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# CAPITAL PUNISHMENT IN INDIA: JUSTICE OR REVENGE: A CRITICAL LEGAL ANALYSIS

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## ABSTRACT

Capital punishment, commonly known as the death penalty, remains one of the most contentious issues in the Indian legal system. Despite the constitutional guarantees of the right to life under Article 21, Indian courts continue to award the death sentence in cases classified as the "rarest of rare." This paper examines the historical evolution, constitutional validity, judicial interpretation, and the ongoing socio-legal debate surrounding capital punishment in India. By analyzing landmark judgments such as *Bachan Singh v. State of Punjab* (1980) and *Machhi Singh v. State of Punjab* (1983), this paper argues that the application of the death penalty in India raises profound questions about whether it serves the ends of justice or merely constitutes state-sanctioned revenge. The paper further explores reformist perspectives, international trends toward abolition, and the disproportionate impact of capital punishment on marginalized communities.

**Keywords:** Capital punishment, death penalty, rarest of rare, Article 21, Indian judiciary, retributive justice, abolitionism, constitutional validity.

## 1. Introduction

Capital punishment is the legal process whereby a person is executed by the state as a penalty for a crime. In India, the death penalty is awarded for offences under the Indian Penal Code, 1860 and special statutes such as the Prevention of Terrorism Act and the Narcotic Drugs and Psychotropic Substances Act, among others. The legitimacy of capital punishment has been debated across legal, ethical, religious, and political domains for centuries.

India's position on the death penalty is paradoxical: while the Constitution guarantees the right to life, the state retains the power to extinguish it. This tension lies at the heart of the debate. Proponents argue that capital punishment delivers justice to victims and deters heinous crimes. Critics, however, contend that it is irreversible, prone to misapplication, and serves retributive rather than rehabilitative ends — making it closer to state-sanctioned revenge than justice.

This paper seeks to interrogate this central question through a multi-dimensional lens encompassing constitutional law, judicial precedent, criminology, and human rights discourse.

## 2. Literature Review

Scholars and jurists have extensively studied capital punishment in India from varying perspectives. Upendra Baxi's work on Indian constitutionalism highlights how the judiciary has often oscillated between reform and restraint in matters involving the right to life. V.R. Krishna Iyer, a former judge of the Supreme Court, was a fervent opponent of the death penalty, arguing that no civilized state should have the power to take a life.

The Law Commission of India's 262nd Report (2015) recommended the abolition of the death penalty for all crimes except terrorism-related offences and waging war against the state.

The Law Commission of India's 262nd Report (2015) recommended the abolition of the death penalty for all crimes except terrorism-related offences and waging war against the state. The report acknowledged the irreversible nature of the punishment and the risk of executing innocent persons — a concern reinforced by empirical studies identifying wrongful convictions in capital cases.

Internationally, scholars such as Roger Hood (*The Death Penalty: A Worldwide Perspective*) and David Garland (*Peculiar Institution*) have demonstrated that the global trend is decisively

toward abolition, with over 106 countries having eliminated the death penalty in law. Indian scholarship, including that of Amnesty International India and Project 39A (National Law University, Delhi), has documented the systemic inequalities in the application of the death penalty, revealing that the poor, lower castes, and religious minorities are disproportionately represented on death row.

A significant gap identified in existing literature is the absence of a consistent judicial standard for applying the 'rarest of rare' doctrine, leading to arbitrary and inconsistent sentencing — a gap this paper seeks to address.<sup>12</sup>

### **3. Research Objectives / Questions**

This paper is guided by the following research questions:

- (i) Is capital punishment consistent with the constitutional right to life under Article 21 of the Indian Constitution?
- (ii) Does the 'rarest of rare' doctrine provide a coherent, consistent, and non-arbitrary standard for awarding the death penalty?
- (iii) Does capital punishment serve deterrent or rehabilitative aims, or is it primarily retributive in nature?
- (iv) How does the application of capital punishment in India compare to global human rights standards?
- (v) Should India move toward the abolition of the death penalty?

### **4. Analysis / Discussion**

#### ***4.1 Constitutional Framework***

Article 21 of the Constitution of India guarantees that no person shall be deprived of their life or personal liberty except according to procedure established by law. The Supreme Court in

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<sup>1</sup>Capital punishment in India, (Feb. 11, 2005), [https://en.wikipedia.org/wiki/Capital\\_punishment\\_in\\_India](https://en.wikipedia.org/wiki/Capital_punishment_in_India).

<sup>2</sup>Shreya Rastogi, How Justice Bhagwati's 44-year-old dissent mirrors the state of death penalty in India, *Supreme Court Observer* (Oct. 18, 2024), <https://www.scobserver.in/75-years-of-sc/how-justice-bhagwatis-44-year-old-dissent-mirrors-the-state-of-death-penalty-in-india/>.

*Maneka Gandhi v. Union of India* (1978) expanded this to require that such procedure must be fair, just, and reasonable.

