THE DEATH PENALTY'S BROKEN PROMISE: SPECTACLE, DELAY, AND THE MYTH OF DETERRENCE IN INDIA

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ABSTRACT

The death penalty is often defended on the ground that its severity deters potential offenders from committing serious crimes. However, whether capital punishment provides a meaningful deterrent remains a contested question. This article examines the justification for capital punishment in India by exploring the relationship between deterrence, the visibility of punishment, and the administration of the death penalty. Drawing on Michel Foucault's analysis of the transformation from public executions to concealed forms of punishment, the article questions whether the state's reliance on the death penalty as a deterrent is supported by its actual operation. It examines Indian constitutional jurisprudence, including judicial restrictions on capital sentencing and the treatment of delays in the execution process, alongside crime statistics, research by Project 39A, and the Law Commission of India's 262nd Report. The analysis considers how the concealment of executions, the rarity of their implementation, prolonged legal proceedings, and inconsistencies in capital sentencing complicate the claim that the death penalty serves as an effective deterrent. It further examines the prolonged uncertainty experienced by individuals awaiting execution as a human rights concern. The article argues that the deterrent justification for capital punishment remains insufficiently established and that a punishment whose supposed deterrent effect is uncertain cannot readily justify the prolonged suffering and irreversible consequences associated with its use. It therefore advances an abolitionist argument, questioning the continued justification for capital punishment in India.

Keywords: Capital Punishment; Deterrence; Michel Foucault; Spectacle of Punishment; Indian Constitutional Law; Abolition of the Death Penalty.

INTRODUCTION

On March 20, 2020, India executed four convicts in the 2012 *Nirbhaya* gang rape and murder case inside Delhi's Tihar Jail.[1] The decision was a result of years of intense nationwide outrage, mass street protests, and an unprecedented public demand for justice. The sheer brutality of the 2012 crime had deeply shaken the country, creating a rare moment of absolute consensus. Ordinary citizens demanding safer streets and politicians across the political spectrum both shared the exact same conviction, the ultimate crime demanded the ultimate punishment. The assumption surrounding capital execution was that this hanging would strike terror into the minds of prospective offenders. There was a widespread belief among both the public and those in power. Capital punishment for such horrific acts would finally act as a decisive general deterrent, sending a clear message that would curtail heinous crimes and protect women across the nation.

However, empirical evidence quickly dismantled this deterrent claim. National Crime Records Bureau (NCRB) reports demonstrate that capital execution failed to alter violent crime trends.[2] In 2020, the year of the Tihar executions, India recorded 28,046 rape cases.[3] Violent crime rates remained consistently elevated, with NCRB data recording 31,677 rapes in 2021 and 31,516 in 2022.[4] By 2024, annual reported rapes stood at 29,536, while total crimes against women remained extremely high at 4.41 lakh cases.[5] Homicide rates similarly showed negligible fluctuation, maintaining a steady national rate of approximately 2.0 per 100,000 population across the decade.[6] The empirical data indicates that the presence or execution of the gallows does not meaningfully influence crime rates.

Rather than operating as a swift mechanism of deterrence, the death penalty in India has suffered from systemic errors, arbitrary sentencing, and administrative breakdowns. Between 2016 and 2025, Trial Courts (Sessions Courts) imposed 1,310 death sentences across 822 cases. However, appellate scrutiny revealed profound structural defects in trial-level capital

[1] *December 16, 2012 Gang-rape Convicts Hanged at Tihar Jail*, The Indian Express (Mar. 20, 2020). https://indianexpress.com/article/india/december-16-gangrape-case-convicts-hanged-at-tihar-jail-6164411/
[2] *See* National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2020* (2021) [hereinafter *NCRB 2020*]; National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2021* (2022) [hereinafter *NCRB 2021*]; National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2022* (2023) [hereinafter *NCRB 2022*].
[3] *NCRB 2020*, *supra* note 1, at tbl. 3A.1.
[4] *NCRB 2021*, *supra* note 1, at tbl. 3A.1; *NCRB 2022*, *supra* note 1, at tbl. 3A.1.
[5] *See* National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2024* (2025).
[6] *NCRB 2022*, *supra* note 1, at ch. 1.

sentencing. Of the 842 death sentences considered by High Courts in confirmation proceedings, only 70 (8.31%) were upheld. More than a third, totaling 258 sentences (30.64%), resulted in complete acquittals. When these surviving cases reached the Supreme Court, the error rate became absolute: of the 70 death sentences confirmed by the High Courts, the Supreme Court adjudicated 37 and upheld none, confirming zero death sentences across the entire three-year period from 2023 through 2025.[7]

