
DEATH PENALTY - JUSTICE OR REVENGE: AN EXPLORATORY RESEARCH OF HUMAN RIGHTS IMPLICATIONS AND THE THIN LINE BETWEEN JUSTICE AND REVENGE

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ABSTRACT

The death penalty in India remains a highly debated issue, caught between the goal of justice and the desire for revenge. Although the Supreme Court's "rarest of rare" rule is meant to limit its use, inconsistencies in sentencing, social inequalities, and strong public emotions have raised questions about its fairness. This study looks closely at whether India's capital punishment system truly delivers justice or is influenced by social and political pressures driven by vengeance. Analyzing key court rulings, laws, public opinion, and policy reports reveals flaws and ethical issues in the handling of the death penalty. The research also considers possible legal changes to enhance the consistency, humanity, and fairness of its use. The results highlight the urgent need to rethink the death penalty in India's justice system.

Keywords: Death Penalty, Capital Punishment, Justice vs. Revenge, Rarest of Rare Doctrine, Indian Judiciary, Legal Reforms, Human Rights, Sentencing Disparities, Retributive Justice, Socio-Legal Analysis, Death Penalty India Report, Law Commission of India, Criminal Justice System, Clemency and Mercy Petitions, Judicial Discretion

REVIEW OF LITERATURE

¹The 2016 Death Penalty-India Report by National Law University Delhi is the first detailed social and empirical study of the death penalty system in India. It presents the first empirical study on the 'social' and 'legal' domains of the death penalty. It is based on interviews with all prisoners on death row. The report exposes a disturbing and systematic exclusion and marginalisation of the disadvantaged. 74% of individuals sentenced to death came from underprivileged backgrounds, which exposes the stunning correlation between poverty and death sentences. For many, education remains elusive. Over three-quarters of the prisoners had not completed secondary schooling, thus limiting their ability to understand and engage critically with the legal system. A significant proportion of prisoners on death row were from Dalit, Adivasi, and religious minority backgrounds. This raises further questions about caste and religious discrimination within the justice system. Legal aid available to those accused was specifically inadequate and unsystematic at the trial stage, which is of paramount significance in maintaining an equitable outcome for the accused. This snapshot of the findings in the Death Penalty-India Report indicates a profoundly inequitable system and points towards a system that fails to provide justice for the most vulnerable and marginalised in society.

²By commenting on reports from examining commissions, the Law Commission of India Report No. 262 (2015) made a notable shift in the national debate about capital punishment by recommending that the death penalty be abolished for all crimes apart from terror-related offences. The Commission had consulted with legal experts, former judges, human rights activists, and other stakeholders and found that capital punishment was not an effective crime deterrent. As mentioned in the report, studies on the death penalty use throughout the world, including in India, demonstrated no real evidence that capital punishment deters crime more than sentences of life imprisonment. Furthermore, an important risk the Law Commission identified in capital cases, particularly within the context of the Indian criminal justice system which is acknowledged to be inefficient and rife with issues such as custodial torture and sub-standard defense lawyers, was the risk of executing an innocent person. The report also found that death penalty sentences were most often applied in socio-economically discriminated circumstances, and were disproportionately applied to the economically disadvantaged and the marginalized. The report also noted the sometimes inconsistent nature of judges' sentencing

¹ Project 39A, The Death Penalty India Report (National Law University Delhi, 2016)

² Law Commission of India Report, No. 262 (2015)

decisions in death penalty cases, where similar crimes and facts would see judges issue very different punishments, including life imprisonment or death. The report ultimately removed the death penalty itself from all but terror-related cases because these kinds of crimes threaten national security, and hence, capital punishment was retained in these contexts and crimes.

³In their research *Judgments and Justice* (2017), Aparna Chandra, Gaurav Mukherjee, and Mitali Singh examined 215 Supreme Court death penalty cases reported between 2000-2015, finding a troubling inconsistency in the application of the "rarest of rare" rule; a rule intended to limit the death penalty to the most egregious serious crimes. The study indicated that the decisions based on the "rarest of rare" rule did not follow pre-existing legislation, but depended largely on personal phenomena, such as the behaviour of the accused during their trial or appeal. The researchers argue that this sort of reasoning creates ambiguity and, therefore, amplifies unfairness in cases where a life or death decision is to be made, and furthermore indicate that the reasoning for either upholding or decreasing a death sentence was vague and inadequate in respecting the evaluative criteria. These erstwhile discrepancies diminish the promise of equal justice and expose a serious flaw in how India's superior courts have dealt with death penalty-related matters. Further, Chandra and colleagues' article raises pertinent questions regarding the fairness and reliability of India's death penalty, and lends credence to attempts to reform and abolish it.

