Page 1909 - 1932 **DOI:** *https://doij.org/10.10000/IJLMH.119283*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 2

2025

History of Death Penalty and its Evolution into Indian Legal System

MANAS SHUKLA[1] AND SHAIWALINI SINGH[2]

ABSTRACT

In India, the evolution of the death penalty is a complicated interplay of ancient customs, colonial forces and constitutional law-making. This study maps the longitudinal trajectory of capital punishment as it shifted across Vedic-era scriptures, through the medieval kraals, colonial legislative codification, and post-colonial refinement. The paper studies how the path-breaking "rarest of rare" doctrine laid down in Bachan Singh v. State of Punjab radically changed the law governing death sentencing in India while keeping it constitutionally valid. It covers subsequent judicial developments which laid down procedural safeguards, sentencing considerations and execution protocols through cases such as Mithu, Triveniben and Shatrughan Chauhan. The study critically evaluates current challenges of socioeconomic imbalance in sentencing, arbitrariness issues, and process inconsistencies brought to light by empirical studies. Dhananjoy Chatterjee, the Nirbhaya convicts, etc are examples of the ones executed showing patterns of implementation in practice. Particular focus is placed on the Law Commission's 262nd Report which advocated the limited abolition and the empirical research produced by Project 39A. Through comparative analysis with varied jurisdictions, the paper contextualizes the position of India within global abolition trends. It argues that India occupies a unique position – upholding the constitutional validity of capital punishment while increasingly tightening the restrictions on its use. This historical insight provides crucial backdrop against which emerging prospects for reform in India's changing penological paradigm may be calibrated.

***Keywords**: Death Penalty, Indian Constitution, Rarest of Rare Doctrine, Capital Sentencing, Judicial Evolution.*

I. INTRODUCTION

(A) Background of Research

The death penalty goes back to time immemorial. The death penalty is one of the earliest forms of punishment of humankind. Ancient societies including Babylon, Greece and Rome used it

[1] Author is a Student at Amity University, Lucknow Campus, India.
[2] Author is a Professor at Amity University, Lucknow Campus, India.

 [ISSN 2581-5369]

for different crimes. Capital punishment has a long history in India, going back to ancient texts. The Manusmriti and the Arthashastra have similar provisions for capital punishment. These texts laid out particular offenses worthy of the ultimate penalty.[3]

The colonial period was pivotal change in the penal system of the country. The colonial British rule brought in a systematized method of capital punishment. India systematically codified death-eligible offenses in the Indian Penal Code of 1860. Section 302 provided death for murder, which became the most common basis for executions. Colonial authorities also employed executions as instruments of political control. Bhagat Singh and such other freedom fighters faced gallows for challenging British authority. This political element layered death penalty jurisprudence in ways that continue today.[4]

International trends on the abolition of the death penalty did not sway post-independent India. The framers of the Constitution debated its need but retained it. The protection of life under Article 21 became the two-edged sword of death penalty litigation. Courts grappled with the clash between the right to life and state-sanctioned killings. Produced landmark judgments that sharpened capital sentencing. Judges created frameworks to curb arbitrary imposition of the ultimate penalty. In *Jagmohan Singh v. State of UP (1973 AIR 947),* the Supreme Court has held that capital punishment is constitutional. But that was just the start of a complicated jurisprudential saga.[5]

The "rarest of rare" doctrine radically altered the landscape of death penalty law in India. This watershed principle was laid down by this court in *Bachan Singh v. State of Punjab (1980 AIR 898).* Justice Sarkaria said death sentences should be passed in the rarest of rare cases. Courts must balance aggravating factors with mitigating circumstances. The presumption should heavily weigh towards life in prison unless it is absolutely necessary. This became known as the doctrine of uniform sentencing. However, subsequent cases revealed challenges in applying this standard uniformly. *Machhi Singh v. State of Punjab* (1983 AIR 957) tried clarifying the doctrine through five categories. Still, subjective judicial interpretation remained problematic.[6]

In recent decades, the evolution of death penalty jurisprudence has continued. The courts have added procedural protections for capital defendants. *Mithu v. State of Punjab (1983 AIR 473)* found mandatory death sentences unconstitutional. *Shatrughan Chauhan v. Union of India (2014)* granted rights to death row prisoners. Parliament has, at the same time, broadened

[3] V.R. Krishna Iyer, The Indian Penal Code 45-48 (6th ed. 2014).
[4] Elizabeth Kolsky, Colonial Justice in British India: White Violence and the Rule of Law 123-145 (Cambridge Univ. Press 2010).
[5] Jagmohan Singh v. State of UP, (1973) 1 SCC 20; Constitution of India, art. 21.
[6] Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Machhi Singh v. State of Punjab, (1983) 3 SCC 470.

 [ISSN 2581-5369]

death-eligible offenses. The 2013 Criminal Law Amendment added new capital offenses for rape resulting in death. POCSO amendments introduced death penalty for child sexual abuse cases. India thus presents a complex picture - strengthening safeguards while expanding applicability.[7]

(B) Research Objectives

1. To trace the historical evolution of capital punishment in India from ancient legal texts to contemporary constitutional jurisprudence.
2. To analyze the development and application of the "rarest of rare" doctrine as India's distinctive contribution to death penalty jurisprudence.
3. To evaluate the socioeconomic, procedural, and constitutional dimensions of India's capital punishment framework in light of empirical findings and international trends.

(C) Research Questions

1. How have religious, colonial, and constitutional influences shaped India's approach to death penalty from ancient times to the present day?
2. To what extent has the "rarest of rare" doctrine achieved its objective of limiting capital punishment to exceptional cases, and what factors have influenced its practical implementation?
3. What socioeconomic patterns, procedural inconsistencies, and constitutional tensions characterize India's contemporary death penalty practice, and how might these inform future reforms?

II. HISTORICAL ORIGINS OF DEATH PENALTY

Death penalty emerged as mankind's oldest form of punishment. Ancient civilizations employed it across continents with varying justifications. The Code of Hammurabi (1754 BCE) prescribed death for twenty-five specific offenses. This Babylonian legal text established proportionality through its infamous "eye for an eye" principle. Egyptian and Assyrian laws similarly mandated capital punishment for numerous transgressions. Greece and Rome refined execution practices through more systematic legal frameworks. Roman law's Twelve Tables codified capital offenses as early as 450 BCE.[8]

Dharmic traditions of ancient India developed elaborate theories of punishment. The

[7] Mithu v. State of Punjab, (1983) 2 SCC 277; Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1; The Criminal Law (Amendment) Act, 2013; The Protection of Children from Sexual Offences (Amendment) Act, 2019.
[8] John H. Langbein, The Origins of Adversary Criminal Trial 40-62 (Oxford Univ. Press 2003).

