

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

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Volume 8 | Issue 3  
2025

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# Analysing the Appeal Process for Death Penalty Cases in India

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## ABSTRACT

*This paper delves into the legal, ethical and critical dilemma of death penalties in India, portraying its necessity in several cases ('rarest of the rare') while also accounting for arbitrary misuse and rigorous, stringent policies to keep them in check with the help of critically analyzing the provisions and through examination of landmark judgements of Bachan Singh v. State of Punjab and Chandra Mohan Tiwari V. State of MP and provisions like section 354 of the CrPC. This paper aims to explore the aspect of the appeal process and the hurdles faced by the convicts. Moreover it also analyses the impact such procedures and decisions have not just on the families and immediate close relations of the convict but on the society at large. Over the years, there have been several indisputable passing of death penalties passed by the trial court. Hence, Through this paper I wish to tackle not just the issue of arbitrary issuance of penalties but also the tardy and excruciating appeal process to counter. One needs to be mindful and understand the gravity of the punishment and the kind of precedent it sets on the society and this paper formulates it by talking about the nirbhaya case and the timeline of the evolving jurisprudence surrounding death penalties.*

## I. INTRODUCTION

The issue of death warrants by the supreme court against the four convicts in the Nirbhaya case has sparked off the debate of death penalties. There are several arguments that are in favour and against the constitutionality of death penalty and it has proved to be a controversial issue globally. Death penalty can be defined as execution of an offender sentenced to death after conviction by a court of law for a criminal offense.<sup>2</sup> There are several factors that influence death sentencing for instance legal provisions, political motives, public opinions, social and cultural factors, international organisation's norms etc. The legal system of India has incorporated extensive appeal processes in order to protect the accused and maintain the integrity of the judicial system.

In essence, death penalty represents the conflict between legal necessities and ideals of justice.

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<sup>2</sup> 'Capital Punishment in India' (LOK SABHA SECRETARIAT, 2015) [https://loksabhadocs.nic.in/Refinput/New\\_Reference\\_Notes/English/CAPITAL\\_PUNISHMENT\\_IN\\_INDIA.pdf](https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf) accessed 29 April 2024

It symbolizes the highest display of control by the state over life and death of its citizens, a power that weighs heavy with deep moral and ethical significance. Supporters of death penalty argue that it acts as a vital deterrent for serious crimes, as it proves to be a type of punishment proportional to the gravity of certain offences, and a method of maintaining the social agreement by guaranteeing responsibility and resolution for victims and their loved ones. However, people in opposition of death penalty are of the belief that it is an outdated practice that goes against the values of human integrity, justice, and balance. Their argument highlights problems in the death penalty system, such as wrongful convictions, political influences, and inequalities due to caste and religion, as strong arguments for quashing it altogether.

Conflicting narratives about guilt, innocence, and punishment collide during the appeals process when considered in light of prior occurrences, legal rulings, and judicial rulings. It's an environment where legal arguments clash, evidentiary standards are closely scrutinised, and the prospect of errors and injustice puts the values of impartiality and justice at jeopardy.

Additionally, the appeal procedure is a prime reflection of the principles of procedural system and constitutional rights constituted in the legal system of India. It illustrates a commitment to safeguarding the rule of law and human dignity by ensuring sure that everyone facing the death penalty obtains a fair opportunity to challenge their conviction and sentencing. The objective behind this paper is to analyse the appeal process for death penalties and to solve the pertinent question surrounding the authenticity of the appeal process by discussing the procedures involved and the role of High Court in upholding or overturning such sentences using relevant case laws to support the arguments and whether such transparent procedures help in retaining public's faith in the judiciary.

## **II. UNDERSTANDING DEATH PENALTY**

As mentioned before, death penalty refers to the mode of punishment where the court sentences execution of an offender for a criminal offense. Death penalty is used synonymously for capital punishment.<sup>3</sup> The states impose death penalty on convicts for different offences that can be grouped into 5 categories:

1. Offences related to drugs.
2. For certain acts that are unacceptable on religious, societal and ethical grounds.
3. Acts related to terrorism and murder.

