stayed the execution of all four convicts

¹³ *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).

on 15 March 2014. In February 2019, the parents of the victim approached the Delhi High Court seeking the issuance of death warrants. The convicts filed petitions before the Supreme Court seeking review of their sentences. On 20 March 2020, in the Nirbhaya gang-rape case of 2012, the Supreme Court directed the imposition of the death penalty on all four convicts. As the Court found, the crime was perpetrated by six individuals who operated a bus disguised as public transport in order to entice passengers. Justice R. Banumathi observed that the aggravating factors outweighed the mitigating factors, and saw no justification for commuting the death sentence imposed by the lower courts to life imprisonment. All four convicts were executed at 5:30 a.m. at Tihar Jail.

B. Mohammad Ajmal Amir Kasab v. State of Maharashtra

Bench: Justice Aftab Alam and Justice C.K. Prasad.¹⁴

Facts of the case: Kasab was convicted on multiple counts, including murder, waging war against India, and possession of explosives. He received a death sentence on certain charges and a life sentence on others. The execution took place on 21 November 2012 at Yerwada Central Jail, Pune.

Course of the proceedings: the central question during the proceedings was whether the accused, Kasab, received a fair and unbiased trial. The Court addressed this issue at length, noting that Kasab was initially offered legal representation from Pakistan in compliance with his express request, and that the Supreme Court also provided him with counsel, the acceptance or refusal of which rested with him. The Court concluded that there was no violation of constitutional requirements and that the appellant had received a fair trial, given that he was accused of causing the death of innocent victims. Further considerations in the case concerned the time allowed to counsel for preparation, the appellant's acts of hostility towards the Government of India, and his participation in a conspiracy.

Ruling of the Supreme Court: the Supreme Court upheld the death sentences and life sentences imposed on the accused in view of the gravity of his conduct.

VIII. JUDICIAL APPROACH

The imposition of the death penalty in India is founded on the concept of the "rarest of rare" cases. Under the Bharatiya Nyaya Sanhita, 2023, the death penalty is a punitive measure of great severity, imposed on persons convicted of grave offences. In this context, a question arises as to the authority of the State to terminate the life of an individual who has exceeded the bounds

¹⁴ *Mohammad Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1 (India).

of what is regarded as humane. On this issue, opinion is divided into two groups. The first comprises those who assert the necessity of this punishment as a means of deterring like-minded persons. The second, often described as the progressives, contend that it is merely a legal act of terminating a life as mandated by the court. An examination of the principles governing criminal prosecution shows that the imposition of the death penalty is authorised only in the most exceptional or exceedingly rare instances, which involve a substantial degree of criminality and thus present an imminent and severe danger to society. In determining the appropriateness of capital punishment, it is necessary to analyse not only the degree of culpability for the offence, but also the personal attributes of the offender, the contextual factors, and the severity of the transgression.

It is therefore necessary to ascertain the appropriate penalty in light of the gravity of the offence and the response of society to it. The Indian legal system lacks consistency in its position on the death penalty and does not expressly prohibit its application. In India, the imposition of the death penalty is limited to highly extraordinary circumstances, specifically those falling within provisions of the Bharatiya Nyaya Sanhita, 2023 dealing with offences such as waging war against the State, murder, murder by a group on prohibited grounds (mob lynching), gang rape and rape causing death or a persistent vegetative state, repeat rape offenders, and abduction for ransom, and analogous transgressions. The most notable cases attracting capital sentences pertain to acts of homicide and grave physical assault. The "rarest of rare" doctrine may be further classified into two sub-categories. In sentencing, aggravating circumstances and mitigating circumstances are factors capable of influencing a judge's determination. Where aggravating circumstances are present, the court may impose capital punishment. Where mitigating factors are present, the court will refrain from imposing the death penalty unless there are highly extraordinary circumstances.

IX. THE RAREST OF RARE DOCTRINE

A. Progression of the doctrine

The Supreme Court's decision in *Maneka Gandhi v. Union of India* introduced a fresh perspective on the interplay between Articles 14, 19 and 21 of the Constitution. It held that the punishment of an individual for an offence must satisfy the requirements of all three Articles, both procedurally and substantively. Earlier, in *A.K. Gopalan v. State of Madras*,¹⁵ a six-judge Bench had held that where an accused is convicted and subjected to punitive detention or imprisonment, the matter falls outside the protection of Article 19.