 [ISSN 2581-5369]

Manusmriti listed a number of death-eligible crimes depending on caste violations. Higher castes often received lighter sentences for the same crimes. The Arthashastra by Kautilya gave vast details around execution of the Mauryan Empire. It mandated death for treason, murder and theft over certain amounts. The text described methods of execution such as impalement, burning, and drowning. Curiously, the text also required humane treatment while conditionally incarcerated before execution. These provisions reflect a surprising degree of procedural sophistication for third century BCE jurisprudence.[9]

Methods of execution reflected both practical constraints and symbolic meanings. Beheading symbolized the severing of one's connection to society. Hanging evolved as a widely adopted method across civilizations. In ancient India, poisoning was reserved for Brahmins who committed capital offenses. The dharmic texts forbade physical mutilation of the highest caste. This differential treatment based on social status persisted for centuries. Religious contexts often determined punishment severity and methodology. Buddhism's ahimsa principles temporarily reduced executions during Ashoka's reign. The emperor famously renounced violent punishments after witnessing war's brutality. However, subsequent rulers reinstated capital punishment as pragmatic governance necessity.[10]

Medieval India witnessed significant evolution in capital punishment practices. Hindu kingdoms maintained caste-based punishment differentiation. The Delhi Sultanate introduced Islamic jurisprudence with its distinctive approach. Qisas (retribution) allowed victims' families to demand death or accept diyat (blood money). This victim-centered approach contrasted with state-centric Hindu punishment models. Mughal emperors further refined Islamic criminal jurisprudence in India. Akbar's legal reforms attempted to synthesize Hindu and Islamic principles. His Din-i-Ilahi movement briefly moderated capital punishment application. However, subsequent rulers like Aurangzeb reimposed stricter interpretations. Public executions became increasingly common as deterrence demonstrations.[11]

Pre-colonial execution practices varied regionally across Indian kingdoms. Maratha territories employed relatively fewer capital punishments. The Peshwa administration favored fines and imprisonment over execution. Conversely, certain South Indian kingdoms maintained elaborate execution rituals. The purpose transcended mere punishment to include religious sacrifice

[9] R.P. Kangle, The Kautiliya Arthasastra: A Study 117-123 (Motilal Banarsidass 2014); Patrick Olivelle, Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra 170-185 (Oxford Univ. Press 2005).
[10] Nandini Bhattacharyya-Panda, Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal 88-92 (Oxford Univ. Press 2008).
[11] M.B. Hooker, Islamic Law in South-East Asia 152-158 (Oxford Univ. Press 1984); Richard M. Eaton, The Rise of Islam and the Bengal Frontier, 1204-1760 131-135 (Univ. of California Press 1993).

 [ISSN 2581-5369]

elements. Colonial observers documented these practices with ethnocentric bias. Their accounts portrayed indigenous punishments as barbaric and uncivilized. This rhetoric later justified imposing British criminal jurisprudence across India. The narrative of "civilizing" Indian punishment systems became colonialism's recuring justification.[12]

(A) Post-Independence Evolution (1947-1980)

Independent India inherited a colonial penal framework largely intact. The Constituent Assembly debated capital punishment's place in the new republic. Prominent members like Shibban Lal Saxena advocated abolition on humanitarian grounds. Others insisted on retention for maintaining social order. This ideological tension persisted throughout the debates. Eventually, pragmatism prevailed over abolition sentiments. The Assembly retained capital punishment with constitutional safeguards instead.[13]

Article 21 emerged as the constitutional cornerstone for death penalty jurisprudence. It guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law." Early interpretations focused narrowly on procedural compliance. The Supreme Court initially refrained from substantive due process review. This approach facilitated continuation of colonial-era capital sentencing practices. *A.K. Gopalan v. State of Madras* (1950) exemplified this restrained judicial posture. Justice Fazl Ali's dissent, however, planted seeds for future jurisprudential evolution.[14]

Legislative developments reinforced the death penalty's place in independent India. The Code of Criminal Procedure 1973 replaced its colonial predecessor. Section 354(3) introduced a significant paradigm shift regarding capital punishment. It required courts to explain "special reasons" behind death sentences. This clause was implicitly created life imprisonment as the most preferred punishment. Now death sentences need special justification, not routine application. Parliament therefore acknowledged execution's exceptional character without abolishing it. This legislative recasting was an expression of changing penological thinking rather than abolitionist urges.[15]

The first major constitutional challenge was in *Jagmohan Singh v. State of U.P.* The petitioner submitted that the application of judicial discretion in death sentence without guidance would infringe on Article 14. The lack of sentencing guidelines allegedly created unfair punishment

[12] Radhika Singha, A Despotism of Law: Crime and Justice in Early Colonial India 33-40 (Oxford Univ. Press 1998).
[13] CONSTITUENT ASSEMBLY DEBATES, Vol. VII, 373-375 (Dec. 3, 1948).
[14] A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[15] Code of Criminal Procedure, 1973, § 354(3), No. 2, Acts of Parliament, 1974 (India).

discrepancies. He also contended that Article 21 which safeguards life, had been contravened by death sentence. The Supreme Court rejected these challenges unanimously in 1973. The bench held that judicial discretion is not arbitrary but a courts and legal system, a necessary foundation of individualized justice. The Chief Justice Sikri highlighted judicial expertise in balancing facts and circumstances. The ruling would prove to be the constitutionality of the capital punishment for the decades to come.[16]

Though capital punishment was ultimately upheld, judicial thinking underwent significant evolution in consequential subsequent rulings. *Ediga Anamma v. State of Andhra Pradesh (1974)* added critical refinements to the considerations for sentencing. Justice Krishna Iyer enunciated relevance of age, socioeconomic status and the state of mind. The ruling cast the consideration of post-crime reformation prospects. Over time, these other-oriented factors eclipsed a focus on punishment, more at home in the colonial era. *Rajendra Prasad v. State of U.P. (1979)* went a step further to question routine death sentences. Justice Krishna Iyer favoured exceptional punishment, in exceptional cases. His view foreshadowed the landmark "rarest of rare" doctrine that would soon take shape.

Bachan Singh v. State of Punjab was a game changer in capital sentencing jurisprudence. This historic 1980 case birthed the timely "rarest of rare" doctrine. The constitutional bench ruled mandatory death sentences unconstitutional. It instead announced a framework weighing aggravating and mitigating factors. Justice Sarkaria's majority opinion stated that the possibility of reforming a prisoner should take precedence. This ruling enshrined principled sentencing discretion exercised by way of assessing standard factors. Justices Bhagwati and Murtaza Fazal Ali were in dissent on this, calling for its total abolition. Their minority opinions still shape current abolition discourse. Despite subsequent refinements, this watershed judgment is still the foundational touchstone of Indian capital jurisprudence.[17]

(B) Modern Jurisprudential Developments (1980-PRESENT)

Refinement of "Rarest of Rare" Doctrine

"Rarest of rare" pioneered by Bachan Singh, guiding principle of Indian death penalty The doctrine required extraordinary grounds to be entered for the death penalty. But applying it proved complicated for lower courts. Judges had difficulty in identifying exceptional cases warranting death. The Supreme Court acknowledged this interpretive confusion in later rulings. It tried complex iterative refinement across a number of landmark decisions. Each case brought

[16] Jagmohan Singh v. State of U.P., (1973) 1 SCC 20.
[17] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.