⁴In a 2015 paper, Alok Prasanna Kumar engages in an analysis of the discretionary nature of executive clemency in the Indian context as set out in Articles 72 and 161 of the constitution, regarding the positioning of the President and governors to provide clemency and reduce sentences in any circumstance including those subject to the death penalty, Kumar points out that the powers of clemency were intended to embrace a compassionate safeguard, however, their application have often been marred by random action, lack of transparency and rapid political input. Given that there are no statutory requirements or guidelines that are enforceable, it is unsurprising that the outcomes of clemency decisions will be unpredictable. Furthermore, Kumar notes an unimaginable delay in the handling of mercy petitions to the point of years, raising serious issues about fairness and causing extraordinary psychological hardships for prisoners, who are left languishing on death row. The delays were so egregious that the

³ Aparna Chandra, Geetika Kapoor, and Mrinal Satish, *Judgments and Justice: The Supreme Court's Record on the Death Penalty* (Centre on the Death Penalty, National Law University Delhi 2017)

⁴ Alok Prasanna Kumar, 'Constitutional Dilemmas in Mercy Powers' (2015) *Indian Constitutional Law Review*

Supreme Court has ruled that they could be an independent basis for commuting a death sentence, as in *Shatrughan Chauhan v. Union of India*. Kumar also specifies that central considerations are often political rather than legal or humanitarian, harming public confidence in the executive as a humane actor in capital cases. Overall, Kumar brings valuable insights to the continuing discussion on legitimacy, fairness, and efficacy of the death penalty in India, highlighting the confusing and sporadic nature of mercy petition processes.

⁵In her comparative legal examination, Sital Kalantry (2018) points to a stark contrast between the United States and India with regard to the death penalty. Kalantry notes a contradiction in the Indian system. Although India is a party to numerous international human rights covenants and has a constitution that promotes human dignity, equality, and due process, the death penalty is nevertheless present as a punishment applicable to multiple crimes. Kalantry suggests that the Indian legal system espouses values that, at least on paper, conflict with sanctioned executions by the state. In the United States, while the death penalty remains in practice, the general public rejects the idea. Death penalty questions are often rationalized through our system of federalism, court rulings, and popular vote, and systemic reforms are being instituted as outlined in the Trafficking Victims Protection Act of 2000. Conversely, the Indian legal system has not put in place strong measures to highlight and prevent arbitrary decisions, and therefore, ensure fair application. Although there is the "rarest of rare" standard for determining who receives the death penalty, drawn from the *Bacchan Singh v. State of Punjab* case, it provides very little hope for preventing wrongful conviction. Kalantry explains that the death penalty system creates particular disadvantage for marginalized populations in India, specifically the Dalits, showing larger trends of social inequalities. Kalantry ultimately asserts that India's ongoing acceptance of the death penalty is contrary to the progressive and reform-minded intentions behind India's legal system, and that reforms to eliminate the death penalty should align India's death penalty practice with the values espoused by the Indian Constitution.

⁶Anup Surendranath, one of India's foremost specialists on the death penalty, offers a detailed examination of its use, especially the unjust implications for different marginalized groups. Surendranath is the executive director for Project 39A at National Law University Delhi and has conducted numerous studies on the unfairness of the criminal justice system. The studies

⁵ Sital Kalantry, 'The Global Death Penalty Landscape and India's Position' (2018) *NYU Journal of International Law and Politics*.

⁶ Anup Surendranath, 'The Death Penalty in India: A Socio-Legal Analysis of the Marginalised and Judicial Discretion' (Project 39A, National Law University Delhi, 2016)

indicate that the death penalty in India very much projects a bias against the poor, Dalits, Adivasis, and religious minorities, who do not have robust access to legal assistance. He closely observes what happens inside the courtroom and analyzes trial records to demonstrate how Indian courts tend to fail to consider several differential factors of relevance such as age, mental health, social context, and opportunity for reform before the death sentence is handed down (recall that Indian law provides that the death sentence may only be issued with careful consideration under the "rarest of rare" rule). His studies suggest that Indian courts also have inconsistent and inappropriate untrammelled discretion in deciding death, as they tend to rely on whatever reasons come to mind rather than dutifully consider the facts. Surendranath considers the Indian court's discretionary death sentences a central symptom of larger systemic failure in reasonably achieving equality and human dignity consistent with a just society.

STATEMENT OF THE PROBLEM

Under the "rarest of rare" doctrine, the death penalty is legal in India, but there are also huge disagreements whether it is justice, or simply another state avenue for revenge. There are so many inconsistencies about the sentencing for different murders, such as bias based on socioeconomic status, bias based on a victim's outcome, and perceived delays that may be wrongful. This research aims to explore the morality of the death penalty, considering whether it serves justice or revenge, and to examine recommendations for law or policy that would make its implementation fairer, more humane, and less inconsistent.