Looking at broader appellate trends over the last decade (2016 to 2025), out of 1,085 death sentences adjudicated by High Courts, only 106 (9.77%) were confirmed. Conversely, High Courts acquitted 326 individuals across 191 cases (34.65%), yielding an acquittal rate nearly four times higher than the confirmation rate. At the Supreme Court level, out of 153 death sentences decided during the decade, nearly a quarter ended in complete acquittal (38 sentences, 24.84%). In 2025 alone, High Courts overturned death sentences into acquittals in over 25% of decided cases (22 out of 85), while the Supreme Court acquitted accused individuals in over 50% of its capital cases (10 out of 19). In total, 364 individuals who should not have been convicted endured the severe psychological and physical toll of death row.[8]

This paper argues that the death penalty itself never possessed an intrinsic deterrent value; rather, historical deterrence was entirely dependent upon the swiftness and absolute visibility of the execution. By shifting state-sanctioned killings away from the public square and hiding them behind closed prison doors, the state structurally destroyed the only mechanism through which capital punishment could terrify a populace into compliance. What remains today is an invisible, lingering apparatus of state violence. Stripped of its visibility and crippled by systemic administrative delays, the death penalty has lost its penal utility, transforming into an arbitrary, error-prone, and obsolete system of hollow retribution that must be abolished in its entirety.

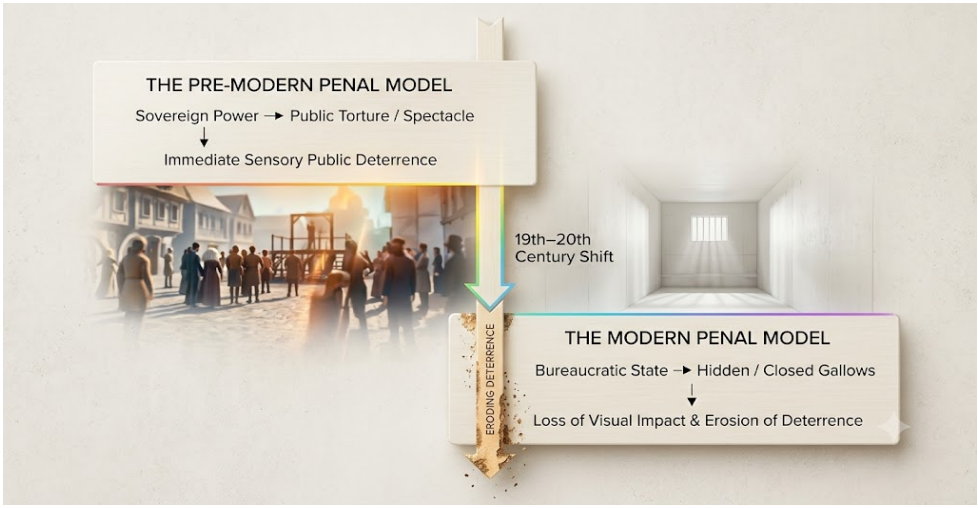
FROM SOVEREIGN SPECTACLE TO ADMINISTRATIVE SOUL

To understand why capital punishment stands on the brink of structural obsolescence, one must analyze the transformation in how state power is physically exercised on the condemned. Modern advocates of the death penalty continue to rely on the classical assumption that capital

[7] Project 39A, *Death Penalty in India: Annual Statistics Report 2025 & 10 Years of Death Penalty Data (2016–2025)*, pt. II (2026), *available at* https://thesquarecircleclinic.org/publications/death-penalty-in-india-annual-statistics-2025.
[8] *Id.* at pts. I & II.

punishment serves as a general deterrent against violent crime. However, this argument ignores a fundamental historical shift. Deterrence was never guaranteed by the sole verdict of the death sentence, but rather by beholding the spectacle of the execution itself. When states across the world, and eventually India moved executions away from public squares and concealed them behind closed prison doors, they structurally dismantled the very mechanism that allowed capital punishment to function as a tool of psychological intimidation.

In *Discipline and Punish*, Michel Foucault analyzes the pre-modern model of penal power, termed the "spectacle of the scaffold" (*le spectacle du supplice*).[9] Under historic monarchies, a crime was never just a violation of a law written on paper, it was a direct insult to the physical power and honor of the monarch himself. Because of this, the state had to respond with overwhelming force. The punishment was intentionally designed to break the convict's body through either brutal torment, or execution. These acts were staged as massive public spectacles, designed to show everyone in the crowd exactly who held absolute power.