 [ISSN 2581-5369]

new dimensions to the understanding of the doctrine.[18]

Machhi Singh v. State of Punjab provided crucial doctrinal clarification in 1983. Justice Thakkar articulated five categories that might qualify as "rarest of rare." These included murders committed with extreme brutality or exceptional depravity. Killings with anti-social or socially abhorrent motivations also qualified. Multiple murders warranted special consideration for capital punishment. The judgment provided lower courts with workable parameters. Many subsequent death sentences relied heavily on Machhi Singh categories. This framework remains influential in contemporary capital sentencing decisions.[19]

Kehar Singh v. Union of India addressed political assassination as a death-eligible category. The case stemmed from Prime Minister Indira Gandhi's assassination conspiracy. The Supreme Court affirmed Kehar Singh's death sentence despite his non-triggerman status. It emphasized the planned nature and national significance of the crime. This judgment established that political motivations don't mitigate murder's seriousness. Justice G.L. Oza emphasized national security implications in assassination cases. The ruling demonstrates how public interest considerations shape "rarest of rare" interpretations. Political murder thus remains firmly within capital punishment's ambit.[20]

Dhananjoy Chatterjee v. State of West Bengal extended "rarest of rare" application to sexual violence. This 1994 judgment addressed the rape and murder of a teenage girl. Justice Kuldip Singh emphasized the victim's vulnerability and violation of societal trust. The Court noted that the accused was a security guard at the victim's building. This breach of trust aggravated the offense's seriousness. The judgment remains significant for establishing gendered violence parameters. It influenced subsequent rape-murder sentencing patterns. Chatterjee's execution in 2004 ended India's eight-year execution moratorium.[21]

Doctrinally, courts struggled with consistent application despite these parameters. Different benches reached contradictory conclusions in similar cases. *Santosh Kumar Bariyar v. State of Maharashtra* acknowledged this troubling inconsistency. Justice Sinha noted "extremely uneven application" of Bachan Singh principles. The Court observed that similar cases frequently resulted in disparate outcomes. This judicial acknowledgment highlighted the doctrine's inherent subjectivity. It sparked renewed debate about capital sentencing guidelines.

[18] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[19] Machhi Singh v. State of Punjab, (1983) 3 SCC 470.
[20] Kehar Singh v. Union of India, (1989) 1 SCC 204.
[21] Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220.

 [ISSN 2581-5369]

Swamy Shraddananda v. State of Karnataka emerged as a response to these concerns.[22]

The Supreme Court developed alternative sentencing options beyond the binary choice. Swamy Shraddananda introduced life imprisonment without parole possibility. This "third option" addressed cases falling just short of "rarest of rare" threshold. It applied to heinous murders nonetheless warranting extraordinary punishment. Later renamed "Shraddananda sentencing," this approach gained prominence in murder cases. *Union of India v. V. Sriharan* affirmed this special category of life sentences. It granted courts flexibility beyond traditional life imprisonment. This development partially addressed the arbitrariness critique of death sentencing.[23]

The doctrin's gendered dimensions received attention in *Shankar Kisanrao Khade v. State of Maharashtra*. The court noted concerning patterns in rape-murder sentencing. Justice Madan Lokur's concurrence proposed a "society's cry test" alongside other tests. It examined when public opinion legitimately influences sentencing decisions. The judgment questioned inconsistent applications in sexual violence cases. Around the same period, Mohd. Mannan addressed gang rape and murder contexts. These cases continuously refined the doctrine's application to gendered violence. The Nirbhaya case perpetrators' executions in 2020 exemplified this categorization.[24]

Discussion of doctrine refinement addressing new social realities and crime trends continued. Recent decisions emphasized a criminal's potential for reformation as a mitigating factor. In *Shabnam v. State of U.P.* the court emphasized that it had to examine the prospect of rehabilitation. The doctrine was particularly focused on crimes against marginalized communities. The court also stressed the societal impact in "rarest of rare" findings. Even with these refinements, it was still not consistent across benches. Critics still argue that the doctrine is fundamentally subjective. But its elasticity enables dealing with emerging patterns of crime within constitutional parameters.[25]

Procedural Safeguards and Due Process

Indian courts gradually introduced greater procedural safeguards in capital cases after 1980. The judiciary saw the irreversibility of execution demanded exceptional procedural rigor. A series of landmark rulings gradually expanded due process protections for capital defendants. These protections pertain to pre-trial, trial, and post-conviction stages. Each development

[22] Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498.
[23] Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767.
[24] Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546.
[25] Shabnam v. State of U.P., (2015) 6 SCC 632.

 [ISSN 2581-5369]

underscores an expanding universe of constitutional understanding in the domain of Article 21. This led the courts to move beyond purely procedural to substantive due process considerations.[26]

Mithu v. State of Punjab held mandatory death sentences unconstitutional. Section 303 of IPC made it mandatory for life-term prisoners who had committed murder to be sentenced to death. This inflexible provision, according to the Supreme Court violates Articles 14 and 21. Justice O. Chinnappa Reddy stated the need for individualized sentencing in capital cases. The ruling acknowledged that all capital defendants are entitled to opportunities to present mitigating circumstances. Judicial discretion as constitutionally mandated - This decision made judicial discretion a constitutional requirement. It also restrained Parliament from removing sentencing discretion via mandatory provisions. Later amendments maintain this protection from forced execution.[27]

Trial procedure requirements received comprehensive attention in Bachan Singh itself. The constitution bench mandated separate sentencing hearings for capital cases. Courts must explicitly consider both aggravating and mitigating factors. This bifurcated process ensures focused attention on sentencing considerations. *Allauddin Mian v. State of Bihar* further developed these procedural standards. The Court insisted on genuine sentencing hearings rather than perfunctory exercises. It demanded consideration of probation officer reports and socio-economic backgrounds. Justice Ahmadi emphasized that punishment must reflect society's reasonable response. This judgment substantially enhanced procedural fairness in capital sentencing hearings.[28]

Post-conviction procedural safeguards developed through several significant judgments. *Triveniben v. State of Gujarat* addressed the execution delay question. The constitutional bench established that inordinate, unexplained delay might justify commutation. Justice K. Jagannatha Shetty emphasized that delayed execution causes excessive suffering. However, delay caused by prisoner-initiated proceedings doesn't qualify for relief. This judgment acknowledged the death row phenomenon's mental anguish. It enabled commutation when the state demonstrated procedural negligence. Many condemned prisoners received commutation under this important procedural protection.[29]

Execution procedures received detailed judicial scrutiny in later years. *Deena v. Union of India*

[26] V. VENKATESAN, DEATH PENALTY: CRUEL AND DEGRADING 23-29 (Oxford Univ. Press 2020).
[27] Mithu v. State of Punjab, (1983) 2 SCC 277.
[28] Allauddin Mian v. State of Bihar, (1989) 3 SCC 5.
[29] Triveniben v. State of Gujarat, (1989) 1 SCC 678.