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<sup>3</sup> 'Capital Punishment in India' (*LOK SABHA SECRETARIAT*, 2015) [https://loksabhadocs.nic.in/Refinpu/New\\_Reference\\_Notes/English/CAPITAL\\_PUNISHMENT\\_IN\\_INDIA.pdf](https://loksabhadocs.nic.in/Refinpu/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf) accessed 29 April 2024

4. Actions that affect the authority of the state including corruption, and
5. Military offences.

Each of the offences mentioned above differs in terms of jurisdiction and gravity.<sup>4</sup>

The Code of Criminal Procedure, 1973 (CrPC) plays a vital role in the procedural sentencing of capital punishments. The following sections are involved in the procedure of death penalties:

- Section 366 of the CrPC establishes that an order of death sentence given by the Sessions Court needs to be confirmed by the High Court as only then the execution can be brought into effect.<sup>5</sup> This is because death penalty is the highest degree of punishment that can be allotted to an individual and thus it acts as a preventive step to minimize risks while passing judgements.<sup>6</sup>
- Section 367 of the CrPC allows the High court to direct the Trial court to undertake further inquiry or additional evidence(s).<sup>7</sup>
- Section 368 allows the High Court to affirm the sentence passed by the sessions court or pass another, annul the accused and convict him under a difference offence or acquit the accused altogether.<sup>8</sup>
- Section 369 states that the case submitted to the high court shall be heard by two or more judges to uphold the sentence or for a new sentence or for any order that deems relevant to the High Court.<sup>9</sup>
- Section 370 provides that in case there is a conflicting opinion in equal proportion then the case is followed in the same manner as under section 392 where an appeal along with the conflicting views are presented before the judge of the same court and the said judge delivers their judgement after careful consideration of opinions of all the judges preceding them.<sup>10</sup> And lastly,

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<sup>4</sup> Rao RV and Sharma P, 'Death Sentence in India: Is It Rare yet Arbitrary?' (*SSRN*, 26 July 2022) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4155332](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4155332) accessed 29 April 2024

<sup>5</sup> s. 366 The Code of Criminal Procedure, 1973

<sup>6</sup> K M N, 'DEATH PENALTY SENTENCING IN INDIA - CONCERNS AND SOLUTIONS' (*IJFANS*, October 2012) <https://www.ijfans.org/uploads/paper/ea870c3f7a3f8b87f95a5ab96126e2ab.pdf> accessed April 2024

<sup>7</sup> s. 367 The Code of Criminal Procedure, 1973

<sup>8</sup> s. 368 The Code of Criminal Procedure, 1973

<sup>9</sup> s. 369 The Code of Criminal Procedure, 1973

<sup>10</sup> s. 370 The Code of Criminal Procedure, 1973

<sup>11</sup> s. 392 The Code of Criminal Procedure, 1973

- Section 371 states that the judgement passed by the High Court shall then be sent back to the Trial Court by the concerned officer under the seal of the High Court and their official signature shall be attested with the copy of the order of the High Court.<sup>12</sup>

The significance of regulations and procedures enshrined in the criminal law system of India must not be sidelined and should be followed accordingly. In the Constitution of India there is a provision that allows for the presence of clemency where the President has the authority as his role as leader of the country; the authority to provide the convicted individual with relief from their punishment. Article 72 of the Indian Constitution states that –

*“Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases-*

*(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offense; (c) in all cases where the sentence is a sentence of death.”<sup>13</sup>*

In multiple cases, delays in pardons by the President were held unconstitutional and violative of Article 21 of the Indian Constitution which entails right to life<sup>14</sup> According to Section 473 of the new procedural bill Bharatiya Nagrik Suraksha Sanhita, the mercy petition of a death sentence convict that has been disallowed by the President will not be able to appeal against it in the apex court.<sup>15 16</sup>

In addition to this, The Governor also possesses the ability to grant pardons. The Article 161 of the Indian constitution demarcates the specific powers granted to the President, stating that while the President can suspend, remit, or commute a sentence, they cannot excuse a death penalty once it has been imposed by a court.<sup>17</sup>

The adoption of the Doctrine of Rarest of rare also reflects on the judiciary’s concern regarding the accused’s violation of constitutional rights by ensuring that justice is delivered without any wrongful conviction. The test was devised after the case of Bachan Singh V. State of Punjab (1980) where in its judgement the court divided this test into two parts:

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<sup>12</sup> s. 371 The Code of Criminal Procedure, 1973

<sup>13</sup> art. 72 The constitution of India, 19750

<sup>14</sup> art. 21 The constitution of India, 19750

<sup>15</sup> ‘Under New Bill, Death Row Convict Can’t Appeal against President’s Decision on Mercy Plea’ (*The Economic Times*, 2023) <https://economictimes.indiatimes.com/news/india/under-new-bill-death-row-convict-cant-appeal-against-presidents-decision-on-mercy-plea/articleshow/103253875.cms?from=mdr> accessed 1 May 2024