The public execution operated as an elaborate ritual designed to make regime's authority visible, tangible, and absolute. Methods such as drawing and quartering, burning at the stake, or public hangings were intentionally structured around maximum agony and visual publicity. The presence of the crowd was structurally essential to this penal economy. The populace had to witness the physical suffering of the condemned so that the terror of state retribution was imprinted directly onto the collective consciousness. Deterrence in this era functioned through direct sensory association. The public saw the crime reflected in the gruesome destruction of

[9] Michel Foucault, Discipline and Punish: The Birth of the Prison 32–35 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

the offender's body, creating an immediate psychological fear.[10] By moving executions from public squares to hidden prison gallows, the state completely wiped out that fear factor, rendering the death penalty obsolete.

During the nineteenth and twentieth centuries, states across Europe, the Americas, and colonial territories systematically abandoned public executions. Modern legal histories often attribute this shift to humanitarian progress and evolving standards of human decency. Foucault demonstrates, however, that the privatization of capital punishment was driven by a crisis of state legitimacy and administrative efficiency rather than pure benevolence.[11] Historically, the shift from public torture to hidden imprisonment was not born out of sudden state compassion, but out of political survival and economic utility. By the late eighteenth and early nineteenth centuries, legal reformers like Sir Samuel Romilly, Sir James Mackintosh, and Pellegrino Rossi began fiercely condemning public executions, exposing the scaffold as nothing more than a system of "horrible butchery" that degraded society. [12][13]

England became a pioneer in abandoning these spectacles, progressively banning public whippings before officially dragging the gallows behind prison walls in 1868. In doing so, the penal system underwent a profound transformation. The state stopped targeting the physical body with violence and instead focused on policing the criminal's soul through isolation, rigid schedules, and surveillance.[14] Simultaneously, states began realizing that destroying a body was economically wasteful. Rather than staging executions, countries like Austria pivoted toward utilizing the offender's services, forcing convicts with shaven heads and distinct clothing out into the open to perform hard labor, such as repairing highways and cleaning city streets.[15] Punishment was no longer about a king destroying a life in public. It had now transformed into a clinical effort to retrain the mind and exploit the labor of the condemned. In Great Britain, the Capital Punishment Amendment Act 1868 ended public hangings, ordering all future executions to be conducted behind prison walls.[16] In India, colonial authorities under the British Raj similarly institutionalized the closed prison gallows under the Code of Criminal

[10] *Id.* at 34–42.
[11] *Id.* at 15–25.
[12] *Id.* at 14.
[13] Simon Devereaux, *the "Bloody Code" Debated, 1808–1821*, *in* Execution, State and Society in England, 1660–1900, at 244 (2023).
[14] Michel Foucault, Discipline and Punish: The Birth of the Prison, 14 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).
[15] *Id.* at 15.
[16] Capital Punishment Amendment Act 1868, 31 & 32 Vict. c. 24 (Eng.).

Procedure 1898, transforming public hangings, which had previously been used to suppress anti-colonial rebellions, into quiet, administrative procedures.[17] State-sanctioned killing shifted from a public ritual of sovereign dominance to a secretive administrative event overseen by medical doctors, prison wardens, and bureaucrats.

By concealing the execution within the prison, the modern state unintendedly destroyed the primary mechanism through which capital punishment asserted its deterrent value. Foucault observes that when punishment is removed from public view, the execution itself ceases to be a spectacle; it becomes a secret, administrative act.

This privatization alters the psychological relationship between punishment and the general public:

1. **Loss of Sensory Immediacy:** Once an execution is dragged behind prison walls, the death penalty stops being a visible reality and turns into an abstract legal concept. The direct, visual link that connected a horrific crime with an immediate consequence simply vanishes. Take, for example, the 2012 Nirbhaya case. The actual execution of the convicts occurred in the early morning darkness in Tihar Jail in 2020, completely hidden from the public. Because the populace only consumed the execution as a sterile headline rather than a visual reality, the state-sanctioned killing failed to leave any lasting sensory or psychological footprint on society. This failure is definitively proven by the fact that reported rapes and violence against women across India showed absolutely no decrease after the hangings, rendering the execution inconsequential to society at large. Ultimately, the gallows failed as a tool of public safety, achieving nothing more than a private sense of closure for the victim's family and solace for the memory of the victim herself.