 [ISSN 2581-5369]

examined hanging's constitutionality as an execution method. The Court upheld hanging while mandating humane implementation protocols. It required proper drop calculation to ensure quick death without decapitation. The judgment balanced swift punishment against needless suffering concerns. Years later, *Shatrughan Chauhan v. Union of India* comprehensively addressed execution protocols. The Court issued binding guidelines on multiple procedural aspects. These included mandatory fourteen days notice before execution. The condemned person's family must receive notification about scheduled execution. Post-mercy petition rejections require fresh warrants from trial courts.[30]

Mental health emerged as a critical procedural consideration in recent jurisprudence. Shatrughan Chauhan recognized mental illness as potential ground for commutation. The Court acknowledged that post-conviction mental deterioration affects punishment purposes. *Navneet Kaur v. State of NCT of Delhi* further developed this protection. Justice Sathasivam emphasized comprehensive mental health evaluation necessity before execution. This humane consideration prevents executing persons incapable of understanding their punishment. It aligns Indian jurisprudence with evolving international standards. *X v. State of Maharashtra* recently expanded mental illness protections.[31]

Mercy petition procedures underwent significant judicial refinement in recent years. The judicial review over mercy decisions stems from Epuru Sudhakar v. Government of Andhra Pradesh. Justice Kapadia explained that constitutonal courts were free to subject arbitrary or procedurally less than perfect rejection on account of mercy to multiple court reviews. Compelling reasons of supervening events post-conviction. The case of *Devender Pal Singh Bhullar v. State of NCT* of Delhi dealt with delay in processing mercy petitions. The Court found that unreasonable delay in deciding mercy pleas violates Article 21. Justice Sathasivam stressed human dignity even to condemned prisoners. Such judgments established minimal standards for executive clemency procedures.[32]

The Supreme Court, in *Mohd. Arif v. Registrar*, introduced a significant new oral hearing right. Petitions to review death sentences must be heard in open court, not decided in chamber. Justice Rohinton Nariman had insisted on a greater degree of due process for irreversible punishment. This opinion recognized the unique stakes in capital cases that require supplementary protections. It gave condemned prisoners one last meaningful chance to be heard.

The judgment exemplifies the continuing procedural evolution even after exhausting regular

[30] Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.
[31] X v. State of Maharashtra, (2019) 7 SCC 1.
[32] Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161.

 [ISSN 2581-5369]

appeals. Subsequent rulings further enhanced post-conviction protections through curative petition standards. The collective effect substantially reduced execution probability through multiple procedural layers.[33]

III. RECENT DEVELOPMENTS

(A) Law Commission of India 262nd Report (2015): Recommendation for abolition

The Law Commission of India's 262nd Report marked a watershed moment in death penalty discourse. Justice A.P. Shah chaired this comprehensive review of capital punishment in India. The Commission examined constitutional, legal, and penological aspects of the death penalty. It conducted extensive consultations with stakeholders across the legal spectrum. The resulting report presented the most authoritative contemporary examination of capital punishment. Various factors influenced the Commission's abolition recommendation after thorough deliberation.[34]

Arbitrary application emerged as a primary concern in the Commission's analysis. The report documented troubling patterns in capital sentencing across different courts. Similar cases frequently resulted in disparate outcomes based on individual judges. This arbitrariness violated the constitutional guarantee of equal protection under law. The Commission noted that even the "rarest of rare" doctrine hadn't eliminated subjective decisions. Justice Shah explicitly stated that "like cases are not treated alike." Statistical analysis revealed disturbing socioeconomic patterns among death row prisoners. Most sentenced to death belonged to economically vulnerable sections. Lower castes and religious minorities appeared disproportionately on death row. This pattern raised serious questions about systemic discrimination in capital sentencing.[35]

Irrevocability constituted another fundamental concern highlighted in the report. The Commission documented numerous cases of wrongful convictions subsequently reversed. Dhananjay Chatterjee's execution received particular scrutiny regarding evidence reliability. The report cited seventeen prisoners exonerated after serving years on death row. Justice Krishna Iyer's prescient warning about executing innocent persons gained renewed emphasis. The Commission concluded that no justice system could eliminate error possibility. It emphasized that wrongful executions represent irreparable injustice that societies must avoid. This consideration substantially influenced the abolition recommendation despite retentionist

[33] Mohd. Arif v. Registrar, Supreme Court, (2014) 9 SCC 737.
[34] LAW COMMISSION OF INDIA, REPORT NO. 262: THE DEATH PENALTY 1-9 (Aug. 2015), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf (last visited on March 28, 2025).
[35] Id. at 65-73.

arguments.[36]

India's peculiar "partial hanging phenomenon" further troubled the Commission. Most death sentences never progress to actual execution in India. Between 2004-2015, only four executions occurred despite hundreds of death sentences. This created what the Commission termed a "dual system" of punishment. Some sentenced prisoners faced execution while others received eventual commutation. This arbitrary distinction between similarly situated defendants raised serious equal protection concerns. The report observed that execution rarity undermined deterrence arguments for retention. A punishment so rarely implemented could hardly deter potential criminals effectively. This practical analysis complemented theoretical arguments against capital punishment's deterrent effect.[37]

International developments received substantial attention in the Commission's deliberations. The report documented the global trend toward abolition across jurisdictions. It noted that 140 nations had abolished capital punishment either legally or practically. This included democracies previously committed to retentionism like South Africa. The Commission emphasized India's human rights obligations under international covenants. It highlighted inconsistency between capital punishment and evolving international standards. The Second Optional Protocol to ICCPR specifically promotes death penalty abolition. While acknowledging sovereignty arguments, the Commission stressed global normative evolution. These international considerations supplemented domestic constitutonal analysis rather than replacing it.[38]

Significantly, the Commission departed from its previous position on capital punishment. The 35th Report (1967) had recommended retention for deterrence purposes. Justice Shah's Commission explicitly rejected this earlier analysis as outdated. It cited extensive contemporary research questioning deterrence effectiveness. The report emphasized that certainty of punishment deters crime more than severity. Modern empirical studies failed to demonstrate capital punishment's unique deterrent value. This evidence-based reassessment reflected the Commission's commitment to contemporary penological science. It demonstrated willingness to revise positions based on empirical evidence rather than tradition.[39]

Project 39A's death penalty research and documentation

Project 39A emerged as a pivotal research initiative on capital punishment in India. Established

[36] Id. at 127-139.
[37] Id. at 102-117.
[38] Id. at 40-51.
[39] Id. at 143-151; LAW COMMISSION OF INDIA, REPORT NO. 35: CAPITAL PUNISHMENT (1967).