<sup>16</sup> s. 473 Bharatiya Nagrik Suraksha Sanhita, 2023

<sup>17</sup> K M N, ‘DEATH PENALTY SENTENCING IN INDIA - CONCERNS AND SOLUTIONS’ (*IJFANS*, October 2012) <https://www.ijfans.org/uploads/paper/ea870c3f7a3f8b87f95a5ab96126e2ab.pdf> accessed April 2024

1. To decide whether the case should belong to the rarest of the rare category, and
2. Whether there is no alternative punishment for instance, life imprisonment that satisfy the facts of the case.<sup>18</sup>

Hence, we can understand that the legislation and judiciary understand the nature of the offence and that the constitutional right and dignity of the accused is upheld. But on the other hand, the legislative trend over the last decade clearly highlights an unprecedented expansion of the use of the death penalty which are challenged by appeals.<sup>19</sup> The paper shall discuss the appeal process herein.

### III. APPEAL PROCESS FOR DEATH PENALTY

As discussed before, The CrPC presents several provisions for the High Court to confirm or revoke death sentences. The accused can challenge the order confirming their death sentence by filing an appeal in the Supreme Court, but it is crucial to note that it is not a matter of right.

In the case of Chandra Mohan Tiwari V. State of MP, the supreme court stated that the said appeal can only be filed under two conditions:-

1. When the High Court has awarded a certificate under Article 134 (1)(c) of the Indian Constitution stating that the case at hand is valid and can be appealed to the Supreme Court<sup>20</sup> or
2. The SC grants leave under article 136(1) of the Indian Constitution.<sup>212223</sup>

In the case of Deena V. Union of India, the ‘cruel’ and ‘inhumane’ nature of death sentence by the method of hanging as provided in section 354 of the CrPC the court stated that –

*“The system of hanging is as painless as is possible in the circumstances, it causes no greater pain than any other known method of executing the death sentence, and it involves no barbarity, torture or degradation. This conclusion is based reason, supported by expert*

<sup>18</sup> *Bachan Singh v State of Punjab*, 1980 2 SCC 684(10), AIR 1980 SC 898

<sup>19</sup> Surendranath A and Pathak M, ‘Legislative Expansion and Judicial Confusion: Uncertain Trajectories of the Death Penalty in India’ (2022) 11 International Journal for Crime, Justice and Social Democracy 67

<sup>20</sup> art. 134(1)(c) The constitution of India, 19750

<sup>21</sup> Advocatekhaj.com, ‘Right of Appeal to the Apex Court in Cases Where Death Sentence Has Been Affirmed or Awarded by the High Court (2): Mode of Execution of Death Sentence and Incidental Matters: Law Commission of India Reports: Law Library’ (*AdvocateKhaj*) <https://www.advocatekhaj.com/library/lawreports/modeofexecutionofdeath/33.php?Title=Mode+of+Execution+of+Death+Sentence+and+Incidental+Matters&STitle=Right+of+Appeal+to+The+Apex+Court+in+Cases+Where+Death+Sentence+Has+Been+Affirmed+or+Awarded+by+The+High+Court+%282%29>. accessed 1 May 2024

<sup>22</sup> *Chandra Mohan Tiwari vs. State of MP*, AIR 1992 SC 891

<sup>23</sup> Art. 136(1) The constitution of India, 19750

*evidence and the findings of modern medicine.*”<sup>24</sup><sup>25</sup>

After analysing the appeals process, we can establish that death penalties are not passed indisputably. On the other hand, the year of 2023 marked 561 prisoners for death sentence which was the highest since 2004. The Supreme Court acquitted around 55% of the death penalty prisoners in 2023.<sup>26</sup>

This data paints a clear picture as to why there is a need for appeals for death penalties. A convict may not be entitled to his rights legally but morally speaking, he is entitled to life as much as the next person. The juxtaposition of due process under CrPC and the Constitution of India allows the accused with an opportunity to challenge the judgement which ensures that all procedures have been followed correctly without violating the rights of the accused. Furthermore, it allows rectification of any errors made in hindsight by the lower courts or the judicial system in general for instance, emergence of new evidence or poor legal representation etc. One needs to think twice if not more before passing a judgement on someone's life and death. Hence it is crucial to go over the case once more in order to ensure that every fact and detail falls into place. In addition to this, appeals disallow the arbitrary or fickle death sentence judgement that might be misused by those in power. It guarantees that such cases undergo conscientious inspection to determine the validity of the judgement. This prevents the misuse of such weighty punishment.<sup>27</sup> The appeals process also allows for transparency in the sentencing and punishment system of the judiciary.