¹⁵ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India).

The accused in *Bachan Singh v. State of Punjab*¹⁶ was convicted of triple homicide. His case was adjudicated by the Sessions Court, which imposed the death penalty. The High Court dismissed the appeal and upheld the decision of the Sessions Court. The constitutionality of the death penalty imposed on the accused convicted under Section 302 of the Indian Penal Code was ultimately examined by the Supreme Court, as was the constitutional validity and scope of Section 354(3) of the Code of Criminal Procedure. By a majority of 4:1, the Supreme Court dismissed the appeal, holding that the said provisions do not contravene the Constitution. The term "rarest of rare case" was first introduced in *Machhi Singh v. State of Punjab*,¹⁷ in which the Supreme Court sought to establish criteria for determining whether a case falls within that category.

B. The "rarest of rare" doctrine

The "rarest of rare" doctrine was introduced by the Supreme Court in *Bachan Singh* in 1980. Thereafter, life imprisonment became the norm in India, while the death sentence became an exceptional measure reserved for the most difficult cases.

In *Machhi Singh*, the Court established certain criteria for evaluating the circumstances in which a case may be classified as rarest of the rare. The following criteria were examined.

Manner of commission of the murder: where a murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation in the community. For instance:

where the victim's house is set on fire with the intention of burning her to death;

where the victim is subjected to inhuman torture that ultimately leads to her death;

where the victim's body is subjected to brutal mutilation or dismemberment.

Motive for the murder: where a murder is committed with complete depravity and cruelty, such as:

where a hired assassin kills solely for monetary reward;

a cold-blooded murder committed with a deliberate design to acquire property or to secure personal gain.

Socially abhorrent nature of the crime: where a person belonging to a socially disadvantaged group is killed. Instances of bride burning, commonly referred to as dowry death, also fall within

¹⁶ *Bachan Singh v. State of Punjab*, *supra* note 3.

¹⁷ *Machhi Singh v. State of Punjab*, AIR 1983 SC 957 (India).

this category. The scale of the crime is relevant where the proportion of criminality is significantly elevated, as in cases of multiple murders.

Personality of the victim: where the victim of the murder is an innocent child, a helpless woman, a person rendered vulnerable by old age or infirmity, or a prominent public figure, and the like.¹⁸

C. Scope of the rarest of rare doctrine

In *Jagmohan Singh v. State of Uttar Pradesh*,¹⁹ the Supreme Court upheld the constitutionality of capital punishment, holding that it functions not only as a deterrent but also as a symbolic expression of society's disapproval of criminal conduct. The Court also took the view that India could not afford to experiment with abolishing capital punishment.

The constitutionality affirmed in *Bachan Singh* has since been reiterated. The case of *Bachan Singh* led to the formulation of the following propositions.

Capital punishment should be confined to cases involving the highest degree of culpability and should not be imposed unless it is essential.

Before deciding whether to refrain from capital punishment, it is essential to evaluate carefully the particular circumstances surrounding the offender (the aggravating and mitigating factors).

The norm is life imprisonment, while the death penalty is exceptional.

The death sentence should be imposed only where life imprisonment would be wholly inadequate to punish the crime, having regard to the particular circumstances of the offence.

To strike a fair balance, it is necessary to draw up a balance sheet of all the aggravating and mitigating factors, giving due weight to each.

The Court coined the term "rarest of rare" to describe cases involving a crime so uncommon and unusual that any reasonable member of society would regard it as extraordinary. The standard applies where no other penalty is adequate to the gravity of the offence. The Court explained the scope of the doctrine by delineating precise criteria for ascertaining its applicability in a given case.

D. Functioning of the rarest of rare doctrine

In *Bachan Singh*, the Supreme Court introduced the concept of the rarest of rare cases to guide judges in deciding between life imprisonment and the death penalty. The decision did not, however, provide further guidance on what constitutes the most exceptional cases. As a result,

¹⁸ *The Doctrine of Rarest of Rare: A Critical Analysis*, 2(4) INDIAN J. INTEGRATED RSCH. L. (2022).