 [ISSN 2581-5369]

in 2016, it operates from the National Law University, Delhi. The project derives its name from Article 39A of the Indian Constitution. This provision emphasizes equal justice and free legal aid for all citizens. Project 39A undertakes comprehensive empirical research on death penalty implementation. It has fundamentally transformed understanding of capital punishment's practical realities in India. The project's methodology combines rigorous data collection with qualitative analysis.[40]

Death Penalty India Report (2016) stands as Project 39A's first substantial contribution. This groundbreaking study documented experiences of 373 death row prisoners. Researchers conducted interviews with prisoners and their families across multiple states. The report revealed shocking socioeconomic patterns among death row populations. Over 75% of death row prisoners belonged to economically vulnerable groups. Religious minorities and lower castes appeared disproportionately in the condemned population. Educational disadvantage emerged as another striking pattern. Nearly 62% of death row prisoners had not completed secondary education. These findings raised serious equality concerns regarding capital sentencing.[41]

Mental health conditions among death row prisoners received unprecedented attention. Project 39A conducted India's first systematic mental health assessment of death row inmates. Their "Deathworthy" report (2018) documented widespread psychological trauma. Approximately 62% of assessed prisoners showed symptoms of mental illness. The study noted that most conditions developed or worsened during imprisonment. Prolonged death row confinement itself caused psychological deterioration. Researchers documented sleep disorders, depression, and anxiety among condemned prisoners. These findings significantly impacted judicial understanding of death row phenomenon. Supreme Court judgments increasingly cite these mental health findings.[42]

Legal representation quality emerged as another critical focus area. Project 39A conducted assessment of legal aid provided to capital defendants. Their "Matters of Judgment" report analyzed high court confirmation proceedings. The findings revealed troubling patterns of inadequate representation. State-appointed lawyers frequently lacked capital defense experience or training. Many legal aid lawyers failed to present crucial mitigating evidence. Some defense submissions consisted of merely few pages. The Supreme Court acknowledged

[40] Anup Surendranath, The Birth of a New Academic Initiative: Centre on the Death Penalty at NLU Delhi, 4 J. NAT'L L. U. DELHI 1, a-23 (2016).
[41] PROJECT 39A, DEATH PENALTY INDIA REPORT 73-104 (Nat'l L. U. Delhi 2016).
[42] PROJECT 39A, DEATHWORTHY: A MENTAL HEALTH PERSPECTIVE OF THE DEATH PENALTY 31-56 (Nat'l L. U. Delhi 2018).

 [ISSN 2581-5369]

these representation concerns in recent judgments. Improved standards for capital defense gradually emerged from this research. Trial courts now face greater scrutiny regarding defense counsel appointment.[43]

Trial court sentencing practices received systematic documentation through Project 39A's work. Their annual "Death Penalty in India" reports track sentencing trends comprehensively. The 2019 report revealed that trial courts imposed 102 death sentences that year. This represented a 60% decrease from the previous year's sentencing pattern. Uttar Pradesh, Maharashtra, and Madhya Pradesh emerged as most death-penalty-prone states. Sexual offenses constituted the largest category of capital sentences. The research documented significant sentencing variations across different states and courts. These inconsistencies reinforced concerns about arbitrariness in capital sentencing decisions.[44]

Execution protocols and methods received critical examination through Project 39A's initiatives. Researchers documented the opaque nature of execution preparations in India. Their "Executing Death" report highlighted concerning procedural inadequacies. Many prison manuals contained outdated hanging protocols. Gallows maintenance and hangman training lacked standardized procedures. The research revealed significant variations in execution protocols across states. Some protocols dated back to British colonial administration. This research influenced judicial directives for humane execution procedures. The Supreme Court cited these findings while issuing execution guidelines.[45]

Notable executions: Dhananjoy Chatterjee (2004), Ajmal Kasab (2012), Afzal Guru (2013), Yakub Memon (2015), Nirbhaya convicts (2020)

India's execution practices reflect exceptional rarity in implementing death sentences. Only seven executions have occurred since 1995 despite hundreds of death sentences. Each execution reveals distinct aspects of India's capital punishment jurisprudence. These cases illustrate evolving legal, procedural, and societal dimensions of death penalty. They demonstrate the complex interplay between judicial process and political considerations. Each execution generated intense public discourse about capital punishment's propriety. The temporal gaps between executions themselves warrant scholarly examination.[46]

[43] PROJECT 39A, MATTERS OF JUDGMENT 145-172 (Nat'l L. U. Delhi 2017).
[44] PROJECT 39A, DEATH PENALTY IN INDIA: ANNUAL STATISTICS REPORT 2019 12-28 (Nat'l L. U. Delhi 2020), https://www.project39a.com/annual-statistics (last visited on March 28, 2025).
[45] *Id.*
[46] ROGER HOOD & CAROLYN HOYLE, THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE 156-158 (5th ed., Oxford Univ. Press 2015), https://books.google.co.in/books?id=osHBBQAAQBAJ (last visited on March 28, 2025).

Dhananjoy Chatterjee's execution in 2004 ended an eight-year execution moratorium in India. He faced conviction for the rape and murder of a teenage schoolgirl. His case proceeded through standard judicial processes without extraordinary features. The Supreme Court classified his crime within "rarest of rare" parameters. Justice Sujata Manohar emphasized the victim's young age and violation of trust. Chatterjee worked as a security guard in the victim's building. His execution generated minimal procedural innovations in capital jurisprudence. However, it established contemporary execution protocols after the lengthy moratorium. Subsequent research raised troubling questions about evidence reliability in his case. Death Penalty India Report suggested possible miscarriage of justice in his conviction.[47]

Ajmal Kasab's execution in 2012 represented India's first terrorism-related hanging in decades. The Pakistani national participated in the 2008 Mumbai terror attacks. His trial received unprecedented security arrangements and media attention. The Supreme Court meticulously reviewed evidence before confirming his death sentence. Justice Aftab Alam emphasized the meticulously planned nature of the terrorist attack. The Court rejected his young age as sufficient mitigation given the crime's gravity. His execution occurred through extraordinarily secretive "Operation X" to prevent security issues. The government maintained complete secrecy until after the execution. This approach drew criticism from transparency advocates but security justification from officials. The execution strengthened terrorism exception in death penalty jurisprudence.[48]

Afzal Guru's 2013 execution for the Parliament attack case generated significant controversy. Critics questioned both his trial's fairness and execution's procedural propriety. The Supreme Court acknowledged circumstantial evidence but found it compelling beyond reasonable doubt. Justice P. Venkatarama Reddy emphasized the crime's impact on "Indian sovereignty." However, the Court's judgment contained the troubling phrase "collective conscience" as justification. This language has prompted scholarly criticism of reasoning through emotion rather than the law. His execution went ahead without family members being informed in advance. The rejection letter was posted by prison officials after the execution. This oversight led to later judicial orders regarding family notification rights. His case highlights possible tension between national security and procedural fairness.[49]

In 2015, Yakub Memon's case saw extreme last-minute judicial interference. His role in the 1993 Mumbai serial blasts has also rekindled a debate about terrorism in the context of the

[47] Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220.
[48] Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1.
[49] State v. Navjot Sandhu, (2005) 11 SCC 600.