2. **Administrative Delay vs. Swift Retribution:** With modern constitutional protections, endless appeals, and mercy petitions, decades pass between the actual crime and the eventual hanging. Because it is hidden away and dragged out over a lifetime, the punishment loses all connection to the original act. This structural breakdown was vividly clear in the case of 26/11 Mumbai terror attacker Ajmal Kasab. Despite the state's intent to fast-track the trial of a foreign militant caught red-handed on live

[17] The Code of Criminal Procedure, No. 5 of 1898 (India).

television, the mandatory legal framework, ranging from multiple trial stages to executive mercy petitions, stretched the process across four years before his hanging. If the state cannot swiftly execute an enemy combatant captured on camera, it cannot possibly achieve a rapid, deterrent timeline for domestic criminal offenses.

3. **The Paradox of Secret Retribution:** You cannot terrify a population into obeying the law using a punishment they never see. If the state hides the execution just to protect itself from public outrage or political unrest, it simultaneously strips the penalty of its power to influence behavior. This paradox defines the 2013 execution of Afzal Guru. Fearing mass civil unrest and political volatility, the state hanged him in absolute secrecy inside Tihar Jail without even notifying his family in advance. By executing a convict covertly to maintain public order, the state exposes a glaring contradiction: it acknowledges that the death penalty is an engine of dangerous public volatility rather than a clinical tool of general deterrence.

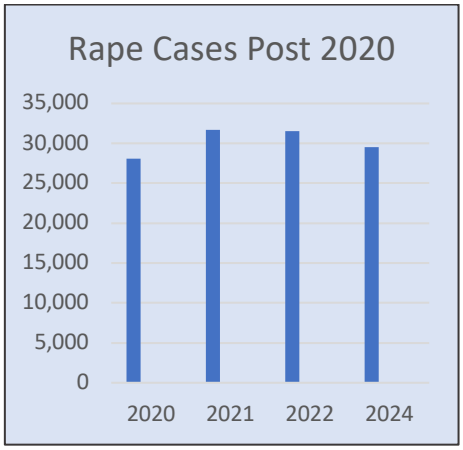
Ultimately, when modern governments claim that the death penalty deters violent crime, they are relying on an old-school logic that their own prison systems destroyed. Stripped of the terrifying public spectacle that once kept people in check, the death penalty behind prison walls no longer functions as a tool to stop crime. Instead, it survives as a hidden, mistake-prone lottery of state revenge.

THE EMPIRICAL REALITY – NATIONAL AND INTERNATIONAL NUMBERS

To evaluate whether the death penalty retains any functional utility, its core justification, the deterrent effect, must be tested against empirical realities. Proponents of capital punishment operate on a purely theoretical assumption. States Believe that the legal existence of the gallows acts as a powerful barrier against heinous crimes. However, when this assumption is subjected to quantitative verification, both national data from India and international trends reveal a starkly different reality. The speculative threat of an invisible, heavily delayed punishment has no measurable impact on violent crime curves.

Within the Indian subcontinent, the argument for deterrence is flatly contradicted by data compiled by the National Crime Records Bureau (NCRB). In 2020, the year the Nirbhaya convicts were executed, India recorded 28,046 rape cases. Instead of dropping, reported rapes rose to 31,677 in 2021 and 31,516 in 2022. By 2024, annual rapes remained stubbornly high at

29,536, while total crimes against women stood at a staggering 4.41 lakh cases.[18] If the death penalty were a genuine disincentive, the period following the executions of the Nirbhaya convicts should have seen a measurable decline in violent offenses. However, empirical data reveals no such correlation, demonstrating that capital punishment failed to suppress violent crime rates.



For instance, between 2016 and 2023, Indian trial courts handed down death sentences at unprecedented rates. Project 39A (now operating as The Square Circle Clinic) at National Law University, Delhi recorded 148 death sentences in 2016, 162 in 2018, and a record peak of 165 in 2022. By the end of 2023, India's death row population had swollen to 561 prisoners—the highest number in nearly two decades.[19] Yet, throughout this period of aggressive trial court sentencing, NCRB data indicates that national violent crime rates remained entirely indifferent to judicial behavior. India recorded 30,450 murder cases in 2016, 29,017 in 2018, and 28,522 in 2022. The murder rate hovered continuously between 2.1 and 2.4 per 100,000 citizens.[20] Furthermore, death sentences handed down by trial courts are systematically overturned upon appellate review. Remarkably, the Supreme Court upheld none of the capital sentences issued between 2023 and 2025.[21] This historical pattern creates a clear incentive structure. Potential