¹⁹ *Jagmohan Singh v. State of Uttar Pradesh*, *supra* note 1.

the framing of guidelines for the exercise of judicial discretion remained unresolved, leading to confusion and inconsistency in judicial decisions. In *Machhi Singh*, the Supreme Court developed a graded classification of cases. The principles established in earlier decisions, which the Court in *Machhi Singh* sought to apply so as to ensure equitable treatment within these categories, remain intact.

It is well settled that the determination of sentence lies within the judge's exercise of discretion. In considering sentence, it is essential to analyse significant factors such as the underlying motive, the gravity of the offence, and the manner of its commission. In *Jagmohan Singh v. State of Uttar Pradesh*, Justice Palekar, speaking for a unanimous Court, held that the death penalty is permissible where the murder was characterised by wicked design and merciless execution, or where the victim held a prominent social status, resulting in substantial social upheaval. The primary aim was to confine the death penalty to the most extreme cases. The definition of the rarest of rare cases is a highly debated topic worldwide.

Although the doctrine lacks a precise definition, it has been applied by reference to the severity of the offence committed by the offender. In the context of the death penalty, India exhibits a diverse range of perspectives, which neither unequivocally endorse nor reject capital punishment, but focus on a restricted set of cases. The position became increasingly complex as the incidence of crime rose and instances of grave criminal conduct became more prevalent. The Supreme Court has established certain evaluative criteria within the framework of *Machhi Singh*. The death penalty does not violate Article 21 of the Constitution, which guarantees the right to life and personal liberty, so long as it is imposed in accordance with a fair, just and reasonable procedure.

On this basis, and on the research undertaken by the Law Commission in 2015, it has been suggested that the most effective approach to safeguarding the nation would be the complete abolition of capital punishment, save in cases involving terrorism. The execution rate in India is comparatively low, owing to the emphasis placed on the criteria governing the administration of capital punishment. This is reflected in data indicating that only four persons were executed during the period from 2004 to 2015.²⁰

²⁰ Rajgopal Saikumar, *Negotiating Constitutionalism and Democracy: The 262nd Report of the Law Commission of India on Death Penalty*, MANUPATRA.

X. THE LAW COMMISSION REPORT OF 2015

The Supreme Court referred the question of the death penalty in India to the Law Commission of India in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*²¹ and *Shankar Kisanrao Khade v. State of Maharashtra*,²² to enable an up-to-date and well-informed examination of the subject.

The Commission had previously been asked to examine the death penalty, most notably in its 35th Report (Capital Punishment, 1967), a significant study on the subject. That Report recommended the retention of the death sentence in India. In *Bachan Singh v. State of Punjab*,²³ the Supreme Court upheld the validity of the death penalty, but restricted its use to the most exceptional and infrequent cases in order to mitigate the arbitrariness of the penalty. There have, however, been notable changes in the social, economic and cultural conditions of the nation since the 35th Report.

The issue of arbitrariness has remained a prominent concern in the adjudication of capital cases over the decades following the leading precedent on the subject. In view of the sensitive nature of the death penalty, the Commission decided to undertake comprehensive research. In May 2014, it issued a consultation paper inviting public comments, and on 11 July 2015 it held a one-day consultation on "The Death Penalty in India" in New Delhi. Following extensive deliberation and study, the Commission formulated its Report No. 262, titled "The Death Penalty", for the consideration of the Government.²⁴

The Commission's 262nd Report recommended the abolition of the death sentence for all offences except those connected with terrorism. The Report has been widely regarded as a significant development in Indian death penalty jurisprudence, variously described as historic, seminal and decisive, and even as a paradigm shift.

A question arises, however, as to what the Report achieved by recommending a change in the language of the exception. It proposed substituting terrorism cases for the "rarest of rare" criterion as the exception to abolition. The word "replace" is not, however, an apt description, owing to a conflation of distinct concepts: "rarest of rare" refers to a standard of judicial scrutiny, whereas "terrorism" denotes a category of criminal conduct.²⁵

²¹ *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498 (India).

²² *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546 (India).

²³ *Bachan Singh v. State of Punjab*, *supra* note 3.

²⁴ LAW COMM'N OF INDIA, Report No. 262: The Death Penalty (2015).

²⁵ Saikumar, *supra* note 20.

The Commission made a comprehensive set of recommendations, which may be summarised as follows.