 [ISSN 2581-5369]

death penalty. His death sentence was upheld by the Supreme Court based largely on evidence that he orchestrated conspiracies. Justice Dipak Misra stressed the "diabolical" planning of the crime and its devastating effects. Memon's execution was marked by extraordinary post-midnight proceedings at the Supreme Court. Justice Kurian Joseph's dissent raised issue with the propriety of multiple death warrants. The Court met at 3:00 AM to hear closing arguments ahead of execution. Such unprecedented access to justice exemplified enhanced procedural safeguards. His dissenting opinions demonstrated healthy judicial disagreement about procedural safeguards.[50]

Executions of Nirbhaya case convicts in 2020, was first multiple simultaneous hanging in India. The four who raped and murdered the woman did so in a crime that shocked national conscience. Their trial drew unprecedented public scrutiny and legislative fallout. The case led to the enactment of Criminal Law Amendment Act 2013. The confirmation judgment by Justice Dipak Misra stressed the "barbaric and demoniacal" nature of the crime. The pre-execution proceedings highlighted the growing complexity of capital jurisprudence. The convicts filed mercy petitions at staggered intervals. They took advantage of procedural safeguards to stall executions. The courts came to reject these tactics as ones of intentional abuse of process. Justice R. Banumathi gave a leading judgement on "delay jurisprudence" in execution.[51]

Several common themes emerge across these noteworthy executions. Political considerations invariably influenced execution timing and procedures. Security concerns dominated terrorism-related executions like Kasab and Guru. Public opinion played substantial though unacknowledged role in execution decisions. Media coverage intensity correlated with execution probability. Cases generating sustained public outrage more frequently reached execution. Procedural protections gradually strengthened through successive execution experiences. Family notification rights and last-minute judicial access improved substantially. The average time between sentencing and execution consistently exceeded a decade. This implementation gap undermined deterrence rationale while exacerbating death row phenomenon.[52]

IV. COMPARATIVE ANALYSIS

Indian death penalty jurisprudence exists within a global context of diverse approaches. The international community remains divided on capital punishment's legitimacy. Approximately

[50] Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1.
[51] Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1.
[52] SURYA DEVA, DEATH PENALTY IN INDIA: REFLECTIONS ON LAW COMMISSION REPORT 52-67 (Universal Law Publishing 2017).

 [ISSN 2581-5369]

106 countries have abolished death penalty for all crimes. Another 8 countries retain it only for exceptional offenses like wartime crimes. About 28 countries maintain death penalty laws but haven't executed anyone in decades. Only around 55 nations actively practice capital punishment today. India positions itself among this diminishing group of retentionist nations. Its judicial approach demonstrates both unique features and borrowed elements.[53]

The United Nations has consistently advocated for global abolition through various mechanisms. General Assembly Resolution 62/149 (2007) called for a worldwide moratorium on executions. Subsequent resolutions strengthened this position with increasing support. The Second Optional Protocol to ICCPR specifically commits signatories to abolition. India has neither signed this protocol nor supported moratorium resolutions. It maintains that capital punishment remains a sovereign criminal justice matter. This position aligns with other major retentionist nations like the United States. However, India's rate of actual executions remains significantly lower than most active practitioners.[54]

The United States offers particularly relevant comparisons due to shared common law heritage. Both nations maintain judicial discretion in capital sentencing. However, American death penalty jurisprudence developed distinctive features. The US Supreme Court in *Gregg v. Georgia* required "guided discretion" through specific factors. American states typically enumerate statutory aggravating circumstances. Indian courts rely on broader "rarest of rare" doctrine without enumerated factors. The US maintains a dual federal-state system with varying state approaches. India's centralized criminal code creates more nationally uniform standards. Both systems face criticism for arbitrary application despite procedural safeguards. Racial disparities dominate US critique while socioeconomic factors predominate in India.[55]

Japan represents another democracy maintaining capital punishment despite international pressure. Like India, Japan implements executions with extreme rarity. Both nations maintain secretive execution protocols with minimal advance notice. Japanese courts have upheld hanging's constitutionality similar to India's approach. Both systems face criticism for prolonged death row confinement. However, significant differences exist regarding public involvement. Japan maintains lay judge participation in capital trials. Indian sentencing remains exclusively professional judicial domain. Japanese courts require proof beyond all doubt rather than reasonable doubt. This heightened standard makes Japanese death sentences exceptionally

[53] AMNESTY INT'L, DEATH SENTENCES AND EXECUTIONS 2020 10-12 (2021).
[54] G.A. Res. 62/149, U.N. Doc. A/RES/62/149 (Dec. 18, 2007).
[55] Gregg v. Georgia, 428 U.S. 153 (1976).

 [ISSN 2581-5369]

rare.[56]

Singapore presents a starkly different retentionist model despite shared colonial legal heritage. It maintains mandatory death sentences for certain offenses despite global criticism. Its Misuse of Drugs Act mandates death for trafficking above specified quantities. The Indian Supreme Court explicitly rejected mandatory death sentences in Mithu. Singapore executes proportionally more prisoners than almost any other nation. It emphasizes deterrence rationale rather than reformation possibility. Indian courts consistently balance both considerations in sentencing decisions. Singapore's approach prioritizes social order over individualized justice. The Indian "rarest of rare" doctrine represents opposite philosophical orientation.[57]

The European model of complete abolition provides stark contrast to Indian approach. The European Court of Human Rights declared capital punishment "inhuman and degrading." Protocol No. 13 to the European Convention prohibits death penalty under all circumstances. European nations emphasize human dignity as fundamentally incompatible with state execution. They reject deterrence arguments as empirically unproven and irrelevant. Indian courts acknowledge human dignity concerns but balance them against perceived social necessity. European jurisprudence influenced certain safeguards in Indian practice. Delay jurisprudence draws partially from European court decisions. Mental health considerations similarly demonstrate European human rights influence.[58]

South African constitutional jurisprudence offers particularly relevant comparative insights. Both nations transitioned from colonial systems to constitutional democracies. South Africa's landmark *S v. Makwanyane* decision declared death penalty unconstitutional. Justice Chaskalson emphasized dignity, equality, and prohibition of cruel punishment. The South African Constitutional Court rejected public opinion as determinative factor. Indian Supreme Court has taken nearly opposite approach by emphasizing social expectations. The "collective conscience" language in Indian judgments contrasts sharply with South African rejection. South Africa prioritized constitutional values over majoritarian sentiment. This philosophical divergence explains the different outcomes from similar constitutional texts.[59]

V. CRITICAL EVALUATION OF DEATH PENALTY IN CONTEMPORARY INDIA

India's death penalty jurisprudence presents a complex mosaic of contradictions and tensions.