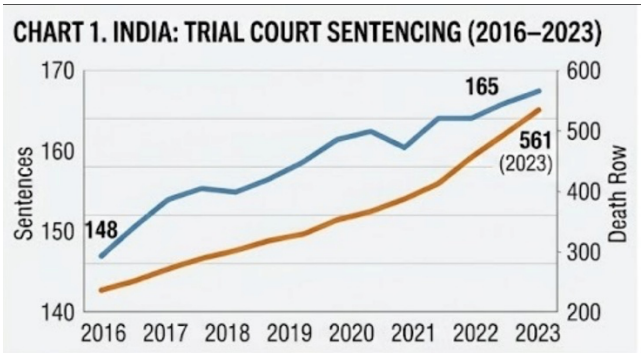
[18] *See* National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2020* (2021) [hereinafter *NCRB 2020*]; National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2021* (2022) [hereinafter *NCRB 2021*]; National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2022* (2023) [hereinafter *NCRB 2022*].

[19] *Death Penalty in India: Annual Statistics 2018*, Project 39A, Nat'l Law Univ., Delhi (2019); *Death Penalty in India: Annual Statistics 2022*, Project 39A, Nat'l Law Univ., Delhi (2023); *Death Penalty in India: Annual Statistics 2023*, Project 39A, Nat'l Law Univ., Delhi (2024), *available at* https://thesquarecircleclinic.org/publications.

[20] Nat'l Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2016: Statistics Vol. 1* (2017); Nat'l Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2018: Statistics Vol. 1* (2019); Nat'l Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2022: Statistics Vol. 1* (2023), *available at* https://ncrb.gov.in.

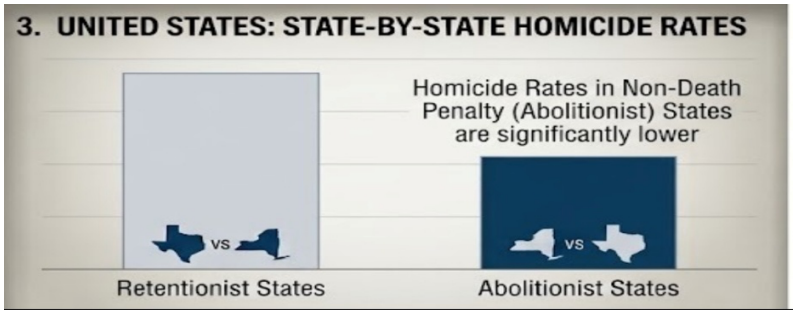
[21] Project 39A, *Death Penalty in India: Annual Statistics Report 2025 & 10 Years of Death Penalty Data (2016–*

offenders realize that the actual probability of execution is infinitesimally low, effectively neutralizing any intended deterrent effect.



This empirical failure is not unique to India; it reflects a broader global consensus. Criminological studies worldwide consistently demonstrate that the presence of capital punishment does not correlate with lower crime rates. The most compelling evidence comes from cross-border comparisons between retentionist nations and abolitionist states.

A stark example is found in the United States, where capital punishment is retained by certain states but abolished by others. According to tracking by the Death Penalty Information Center (DPIC), historical execution rates and homicide metrics run completely counter to traditional deterrent logic. Over the past two decades, murder rates in retentionist states have consistently trended between 48 percent and 101 percent higher than in abolitionist jurisdictions. For instance, in 2020, DPIC data revealed that death penalty states recorded an average homicide rate of 7.3 per 100,000 residents, compared to just 4.7 per 100,000 in non-death penalty states.[22]

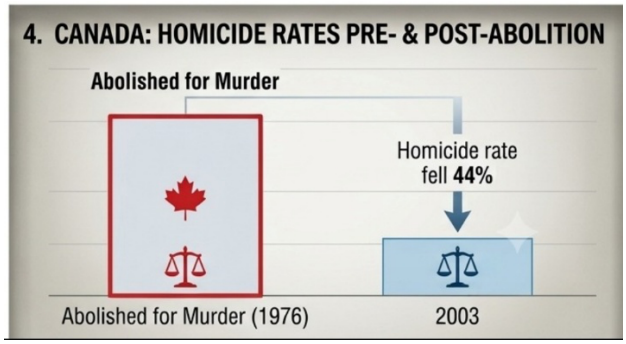


Similarly, a long-term comparison between the United States and Canada demonstrates the

2025), pt. II (2026), *available at* https://thesquarecircleclinic.org/publications/death-penalty-in-india-annual-statistics-2025.