The Commission recommended that the Government expeditiously enact measures encompassing police reforms, witness protection schemes and victim compensation schemes. The evolution of the legal system, from 1955, when the requirement of recording special reasons for imposing life imprisonment rather than capital punishment was removed, to 1973, when special reasons were instead mandated for imposing the death penalty, and ultimately to 1980, when the Supreme Court confined the death penalty to the rarest of rare cases, illustrates the trajectory to be pursued.

In view of the expanded scope of the right to life, the reinforced due-process obligations in the relationship between the State and the individual, and the prevailing principles of constitutional morality and human dignity, the Commission concluded that India must move towards the abolition of capital punishment.

Although there is no principled penological justification for treating terrorism differently from other crimes, there is widespread apprehension that the abolition of capital punishment for terrorism-related offences and for waging war would affect the security of the nation.

In view of the concerns raised at the legislative level, the Commission saw no justification for further delay in taking the first step of abolishing the death penalty for all offences except those connected with terrorism. It therefore recommended the abolition of the death sentence for all offences other than terrorism-related offences and offences involving the waging of war.

The Commission further expressed the hope that the movement towards complete abolition would be swift and enduring, without any reversal.

XI. THE CASE FOR ABOLITION

The death penalty is a long-standing institution that has existed since the beginning of human civilisation. In antiquity, the monarch would impose capital punishment, typically by beheading, on anyone who defied a royal command or failed to discharge a moral duty. It was later incorporated into the Indian Penal Code of 1860, thereby granting it legal recognition in India. In the twentieth century, a movement arose to abolish the death sentence, leading various States to adopt that position and abolish capital punishment.

In India, however, the practice of capital punishment has endured. The issue has generated significant deliberation and disagreement, as proponents of human rights have advanced compelling arguments in favour of abolition. The abolition of the death penalty is a key

objective of the International Covenant on Civil and Political Rights. Many countries have chosen to abolish it.

In recent years, the debate around capital punishment has assumed heightened significance in India, and abolitionists have advanced increasingly persuasive arguments. This paper notes the contention that society is capable of regulating its criminal elements without recourse to so severe a mode of retribution. The principal arguments for abolition are as follows.

A. Wrongful execution of innocent persons

There have been documented cases in which persons found to be innocent were sentenced to capital punishment, and this risk is likely to persist. However sophisticated a legal system may be, it will remain vulnerable to human error. Between 2000 and 2014, around 20 per cent of those sentenced to capital punishment by trial courts were subsequently acquitted by the Supreme Court and the High Courts. A total of 443 persons who had been convicted and sentenced to capital punishment were later acquitted of all charges.

B. Arbitrariness

Arbitrariness denotes a characteristic determined by random selection or individual caprice rather than by any objective rationale or framework. The potential for arbitrary application of the death penalty cannot be disregarded. The use of capital punishment frequently exhibits inequity and prejudice towards those who are economically disadvantaged, belong to minority groups, or are affiliated with particular racial, ethnic, political or religious groups. According to the Death Penalty India Report 2016 published by National Law University, Delhi, a significant proportion of those sentenced to death in India belong to socio-economically disadvantaged communities, including Scheduled Castes, Other Backward Classes and religious minorities.

C. Cruelty

Capital punishment is incompatible with the principles of human rights and dignity. It represents a breach of the fundamental right to life, the most essential of all human rights. It also constitutes a breach of the right to be free from torture and from cruel, inhuman or degrading treatment or punishment. The death sentence, moreover, erodes the inherent dignity of every individual.

D. Absence of a proven deterrent effect

The deterrent effect claimed by proponents of the death penalty is not borne out by the evidence. In its Resolution 65/206, the United Nations General Assembly expressed the view that the available evidence is inadequate to establish that the death sentence functions as an effective

deterrent. A growing body of law-enforcement experts in jurisdictions that retain capital punishment is scrutinising its efficacy as a deterrent to crime.

E. Popular sentiment

Public support for the death penalty does not, of itself, confer on the State the authority to take an individual's life. History records notable occasions on which a significant proportion of the population supported egregious infringements of human rights that were subsequently strongly condemned. Prominent persons and politicians bear a responsibility to draw attention to the inherent tension between capital punishment and the principles of human rights and dignity. It is important to recognise the correlation between public support for capital punishment and the desire for a crime-free society; there are, however, more effective methods of preventing crime.