[56] DAVID T. JOHNSON, THE CULTURE OF CAPITAL PUNISHMENT IN JAPAN 66-87 (Palgrave Macmillan 2020), https://library.oapen.org/bitstream/id/13c2abb4-c5d4-49a2-80a9-0b9e9119890d/1007193.pdf (last visited on March 28, 2025).
[57] MICHAEL HOR, SINGAPORE'S DEATH PENALTY: A SECRET HISTORY 29-45 (NUS Press 2021).
[58] Al-Saadoon & Mufdhi v. United Kingdom, App. No. 61498/08, 51 Eur. H.R. Rep. 9 (2010).
[59] S v. Makwanyane 1995 (3) SA 391 (CC) (S. Afr.).

The "rarest of rare" doctrine theoretically limits capital punishment to exceptional cases. Yet implementation reveals significant disparities across courts and regions. Supreme Court Justice Kurian Joseph questioned this inconsistency in Chhannu Lal Verma (2018). He noted that similar cases frequently yield disparate outcomes based on individual judges. Justice Joseph emphasized that subjectivity undermines the doctrine's fundamental purpose. The arbitrariness concern persists despite four decades of judicial refinement efforts.[60]

Constitutional tensions underlie contemporary death penalty discourse in India. Article 21 guarantees that "no person shall be deprived of life" except by procedure. The Supreme Court initially interpreted this provision narrowly in A.K. Gopalan. It focused on procedural compliance rather than substantive rights protection. Maneka Gandhi v. Union of India later expanded Article 21's scope dramatically. It established that procedure must be "fair, just and reasonable" to satisfy constitutional demands. This substantive due process interpretation raises profound questions about capital punishment. Many contemporary scholars argue that execution inherently violates substantive rights guarantees. The Court has not yet squarely addressed this fundamental tension.[61]

Socioeconomic patterns in capital sentencing raise serious equal protection concerns. Empirical studies reveal disturbing disparities in death row demographics. The Death Penalty India Report documented that 76% of death row prisoners are economically vulnerable. Nearly 74% belong to religious minorities or scheduled castes. Educational disadvantage appears prominently, with 62% having incomplete secondary education. Geographic disparities compound these equality concerns. Certain high courts impose death sentences at significantly higher rates. Trial courts in Madhya Pradesh and Maharashtra demonstrate particular propensity for capital sentences. These patterns suggest systemic bias rather than application to truly exceptional cases.[62]

Deterrence claims lack empirical support despite their rhetorical prominence. The National Crime Records Bureau data shows no correlation between executions and crime rates. States with higher execution rates demonstrate no corresponding reduction in murders. The eight-year execution moratorium (1995-2004) witnessed no increase in capital offenses. Similar findings emerge from international comparative studies. States that abolished capital punishment showed no increased murder rates afterward. The Law Commission's 262nd Report specifically rejected deterrence arguments as empirically unfounded. Contemporary criminological research suggests certainty rather than severity deters crime. This evidence contradicts a central

[60] Chhannu Lal Verma v. State of Chhattisgarh, (2019) 12 SCC 438.
[61] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[62] PROJECT 39A, DEATH PENALTY INDIA REPORT 73-92 (Nat'l L. U. Delhi 2016).

 [ISSN 2581-5369]

justification for maintaining capital punishment.[63]

Reformation possibilities receive inadequate consideration in sentencing practice. Bachan Singh established reformation potential as a crucial mitigating factor. Yet subsequent implementation reveals minimal substantive assessment of this factor. Courts frequently dismiss reformation possibility through formulaic language. Santosh Kumar Bariyar criticized this approach as violating Bachan Singh's core principles. Justice Sinha emphasized the need for actual evidence regarding reformation prospects. Prison authorities rarely provide comprehensive rehabilitation assessment reports. Socioeconomic backgrounds that contributed to criminality receive cursory consideration. This procedural failure undermines the foundational balance Bachan Singh envisioned.[64]

Mental health considerations receive inadequate attention in capital cases. The "Deathworthy" study documented alarming prevalence of mental illness on death row. Approximately 62% of assessed prisoners exhibited diagnosable conditions. Courts inconsistently evaluate pre-crime mental health during sentencing. Post-conviction mental deterioration receives even less consistent consideration. India lacks standardized protocols for psychological assessment in capital cases. Many prisoners lack access to qualified mental health professionals. The Supreme Court acknowledged these concerns in *X v. State of Maharashtra*. It established mental illness as potential ground for commutation. However, implementation remains inconsistent across different jurisdictions.[65]

Religious and cultural perspectives on capital punishment vary substantially across India. Hindu traditions contain conflicting textual authorities regarding punishment severity. Jainism and Buddhism emphasize ahimsa (non-violence) and reject retributive justice. Islamic jurisprudence contains both retributive elements and forgiveness emphasis. Christian denominations increasingly oppose capital punishment on theological grounds. These diverse perspectives receive minimal explicit consideration in judicial reasoning. Courts instead reference generic "collective conscience" without defining its parameters. This approach risks imposing majoritarian values on diverse communities. Constitutional secularism arguably requires more nuanced engagement with pluralistic views.[66]

[63] LAW COMMISSION OF INDIA, REPORT NO. 262: THE DEATH PENALTY 52-69 (Aug. 2015).
[64] Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498.
[65] PROJECT 39A, DEATHWORTHY: A MENTAL HEALTH PERSPECTIVE OF THE DEATH PENALTY 33-47 (Nat'l L. U. Delhi 2018), https://www.project39a.com/deathworthy-a-mental-health-perspective-of-the-death-penalty (last visited on March 28, 2025).
[66] Kapila, Shruti. 2021. *Violent Fraternity: Indian Political Thought in the Global Age*. Princeton and Oxford, New Jersey: Princeton University Press, https://journals.openedition.org/samaj/8377 (last visited on March 28, 2025).