[22] *See* Murder Rates by State, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rates-by-state

limits of capital deterrence. Canada formally abolished the death penalty for murder in 1976, when its national homicide rate stood at 3.02 per 100,000 populations. By 2003, Canada's murder rate had dropped by 44 percent to 1.73 per 100,000, and it has remained at historically low levels ever since. In contrast, the US retentionist system maintained significantly higher homicide rates throughout the same timeframe.[23]



The Law Commission of India, in its landmark 262nd Report (2015), rigorously evaluated global deterrence metrics alongside domestic data to dismantle the penological justification for capital punishment. The Commission observed that between 1970 and 2013, India's annual homicide rate dropped steadily from 3.2 to 2.6 per 100,000 residents, a historical window during which judicial executions dropped to near zero.[24] This inverse relationship highlights a critical empirical reality: the absolute severity of a punishment does not dictate its deterrent value. Beyond raw statistics, the Law Commission of India exposed deep structural vulnerabilities within the domestic criminal framework, noting that the application of the 'rarest of rare' doctrine has degraded into an arbitrary, judge-centric lottery mired by systemic class, caste, and religious biases against marginalized defendants

Criminological theory dictates that for a punishment to deter, it must possess three core attributes: severity, certainty, and celerity (swiftness).[25] By restricting the death penalty to the absolute margins of the law, modern systems have inadvertently destroyed the timeline required for fear to function.

[23] *See* Susan Munroe, Abolition of Capital Punishment in Canada, THOUGHTCO (July 21, 2019), https://www.thoughtco.com/abolition-of-capital-punishment-in-canada-510121 ; see also Crime Comparisons Between Canada and the United States, 1998 to 2023, STATISTICS CANADA (Oct. 8, 2025), https://www150.statcan.gc.ca/n1/daily-quotidien/251008/dq251008a-eng.htm.
[24] Law Commission of India, Report No. 262: The Death Penalty 87 (August 2015).
[25] Cesare Beccaria, On Crimes and Punishments 42–50 (David Young trans., Hackett Publishing Co. 1986) (1764).

In India, due to mandatory constitutional safeguards, appellate reviews, and executive mercy petitions, a convict spends an average of 5 to 15 years on death row before an execution is carried out. Project 39A's *Death Penalty India Report* revealed that for prisoners executed between 2000 and 2015, the average duration of legal proceedings from trial court sentencing to final disposition was over 12 years.[26]

When a hidden execution takes place a decade after the offense occurred, the psychological link between the crime and the punishment is entirely severed. The public has long forgotten the original act. Therefore, the quantitative data confirms the Foucaultian critique: by dragging the process out over a lifetime and concealing the final act behind prison stone walls, the state has rendered the death penalty statistically irrelevant to the choices of potential criminals.

GLOBAL AND NATIONAL JUDICIAL TRENDS IN CAPITAL PUNISHMENT

Over the past fifty years, legal systems worldwide have fundamentally changed how they view the death penalty. The focus has steadily moved away from direct retribution toward protecting human dignity and enforcing strict procedural fairness. Instead of treating executions as a normal tool of justice, courts across the globe and the Supreme Court in India have steadily closed the pathways that lead to capital punishment. By setting up strict legal barriers and limiting which crimes qualify, judges have severely restricted the state's ability to lawfully take a human life. Globally, this is reflected in the landmark international consensus against arbitrary executions.[27] In the domestic sphere, the Indian judiciary restricted capital sentences exclusively to the absolute margins of criminal law through the formulation of the rarest of rare doctrine.[28] This strict constitutional gatekeeping ensures that life imprisonment remains the normative rule, while the death penalty is reduced to a highly exceptional, strictly regulated legal anomaly.

The international landscape has transformed completely since the late twentieth century. Tracking by Amnesty International shows that only 16 countries had fully abolished the death penalty in law by 1977. Today, 113 nations have completely abolished capital punishment for all crimes, and over 140 countries have ended the practice either in law or in everyday

[26] Project 39A, *Death Penalty in India: Annual Statistics Report 2025 & 10 Years of Death Penalty Data (2016–2025)*, pt. II (2026), *available at* https://thesquarecircleclinic.org/publications/death-penalty-in-india-annual-statistics-2025.
[27] *Furman v. Georgia*, 408 U.S. 238 (1972).
[28] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684

practice.[29] Rather than viewing the death penalty as an ordinary option for punishment, modern global courts increasingly treat it as a direct violation of the basic right to be free from cruel, inhuman, or degrading treatment. Landmark rulings across the world highlight this shift.