F. Against the global trend

According to Amnesty International, by the end of 2021 more than two-thirds of the countries of the world had abolished the death penalty in law or in practice. India's retention of the death penalty stands against this global trend.

XII. THE CASE FOR RETENTION

The Law Commission of India recommended a cautious approach in its 35th Report of 1967, endorsing the retention of the death sentence as an infrequent and exceptional mode of punishment. It reasoned that a thorough examination of conditions prevailing in India was necessary to evaluate the question of retention and abolition. Proponents of capital punishment likewise emphasise the importance of assessing the arguments in the context of conditions in India, since arguments suited to other countries may not necessarily apply here. Different governments, and even different States, may hold divergent views on law and order. Despite India's vast territorial expanse, a significant portion of its population lacks literacy. Some regions within India also lack the ancillary features that operate as a deterrent to homicide in Western nations, such as education, uniformity, prosperity, sustainability and awareness. Retentionists advance several justifications, set out below.

A. Crime prevention

First, capital punishment is said to deter subsequent criminal activity. The application of the most severe penalty for the most egregious offences may serve to deter future crime, and this has a substantial influence on human psychology. Where an individual knows that severe penalties attach to particular conduct, and that the adverse consequences of that conduct significantly outweigh any potential advantage, that person is more likely to abstain from it.

B. Ensuring fairness in legal proceedings

Secondly, capital punishment is said to ensure the effective dispensation of justice. A principal purpose of the Preamble to the Constitution is to secure justice for all citizens. It is necessary to consider the means by which justice can be achieved. Is it not fair and just, the argument runs, that a person who has committed the most abhorrent offences, poses a substantial threat to society, and shows no remorse or compassion, should be subjected to capital punishment? Defenders of this view ask what entitlements such offenders may be expected to retain, and to what extent citizens have faith in the capacity of the court system to administer punishment commensurate with the gravity of such transgressions. These questions, on this view, support an approach that regards the abolition of capital punishment with significant scepticism.

C. Judicial reasoning

Thirdly, the administration of the death penalty is said not to be arbitrary. In India, the death penalty is not imposed without supporting evidence or rational justification. As noted above, capital punishment is confined to highly exceptional cases. Even where the death sentence has been passed, the convict retains the right to seek clemency, which may lead to commutation to life imprisonment, including on account of unreasonable delay. On receipt of a mercy petition, the executive may institute an independent inquiry and call for additional material. The executive may grant clemency and commute the death penalty to life imprisonment where further material, particularly information not found in the court records, is presented.

In addition, specific and objective criteria, derived from precedent, must be satisfied before a death sentence is commuted to life imprisonment.

It has also been recommended that the court, in exercising its discretion, treat the following as mitigating factors warranting the lesser punishment of life imprisonment:²⁶

that the offence was committed while the accused was under the influence of extreme mental or emotional disturbance;

the age of the accused, where youth or advanced age is a relevant consideration;

the probability that the accused would not commit further acts of criminal violence so as to constitute a continuing threat to society;

the probability that the accused can be reformed and rehabilitated;

²⁶ Sujitha S, *Death Penalty Should Be Abolished: An Ongoing Debate*, IPLEADERS (Feb. 6, 2022), <https://blog.ipleaders.in/death-penalty-should-be-abolished-an-ongoing-debate>.

that the accused believed he was morally justified in committing the offence, having regard to the facts and circumstances of the case;

that the accused acted under the duress or domination of another person;

that the condition of the accused indicated a mental impairment that impaired his capacity to appreciate the criminality of his conduct.

For a court to apply these principles, it must ask and answer the following two questions.

Does the crime present any exceptional feature that makes a life sentence inadequate and necessitates the imposition of a death sentence?

Is it justifiable to impose a death sentence on the facts of the crime, even after taking into account the significant mitigating factors in favour of the offender?

In order to determine the appropriateness of the death penalty, the court must assess whether the case can be classified as one of the rarest of rare cases, having regard to the particular circumstances and the answers to these questions.