But like every statute and proviso the appeals process has its own disadvantages. Since the issue of death penalty is extremely fragile and needs to be dealt with utmost consideration, legal proceedings can take long or be extended due to appeals process for years and can lead to prolonged uncertainty and late deliverance of justice which proves to be an obstacle for everyone involved in the proceeding including the victim (if alive) and the families of the victims. Moreover, the cost of filing such appeals which includes the court expenses and lawyer fees are something that need to be taken into consideration. In several cases the accused does not have the means to support themselves economically and this can be burdensome for them. Financial burden might not be the only obstacle that they would have to

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<sup>24</sup>Murlidhar Dr. S, 'HANG THEM NOW, HANG THEM NOT: INDIA'S TRAVAILS WITH THE DEATH PENALTY' (*JSTOR*, 1998) <https://www.jstor.org/stable/43953315> accessed 1 May 2024

<sup>25</sup> *Deena V. Union of India*, ('Deena'), (1983) 4 SCC 645

<sup>26</sup> Lakshmi Menon & Snehal Dhote, 'India's Burgeoning Death Penalty Crisis' (*The Hindu*, 2 March 2024) <https://www.thehindu.com/opinion/op-ed/indias-burgeoning-death-penalty-crisis/article67904333.ece>. accessed 1 May 2024

<sup>27</sup> Aggarwal S and Goyal C, 'CAPITAL PUNISHMENT IN INDIA' (*Law Journal Library*, 2 March 2024) [https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/injlolw11&id=1457&men\\_tab=srchresults](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/injlolw11&id=1457&men_tab=srchresults) accessed 1 May 2024

deal with; the entire legal proceeding including the time spent in jail can be mentally taxing on not just the accused but everyone involved. They might have to endure the uncertainty and constantly relive the trauma through hearings and can also lead to them not being able to get justice in a timely manner.

#### **IV. CONCLUSION**

The answer to death penalty is not as black and white as the society makes it to be. It can be argued that in cases of immoral and grave offences like rape, murder etc. one loses the right to life the moment they violate someone else's integrity and dignity, but the question of morality forces us to ponder upon whether the accused loses their right to fight for their lives as well. Death penalty as punishment will always face allegations of unethicity and unconstitutionality. The system fails to realise that rather than the punishment it is more about the effectiveness of the same. There is no conclusive answer to its validity and hence it is futile to argue in favour or against the same. The focal point of the democracy should be to ensure that the current provisions for death penalty are followed accordingly and in a just manner as we understand this is a very controversial and sensitive form of punishment and needs to be dealt with equal seriousness and vigilance. While I am not in the opposition of death penalty categorically, I believe there needs to be a more nuanced and refined procedure for implementation. The question of death penalty as a punishment is a very dicey one to address and I am of the opinion that one needs to incorporate the legislative intent behind the formation of this penalty while discussing its validity. Capital punishment can prove to be an effective tool that will allow us to reach one step closer to "fair" justice. But one cannot overlook the layers of arbitrariness or misuse for that matter. I would like to re-iterate that it is an extremely sensitive and full of substantial risks which can by-pass the principles of natural justice. Therefore, any policy allowing death penalty must include rigorous checks and prevent misuse. Additionally, the role of High Courts under the ambit of CrPC is that of an appellate authority and allows better scrutiny of death penalty cases and maintain consistency by passing precedents for the Trial Courts. Due to the public nature of the judicial system of our country, it allows the public to peak through the legal proceedings allowing transparency and also entailing better implementation and adoption of legal procedures in fear of public outrage and critique which also allows us to answer our research question. Although appeal for death penalty is not a matter of right for the accused but it acts as a beacon of hope for the accused to prove their innocence in case they are being tried unjustly. It also allows them a chance to a fair trial. In this paper, we have analysed the entire procedure behind death penalties and the nitty gritty involved in the appeals process for death penalties. We have also

derived the benefits and detriments entailing the process of appeal. It is suggested that cases involving death penalties should not only be dealt in a prudent and mindful manner but also should be considered as high priority cases so as to provide early relief to everyone connected to the case. The legislation and judiciary should join hands and introduce better provisions for financially handicapped and marginalised accused. Thus, in conclusion of this paper, we have established that the appeals process does in fact ensures transparency and fairness in the trial proceeding and also retains the faith of the citizens in its judicial system.

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