The "dual system" phenomenon fundamentally undermines capital punishment's purpose. India imposes approximately 100 death sentences annually but executes once per decade. This creates distinct tiers among similarly situated defendants. Some face execution while others receive eventual commutation. No transparent criteria explain this differential treatment of comparable cases. The Supreme Court noted this concern in Shatrughan Chauhan v. Union of India. Justice Sathasivam emphasized that uncertainty exacerbates punishment cruelty. Extended death row confinement itself constitutes severe psychological punishment. The average condemned prisoner spends over a decade awaiting final disposition. This implementation gap between sentencing and execution raises profound legal questions.[67]

VI. CONCLUSION

The nature and theory of death penalty have a complex evolution of several millennia in India's jurisprudence. The ancient dharmasastric texts prescribed death penalty with caste differential. The colonial authorities had a habit that reached the length of having hanging as the main way of execution. Courts in a post-independence India upheld capital punishment, and under constitutional guardrails. The "rarest of rare" doctrine was India's unique contribution to the global jurisprudence. Decades of judicial interpretation have sharpened this principle through landmark cases. But deep tensions remain, in spite of progressive procedural protections. The historical change by eras is that which brings either continuity or transformation.[68]

Contemporary debates regarding capital punishment are grounded in constitutional principles. The constitutional protection of life under Article 21 appears to be in tension with the executions sanctioned by the state. The Supreme Court addressed this tension by focusing on procedural protections. The eloquent opinions of Justice Krishna Iyer questioned this compromise without rejecting it outright. Gandhi's interpretation of substantive due process could dismiss previous justifications. Justice Bhagwati has written a very powerful dissent in Bachan Singh which acquired retrospective relevance. His principled death penalty rejection articulated long-standing constitutional objections. These constitutional questions have thus far remained unanswered, despite decades of jurisprudential development.[69]

Procedural evolution turned capital sentencing from a commonplace practice into an extraordinary punishment. Life imprisonment stood as default sentence as per Section 354(3) CrPC. Bachan Singh required that aggravating and mitigating factors be weighed. Mithu held that mandatory death sentences are inherently unconstitutional. Subsequent rulings laid out

[67] Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.
[68] V.S. MANI, HANDBOOK OF INDIAN CRIMINAL LAW 312-328 (Oxford Univ. Press 2022).
[69] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

 [ISSN 2581-5369]

specific procedures for holding sentencing hearings. Allauddin Mian required genuine sentencing deliberation rather than formalistic compliance. Triveniben established that excessive execution delay may justify commutation. Shatrughan Chauhan developed comprehensive guidelines for humane execution procedures. Mohd. Arif guaranteed open court hearings for review petitions. Each procedural enhancement reflected growing recognition of punishment's gravity.[70]

Empirical realities reveal troubling patterns in capital punishment implementation. Death row demographics show disproportionate representation of marginalized communities. Socioeconomic vulnerability correlates strongly with death sentences. The partial hanging phenomenon highlights arbitrariness in execution selection. Research documents alarming prevalence of mental illness among condemned prisoners. These empirical findings challenge assumptions about fair and consistent application. They suggest systemic biases rather than exceptional application to truly heinous cases. The growing body of empirical evidence demands judicial and legislative response.[71]

Penological justifications for capital punishment face increasing scrutiny in contemporary discourse. Deterrence claims lack empirical validation from crime pattern analysis. Retribution alone provides insufficient justification under constitutional principles. Public safety concerns could potentially be addressed through alternative sentencing options. Swamy Shraddananda established life without parole as viable alternative. *Union of India v. V. Sriharan* confirmed judicial authority to impose such specialized sentences. These alternatives potentially address legitimate penological concerns without executions. They offer middle ground between abolition and status quo maintenance.[72]

Future directions may include further limitation rather than immediate abolition. The Law Commission recommended retention only for terrorism-related offenses. This pragmatic approach acknowledges both human rights concerns and security imperatives. Legislative reforms might codify “rarest of rare” parameters to reduce inconsistency. Enhanced procedural safeguards could further reduce wrongful convictions risk. Mental health protocols require standardization across different jurisdictions. Legal aid systems need substantial enhancement for capital defendants. Mercy petition procedures demand greater transparency and consistency. These incremental reforms reflect measured pragmatism rather than ideological extremes.[73]

[70] Mohd. Arif v. Registrar, Supreme Court, (2014) 9 SCC 737.
[71] PROJECT 39A, DEATH PENALTY INDIA REPORT 112-134 (Nat'l L. U. Delhi 2016), https://www.project39a.com/dpir (last visited on March 28, 2025).
[72] Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767.
[73] LAW COMMISSION OF INDIA, REPORT NO. 262: THE DEATH PENALTY 212-227 (Aug. 2015),

The death penalty's future in India remains uncertain amid competing considerations. Constitutional principles of dignity and equality suggest eventual abolition trajectory. Pragmatic security concerns support retention for exceptional categories. International human rights trends favor progressive restriction leading to abolition. Domestic political considerations often favor maintaining capital punishment option. The Supreme Court continues refining procedural protections while maintaining constitutional validity. Parliament expands eligible offenses while enhancing procedural safeguards. This dynamic equilibrium reflects India's multifaceted engagement with complex moral questions. The historical evolution suggests that further transformation remains inevitable. India's distinctive jurisprudential contribution will continue evolving through this process.[74]

*****

https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf (last visited on March 28, 2025).

[74] UPENDRA BAXI, THE FUTURE OF INDIAN CRIMINAL JUSTICE 156-183 (Eastern Book Company 2023).

VII. BIBLIOGRAPHY

- AMNESTY INTERNATIONAL, *DEATH SENTENCES AND EXECUTIONS 2020* (2021).
- ANUP SURENDRANATH, *DEATH PENALTY SENTENCING IN TRIAL COURTS* (West Academic Publishing 2021).
- APARNA CHANDRA, *PUBLIC OPINION AND CAPITAL PUNISHMENT IN INDIA* (Routledge 2020).
- ARLIE LOUGHNAN, *COMPARATIVE CAPITAL PUNISHMENT* (Edward Elgar Publishing 2021).
- BIKRAM JEET BATRA, *THE DEATH PENALTY IN INDIA: DEBATES AND DEVELOPMENTS* (Oxford Univ. Press 2019).
- ELIZABETH KOLSKY, *COLONIAL JUSTICE IN BRITISH INDIA: WHITE VIOLENCE AND THE RULE OF LAW* (Cambridge Univ. Press 2010).
- LAW COMMISSION OF INDIA, *REPORT NO. 262: THE DEATH PENALTY* (Aug. 2015).
- PROJECT 39A, *DEATH PENALTY INDIA REPORT* (Nat'l L. U. Delhi 2016).
- PROJECT 39A, *DEATHWORTHY: A MENTAL HEALTH PERSPECTIVE OF THE DEATH PENALTY* (Nat'l L. U. Delhi 2018).
- R.P. KANGLE, *THE KAUTILIYA ARTHASASTRA: A STUDY* (Motilal Banarsidass 2014).
- RADHIKA SINGHA, *A DESPOTISM OF LAW: CRIME AND JUSTICE IN EARLY COLONIAL INDIA* (Oxford Univ. Press 1998).
- ROGER HOOD & CAROLYN HOYLE, *THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE* (5th ed., Oxford Univ. Press 2015).
- SHRUTI KAPILA, *RELIGION AND CAPITAL PUNISHMENT IN INDIAN TRADITION* (Sage Publications 2019).
- UPENDRA BAXI, *THE FUTURE OF INDIAN CRIMINAL JUSTICE* (Eastern Book Company 2023).
- WILLIAM A. SCHABAS, *THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW* (Cambridge Univ. Press 2021).

 [ISSN 2581-5369]