D. Human rights

Instances of life-sentenced prisoners escaping from custody have been recorded in the history of Indian prisons. In such situations, the question of collective security within society becomes apparent. The potential threat that a convicted criminal poses to society cannot be disregarded, and is, on this view, sometimes concealed under the guise of human rights. It is argued that it is irrational to extend "human" rights to individuals who have wholly relinquished their humanity, particularly those who are not amenable to reform; such persons, on this argument, forfeit the right to life by reason of their abhorrent acts that threaten the well-being of others.

On the opposing view, the death penalty should be imposed only in the most exceptional cases. Numerous debates are taking place worldwide among social activists, law reformers, judges, jurists, lawyers and administrators concerning the abolition of the death penalty.

These debates are global in character. Human beings are neither angels nor demons, and do not act solely benevolently or solely malevolently. Owing to the inherent nature of human beings, it is impossible to eliminate all criminal behaviour from society. Offenders are an integral part of society, and it is incumbent upon society to impart to them the knowledge necessary to enable them to become law-abiding members.

To enable offenders to enjoy fundamental human rights, a change is required in the way they are perceived. At the same time, from the standpoint of victims, it is essential to ensure that they receive justice; otherwise there is a substantial likelihood that they may resort to taking the law

into their own hands, which could lead to disorder. To prevent this, it is essential to ensure that punishment is both certain and proportionate.

E. Moral inquiry

Abolitionists argue that the execution of individuals by the State is morally wrong. An alternative perspective, however, may be advanced. On this view, the existence of capital punishment reflects the State's acknowledgment of the intrinsic worth of offenders as autonomous individuals capable of exercising agency and bearing full responsibility for their acts. To abolish capital punishment on the ground of immorality, the argument runs, is to regard offenders as morally deficient persons who must be pardoned even for the most abhorrent crimes.

XIII. THE 2023 CRIMINAL LAW REFORMS

Among the most important changes introduced by the Bharatiya Nyaya Sanhita, 2023 (BNS) are the following.

The Indian Penal Code prohibited offences against the body, including murder, abetment of suicide, assault and the causing of grievous hurt. These provisions are retained in the BNS, which also addresses further offences such as organised crime, terrorism, and acts of murder or grievous hurt perpetrated by a group on specified grounds.

The Indian Penal Code prohibited sexual offences against women, including rape, voyeurism, stalking and outraging the modesty of a woman. These provisions are retained in the BNS. The age threshold for treating a victim of gang rape as an adult has been raised from sixteen to eighteen years. The BNS also makes it an offence to have sexual intercourse with a woman by deceitful means or on a false promise.

The offence of sedition has been abolished by the BNS. Instead, it penalises acts that (i) excite secessionist sentiment, (ii) endanger the sovereignty, unity and integrity of India, or (iii) incite or attempt to incite secession, armed rebellion or subversive activities. Offences within this category include the use of financial means and the communication of words, signs or electronic messages.

An act intended to threaten the unity, integrity and security of the country, to intimidate the general public, or to disturb public order is treated as a terrorist act under the BNS.

Two kinds of punishment may be imposed for attempting or committing a terrorist act: death or imprisonment for life and a fine of ten lakh rupees, where the act results in the death of a person;

or imprisonment for a term of not less than five years extending to life, together with a fine of not less than five lakh rupees.

Organised crime encompasses criminal activities such as kidnapping, extortion, contract killing, land grabbing, financial fraud and cybercrime, committed on behalf of a criminal syndicate. A person who commits or conspires to commit organised crime is liable to (i) death or imprisonment for life and a fine of ten lakh rupees, where the offence results in the death of a person; or (ii) imprisonment for a term of not less than five years extending to life, together with a fine of not less than five lakh rupees.

The BNS introduces the offence of mob lynching, namely murder or grievous hurt committed by a group of five or more persons on specified grounds, including race, caste, sex, language and personal belief. Where such an act results in death, the prescribed punishment ranges from a minimum of seven years' imprisonment to imprisonment for life or death. In several respects, the BNS gives effect to decisions of the Supreme Court; two examples are the decriminalisation of adultery and the introduction of life imprisonment as an additional punishment, alongside the death penalty, for murder or attempted murder committed by a person serving a life sentence.