In the famous South African case *S v. Makwanyane*, the Constitutional Court struck down the death penalty, ruling that the state cannot destroy the right to life and human dignity.[30] The court stressed that applying the death penalty is always tied to an inherent arbitrariness that disproportionately harms the most vulnerable people in society.

The European Court of Human Rights established in *Soering v. United Kingdom*[31], that prolonged confinement under the threat of execution, i.e. the "death row phenomenon", constitutes inhuman and degrading treatment under Article 3 of the European Convention on Human Rights.[32] This decision recognized that the psychological agony caused by administrative delay destroys the legitimacy of the punishment itself.

In the United States, the Supreme Court progressively restricted the application of capital punishment through cases like *Furman v. Georgia*, which temporarily struck down the death penalty due to its arbitrary and discriminatory imposition. Although capital punishment was reinstated in *Gregg v. Georgia*[33], subsequent rulings like *Roper v. Simmons* [34] and *Kennedy v. Louisiana*[35] barred the execution of juveniles and non-homicide offenders, citing evolving standards of decency.

Crucially, international human rights law strictly prohibits public executions. The United Nations Human Rights Committee, interpreting Article 6 of the International Covenant on Civil and Political Rights (ICCPR), has repeatedly affirmed that public executions violate human dignity and amount to cruel, inhuman, or degrading punishment.[36]

In India, capital jurisprudence has undergone a steady constitutional narrowing. The statutory baseline shifted with the enactment of the Code of Criminal Procedure, 1973. Post legislation,

[29] Amnesty Int'l, Death Penalty in 2025: Facts and Figures (May 18, 2026), https://www.amnesty.org/en/latest/news/2026/05/death-penalty-in-2025-facts-and-figures/.
[30] *S v. Makwanyane,* 1995 (3) SA 391 (CC) (S. Afr.).
[31] *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989).
[32] European Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, 213 U.N.T.S. 222.
[33] *Gregg v. Georgia*, 428 U.S. 153 (1976)
[34] *Roper v. Simmons*, 543 U.S. 551 (2005).
[35] *Kennedy v. Louisiana*, 554 U.S. 407 (2008).
[36] International Covenant on Civil and Political Rights arts. 6, 7, Dec. 16, 1966, 999 U.N.T.S. 171.

life imprisonment became the default rule for murder, requiring judges to state "special reasons" when awarding a death sentence.[37]

The Supreme Court of India upheld the constitutional validity of the death penalty in Bachan Singh v. State of Punjab[38], but established the "rarest of rare cases" doctrine. The Court ruled that capital punishment must be restricted to extraordinary circumstances where the alternative option of life imprisonment is unquestionably foreclosed. To prevent arbitrary imposition, Bachan Singh mandated a balancing test comparing aggravating factors of the crime with mitigating factors of the criminal.[39]

This framework was further refined in Machhi Singh v. State of Punjab[40], which outlined specific categories of heinous offenses that shock the judicial conscience. However, in subsequent decades, the Supreme Court of India openly acknowledged that the application of this doctrine suffered from severe, judge-centric inconsistency. In landmark rulings such as *Swami Shraddhanand (2) v. State of Karnataka*[41] and *Sangeet v. State of Haryana*[42], the Court conceded that capital sentencing had become unprincipled and dependent on the personal philosophies of individual benches. This systemic volatility has led former justices and scholars alike to describe Indian capital punishment as a "sentencing lottery."

While public outrage frequently demands visible retribution for egregious offenses, legal frameworks often clash with the societal urge for penal spectacles. A stark example occurred in India following the brutal "bride burning" of an eighteen-year-old woman, Pushpa, who was doused in kerosene and burned alive by her mother-in-law, Lichma Devi, over unsatisfied dowry demands. Seeking an absolute societal deterrent against the rising tide of dowry murders, the Rajasthan High Court took the unprecedented step of ordering Lichma Devi to be executed via a highly publicized, public hanging at the Ramlila Grounds in Jaipur. However, the Supreme Court of India intervened and firmly rejected public execution as a constitutionally permissible deterrent. In Attorney General of India v. Lachma Devi [43](1985), the apex court unconditionally struck down the directive, ruling that while the underlying crime was