The constitutional validity of the death penalty was directly challenged in *Jagmohan Singh v. State of UP* (1973), where the Supreme Court upheld it, reasoning that the procedure prescribed by law was followed. The landmark shift came in *Bachan Singh v. State of Punjab* (1980), where the Supreme Court (4:1) upheld the constitutional validity of Section 302 of the IPC but introduced the 'rarest of rare' doctrine, limiting the death penalty to cases where the alternative of life imprisonment is unquestionably foreclosed. Justice Bhagwati dissented, arguing that the death penalty was inherently arbitrary and therefore unconstitutional.<sup>3456</sup>

#### 4.2 The 'Rarest of Rare' Doctrine: Promise and Failure

The 'rarest of rare' standard was intended to restrict capital punishment to exceptional cases. In *Machhi Singh v. State of Punjab* (1983), the Court laid down factors to determine what constitutes the 'rarest of rare,' including the manner of commission, the motive, the anti-social nature of the crime, and the victim's vulnerability. However, subsequent application has been widely criticized for inconsistency.

Project 39A's *Death Penalty India Report* (2016) revealed alarming inconsistencies: trial courts imposed death sentences which were later commuted by High Courts, and the Supreme Court itself commuted several sentences on grounds of delays in execution, mental illness, and procedural lapses. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009), the Supreme Court acknowledged that the application of the 'rarest of rare' doctrine had been inconsistent and called for greater rigor.

This inconsistency raises a fundamental question: if the legal system cannot apply the 'rarest of rare' standard uniformly, can it be said that the resulting death sentences represent justice rather than arbitrary state power? The arbitrariness mirrors the very conduct the law seeks to

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<sup>3</sup> Capital Punishment in India: Critical Analysis, <https://www.legalserviceindia.com/legal/article-8656-capital-punishment-in-india-critical-analysis.html>.

<sup>4</sup> Legal Service India, Capital Punishment: Revisiting the Abolition-Retention Debate, (May 9, 2003), [https://www.legalserviceindia.com/articles/cap\\_pp.htm](https://www.legalserviceindia.com/articles/cap_pp.htm).

<sup>5</sup> Sneha Mahawar, Capital punishment in India - iPleaders, IPleaders (Dec. 5, 2022), <https://blog.ipleaders.in/capital-punishment-in-india-2/>.

<sup>6</sup> CAPITAL PUNISHMENT IN INDIA » Lawful Legal, (July 11, 2025), <https://lawfullegal.in/capital-punishment-in-india-2/>.

punish, suggesting retributive impulse rather than rational judicial determination.

#### ***4.3 Deterrence vs. Retribution: Does Capital Punishment Prevent Crime?***

A central justification for capital punishment is its alleged deterrent effect. However, empirical evidence does not support a causal relationship between the death penalty and a reduction in violent crime. Studies from states that have abolished the death penalty show no corresponding increase in homicide rates. In India, the incidence of heinous crimes has not demonstrably decreased despite high-profile executions such as those of Yakub Memon (2015) and the Nirbhaya case convicts (2020).

If deterrence is unproven, then the death penalty operates primarily as retribution — satisfying public demand for vengeance rather than serving the rational ends of criminal justice, which include rehabilitation, reformation, and social protection. The retributive basis of capital punishment, while emotionally compelling, is philosophically problematic in a constitutional democracy that recognizes human dignity as inviolable.

#### ***4.4 Systemic Inequalities and the Risk of Irreversible Error***

The *Death Penalty India Report* (2016) found that 76% of death row prisoners were from economically marginalized backgrounds, and a significant proportion belonged to religious minorities and lower castes. This data points to a structural bias in the criminal justice system where access to quality legal representation, socioeconomic status, and social identity materially affect sentencing outcomes.

Furthermore, the irreversibility of the death penalty means that judicial errors cannot be corrected. The Supreme Court in *Shatrughan Chauhan v. Union of India* (2014) recognized that prolonged delay on death row could itself constitute grounds for commutation, further underscoring the constitutional deficiencies in the administration of capital punishment.

#### ***4.5 International Human Rights Perspective***

India is a signatory to the International Covenant on Civil and Political Rights (ICCPR), which under Article 6 restricts the death penalty to the 'most serious crimes.' The UN Human Rights Committee has consistently held that only crimes involving intentional killing fall within this category. India has resisted the Second Optional Protocol to the ICCPR, which calls for total

abolition. While India abstained from and later voted against UN General Assembly resolutions calling for a moratorium on executions, the international trajectory is unmistakably abolitionist, and India's continued retention of the death penalty places it in the company of states with poor human rights records.

## **5. Conclusion**

The question of whether capital punishment in India constitutes justice or revenge does not admit of a simple answer. At its best, the death penalty represents the state's attempt to deliver proportionate justice for the most heinous acts. At its worst, it is an irreversible, arbitrarily applied, and structurally biased instrument that reflects retributive impulse rather than rational penology.

The analysis reveals that the 'rarest of rare' doctrine, while well-intentioned, has failed to provide a consistent and principled standard. The absence of a deterrent effect, combined with systemic inequalities in its application and the irreversible risk of executing innocents, tilts the balance heavily toward the conclusion that capital punishment in India, as presently practiced, is more punitive than just.

This paper recommends that India seriously consider the Law Commission's 2015 recommendation for abolition of the death penalty in all cases other than terrorism, as a transitional step toward full abolition. In the interim, mandatory reforms in legal aid, standardization of sentencing guidelines, and comprehensive review of death row cases are urgently required.

A just legal system must be measured not by how it treats the worst among us, but by whether it upholds the dignity of all. The death penalty, in its current form, fails this test.<sup>7</sup>

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<sup>7</sup> *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

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