The provision for the death penalty for the gang rape of a child is illustrative. The Indian Penal Code permitted the imposition of capital punishment for the gang rape of a woman under the age of twelve; the BNS permits the imposition of capital punishment for the gang rape of a woman under the age of eighteen.²⁷

XIV. CONCLUSION

The constitutional validity of the death sentence in India has been upheld through judicial interpretations that seek to balance the State's power to punish with the constitutional protection of life and personal liberty. In *Bachan Singh v. State of Punjab*, the Supreme Court established the "rarest of rare" doctrine to limit the arbitrary use of capital punishment. Later judgments further developed sentencing principles by stressing individualised consideration, mitigating circumstances and fair procedure. These decisions reflect a movement away from a purely retributive view of punishment towards a more balanced approach that also accounts for reform and human rights.

Even with these safeguards, serious concerns remain about the fairness and consistency of the death sentence. The growing importance of human dignity in constitutional law has intensified criticism of punishments that permanently foreclose the possibility of reform and rehabilitation.

²⁷ *Criminal Law Bill and Death Penalty*, NEXT IAS (Nov. 15, 2023).

At the international level, there has been a clear trend towards abolishing or restricting the death penalty in the name of human rights and fair criminal justice. India has not abolished capital punishment, but its courts have increasingly relied on constitutional morality, proportionality and due process in death penalty cases. This reflects a gradual change in the understanding of punishment and State authority.

Thus, although the death penalty remains constitutionally valid under the current law, its continued existence faces serious constitutional, ethical and practical concerns. Judicial reforms have significantly narrowed its use, while changing social values increasingly favour a justice system grounded in human dignity and rehabilitation. The future of the death penalty in India will depend on whether it can continue to satisfy constitutional scrutiny in light of evolving legal principles and human rights standards. Until then, the debate on capital punishment will remain an important part of India's constitutional and legal discourse.

XV. BIBLIOGRAPHY

1. D.D. Basu, Introduction to the Constitution of India (LexisNexis, New Delhi, 25th edn., 2022).
2. M.P. Jain, Indian Constitutional Law (LexisNexis, New Delhi, 9th edn., 2023).
3. V.N. Shukla, Constitution of India (Eastern Book Company, Lucknow, 14th edn., 2023).
4. K.D. Gaur, Textbook on Indian Penal Code (Universal Law Publishing, New Delhi, 8th edn., 2022).
5. Ratanlal & Dhirajlal, The Bharatiya Nyaya Sanhita, 2023 (LexisNexis, New Delhi, 2024).
6. The Constitution of India, 1950.
7. The Bharatiya Nyaya Sanhita, 2023.
8. The Bharatiya Nagarik Suraksha Sanhita, 2023.
9. The Indian Penal Code, 1860.
10. The Code of Criminal Procedure, 1973.
11. International Covenant on Civil and Political Rights, 1966.
12. Universal Declaration of Human Rights, 1948.
13. *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.
14. *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947.

15. *Rajendra Prasad v. State of Uttar Pradesh*, AIR 1979 SC 916.
16. *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.
17. *Deena v. Union of India*, (1983) 4 SCC 645.
18. *Machhi Singh v. State of Punjab*, AIR 1983 SC 957.
19. *Kuljeet Singh alias Ranga v. Lt. Governor of Delhi*, AIR 1982 SC 774.
20. *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.
21. *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.
22. *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.
23. *Mohammad Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1.
24. Law Commission of India, 35th Report on Capital Punishment (1967).
25. Law Commission of India, 262nd Report: The Death Penalty (2015).
26. National Law University, Delhi, Death Penalty India Report (2016).
27. Somesh Kumar Gupta, "Method of Execution and Human Rights in India: A Critical Study of the Supreme Court's Recent Judgment Upholding Hanging Till Death" (2022) 5 Indian Journal of Integrated Research in Law.
28. Rajgopal Saikumar, "Negotiating Constitutionalism and Democracy: The 262nd Report of the Law Commission of India on Death Penalty" Manupatra.
29. "The Doctrine of Rarest of Rare: A Critical Analysis" (2022) 2 Indian Journal of Integrated Research in Law.
30. Constitutional Validity of Death Penalty in India, FreeLaw.
31. Archisha Singh, "Capital Punishment in India: Constitutional Validity of Capital Punishment", Brilllopedia.
32. Criminal Law Bill and Death Penalty, Next IAS.
33. Law Commission of India, Report No. 262.
34. Amnesty International, Death Penalty Reports.