[37] § 354(3), Code of Criminal Procedure, 1973 (India).
[38] *Bachan Singh v. State of Punjab,* (1980) 2 SCC 684
[39] Shivansh Singh & Richa Kashyap, *Rarest of Rare – A Flawed Safeguard of Indian Justice System*, 7 Indian J.L. & Legal Rsch. [6217] (2025).
[40] *Machhi Singh v. State of Punjab,*1983 (3) SCC 470
[41] *Swami Shraddhanand (2) v. State of Karnataka*, (2008) 13 SCC 767 (India).
[42] *Sangeet v. State of Haryana*, (2013) 2 SCC 452 (India).
[43] *Attorney General of India v. Lachma Devi*, (1989) 2 SCC 583 (India).

undeniably horrific, a civilized society cannot reciprocate with equal savagery; executing a prisoner in public constitutes a barbaric, degrading spectacle that violates the right to life and human dignity guaranteed under Article 21 of the Constitution of India. The Court held that an execution, even of a condemned criminal, must maintain basic human dignity, and that converting judicial punishment into a public spectacle degrades both the individual and society. This constitutional principle reinforces the shift described by Foucault: modern constitutional governance prohibits the state from returning to public theatrical violence.

Indian jurisprudence recognizes that systemic delays in executing a death sentence violate the prisoner's fundamental rights. In Shatrughan Chauhan v. Union of India[44], a benchmark ruling on capital punishment, the Supreme Court held that inordinate and unexplained delay by the executive in deciding mercy petitions constitutes a grounds for commuting a death sentence to life imprisonment under Article 21. The Court affirmed that executive delay causes severe mental torture, making the execution of the sentence cruel and unjust. Furthermore, in Manoj v. State of Madhya Pradesh[45], the Supreme Court issued comprehensive guidelines requiring trial courts to conduct a thorough psychiatric and socio-economic evaluation of the accused before imposing the death penalty, making the evidentiary threshold for capital punishment higher than ever before.

CONCLUSION

For generations, governments have operated under the firm assumption that the mere existence of the death penalty acts as an ultimate barrier against the most horrific human crimes. However, this research demonstrates that the true power of capital punishment never lived inside the written text of a judicial verdict. When we look closely at the historical breakdown provided by Michel Foucault, we see that the real weight of the death penalty was entirely dependent on its public theater and the immediate speed of its execution. In the past, the sovereign state relied on a direct, shocking sensory message. The public watched the immediate execution of the offender, which carved an instant psychological fear directly into the minds of the community.

Over time, this dynamic completely changed. A combination of growing legal bureaucracy and humanitarian progress pushed these executions out of the public square and locked them deep

[44] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 (India).
[45] *Manoj v. State of Madhya Pradesh*, (2023) 2 SCC 353 (India).

inside hidden prison cells. In doing so, modern legal systems unknowingly destroyed the exact foundation that allowed the punishment to affect human behavior. By replacing a highly visible public event with secret administrative steps, and by stretching out the legal process over decades of appeals, the death penalty has become a faraway concept. The vital mental link between the initial crime and its eventual punishment has been completely broken.

In the domestic sphere, the reality of the Indian legal system further exposes the breakdown of this penal tool. Data compiled by Project 39A shows that the death penalty is restricted to the absolute edges of the criminal framework. Because of strict procedural checks and deep appellate reviews, actual executions have become incredibly rare occurrences. Potential offenders realize that the statistical probability of ever facing the gallows is close to zero, which completely neutralizes any lingering threat of general deterrence.

This operational failure is supported by global empirical data and heavily reinforced by the 262nd Report of the Law Commission of India on the death penalty. The official findings of the Law Commission explicitly confirm that capital punishment has failed to show any unique deterrent impact on violent crime curves. Instead of working as a functional shield for public safety, the system has simply turned into an obsolete, judge-centric lottery that is deeply vulnerable to systemic biases against marginalized groups in society.

Ultimately, because the death penalty has lost its practical purpose, we must confront its core reality as a severe violation of basic human rights. The prolonged psychological torture of waiting for years on death row transforms the punishment into a form of cruelty that mirrors the very violence it tries to stop. This profound contradiction was perfectly captured by the philosopher Albert Camus, who wrote: *"But what then is capital punishment but the most premeditated of murders, to which no criminal's deed, however calculated it may be, can be compared? For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life.*[46]*"*

[46] Albert Camus, *Reflections on the Guillotine*, *in* Resistance, Rebellion, and Death 173, 175 (Justin O'Brien trans., 1961).

Since the death penalty fails to protect the innocent, fails to reduce violent crime, and functions only as an arbitrary exercise of state retribution, there is no longer any valid reason for its survival. The only logical and civilized step forward for modern constitutional democracies is to completely abolish the practice.