HYPOTHESIS

The application of the death penalty in India, as we see it today, appears to mirror societal rage more than genuine justice. Legal reforms and definitive guidelines may establish a case for the fair and just use of capital punishment.

RESEARCH QUESTIONS

1. To what extent does the application of capital punishment in India conform to justice principles in the "rarest of rare" doctrine?
2. What are the socio-economic and demographic indicators concerning those who are given capital punishment in India?

3. Can we establish that public opinion, influenced by social and other media influences, can produce judicial bias in the delivery of capital punishment?
4. Is the legal process of sentencing death by capital punishment within or between courts or benches, or jurisdictions reasonably consistent and fair concerning evolving legal principles?
5. What are the procedural and ethical limitations or flaws in the process of seeking clemency and appealing the sentence of death for death row inmates in India?
6. How does India's retention and application of the death penalty compare with global retention and applications, especially concerning democratic states?
7. What changes or ways to propose it to make the death penalty in India more fair, intellectually comprehensible, transparent, and equitable, compared to other proposals being considered currently?

RESEARCH OBJECTIVE

1. To examine the structure of the legal and judicial system that regulates the death penalty in India, focusing more particularly on the rarest of rare doctrine.
2. To investigate whether capital punishment is an articulation of justice or truly simply an expression of social vengeance.
3. To analyze the occurrences of socio-economic and demographic discrimination in the sentencing of death penalty cases.
4. To assess whether the death penalty is an effective deterrent to serious criminality within the Indian context.
5. To evaluate the inconsistencies in current jurisprudence and administrative structures relating to the death penalty.
6. To recommend legal reforms and regulatory possibilities that could provide a more just and homogeneous application of capital punishment in India.

RESEARCH METHODOLOGY

This study uses a qualitative exploratory approach to better understand the complex legal, moral, and social aspects of capital punishment in India. It involves a close examination of legal documents, case laws, expert views, and existing data to assess whether the death penalty serves as a tool for justice or simply for revenge.

MODE OF CITATION

This study follows a uniform citation method, the Oxford Standard for Citation of Legal Authorities (OSCOLA), 4th edition, 2012.

SCOPE & LIMITATION

This research analyzes the application and impact of the death penalty under the Indian legal framework and system from 1980 to the present. The study summarizes key court decisions, legal instruments, media coverage, and public opinion, and then attempts to analyze whether capital punishment in India is more of a matter of justified punishment or retaliation. The research utilizes primarily secondary sources such as case laws, government records, and scholarly articles. There is limited access to primary materials such as trial records or trial interviews. Some limitations of this research are potentially biased news articles, the lack of clarity in lower courts, and the personal interpretation of differentiating justice from vengeance. Global comparisons will only serve to contextualize India's position.

INTRODUCTION

Providing the ultimate structure that a state may impose on a person, capital punishment provides the setting for much significant ethical, legal, and philosophical debate around the world. In India, the issue of capital punishment is intensely debated and complicated. It is enshrined in the Constitution and codified in the Indian Penal Code, yet it is limited in its use through the implementation of the "rarest of rare" doctrine provided by the Supreme Court in *Bachan Singh v. State of Punjab* 1980, which was designed to ensure that courts exercised the maximum restraint and control when imposing the death penalty. The court application of the ruling has varied widely and has followed public opinion, political pressure from outside the courts, or media attention.

The death penalty is reserved for certain serious crimes in India, such as murder, terrorist acts, and certain sexual offenses. Society today is questioning whether it is providing justice or merely sate a desire for revenge and some of the concerns stem from the fact that most people on death row are from disadvantaged backgrounds, that the delay in reviewing clemency pleas is often extremely long, and that there is a great deal of dramatization and histrionics surrounding terrible criminal acts. At the same time, the majority of the rest of the world has moved away from the death penalty, with over two-thirds of the countries formally abolishing capital punishment in law or practice.

This research tries to investigate a key question: Is the death penalty in India truly a legitimate form of justice, or a form of state-sponsored retaliation? The research will look into significant legal cases, patterns of sentencing, circulation of public opinion, and expert opinion, through which it will attempt to investigate the flaws of capital punishment in India.

HISTORY OF THE DEATH PENALTY IN INDIA

The history of the death penalty in India holds roots in ancient times when capital punishment was mentioned in the religious and legal texts, the Manusmriti and Arthashastra.⁷ Various crimes could attract capital punishment under these ancient laws: murder, theft, treason, and sexual misconduct. Ancient Hindu law considered the death penalty acceptable and necessary for maintaining moral order and social discipline; however, certain cases allowed for either repentance or compensation, indicating that the cases were sometimes viewed as a blend between punishment and reform. The death penalty was popular in Mughal times and extremely harsh, with executions being carried out publicly to have a deterrent effect. Mughal kings were empowered to inflict punishments including death, especially for those crimes that threatened the state or royal authority.

The British have codified the death penalty through laws such as the Indian Penal Code 1860,⁸ which remains the guiding legislation on criminal law in India. It applied the death sentence for murder, waging war against the state, robbery with murder, etc. Another use of the death penalty under British rule was population control- to eliminate population elements that posed threats to the regime; executions of freedom fighters like Bhagat Singh, Sukhdev, and Rajguru

⁷ Kangle, R.P. (1960). *The Kautilya Arthashastra*. University of Bombay.

⁸ *Indian Penal Code (1860)*

infuriated the populace, thereby strengthening the independence movement.⁹

After India gained independence, the constitution allowed the death penalty, but under very strict rules of procedure. Article 21 guarantees the right to life, except as an exception based by law and procedure laid down in the Constitution. Over time, the courts have gone into a series of debates discussing the death penalty in the context of its fairness and legality. The infamous case of 1980, *Bachan Singh v. State of Punjab*,¹⁰ put a full stop to the Supreme Court's death penalty cases and confirmed the death penalty as constitutional, but limited its application to the "rarest of rare" cases with a high degree of judicial oversight. Subsequent cases developed the contours of these limits. In *Macchi Singh v. State of Punjab* (1983),¹¹ the Court elucidated the concept of "rarest of rare." In *Shatrughan Chauhan v. Union of India* (2014), the Court stressed fair procedure and commuted numerous death sentences due to inordinate delays in the consideration of mercy petitions.

In recent years, India has faced criticism both domestically and internationally for retaining the death penalty, as most other democracies have abolished it.¹² Yet, India does intermittently execute such as it did in the 2020 Nirbhaya gang rape case; arguably conceived as a response to public outrage and political orchestration. The Law Commission of India, in 2015, had recommended ending the death penalty for all crimes except for terrorism, but no significant reforms have been taken forward by the legislature. In sum, the enactment of the death penalty law shows the progression of India from relatively ancient religious and royal codes to the modern civil legal system, trying to reconcile the need for justice with punishment and human rights. The present-day debate is a reminder of a nation living by its democratic values.

LEGAL PROVISIONS & JUDICIAL APPROACH

1. STATUTORY PROVISIONS

Under Indian legislation, capital punishment may follow several laws that address various serious offences. Most often, Section 302 of the Indian Penal Code (IPC) 1860¹³ is invoked to award the death sentence or life imprisonment in cases of murder. Section 121 of the IPC

⁹ Historical accounts of the executions of Bhagat Singh, Sukhdev, and Rajguru from the Indian freedom movement

¹⁰ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898

¹¹ *Macchi Singh v. State of Punjab*, AIR 1983 SC 957

¹² Law Commission of India. (2015). Report No. 262: The Death Penalty

¹³ Indian Penal Code 1860, s 302

provides for the death penalty for waging war against the Government of India. Over time, newer enactments and amendments have extended the scope of capital punishment to include other specific and grave offences. For example, terrorist acts causing deaths are punishable by death under the Unlawful Activities (Prevention) Act (UAPA). On the other hand, the Narcotic Drugs and Psychotropic Substances Act (NDPS) 1985¹⁴ prescribes death for certain repeated offenses of drug trafficking on a large scale.

Now, there have been somewhat significant changes in the rape laws following the growing public anger against sexual violence. The Criminal Law (Amendment) Act, 2013, and the Protection of Children from Sexual Offences (POCSO) Amendment Act, 2019, provided death penalties for aggravated sexual assault, particularly where minors are concerned.¹⁵ This change suggests a move toward the more severe punishments advocated during the protests, even though it can be argued that the construction of the bills was a response to actual events, rather than being based on evidence.

2. JUDICIAL DOCTRINE

The constitutional validity of the death penalty was firmly confirmed in the important case of *Bachan Singh v. State of Punjab* (1980). The Supreme Court ruled that the death penalty is not unconstitutional by itself but should only be used in the “rarest of rare” cases.¹⁶ This rule was created to help courts limit when the death penalty is applied. The Court said that sentencing should take into account both the serious and less serious factors, like the nature of the crime, how it was carried out, the criminal’s mental state, background, and chances of reform.

The *Macchi Singh v. State of Punjab* (1983) case provided additional detail in introducing the rule above by identifying five instances that may be described as “rarest of the rare” cases.¹⁷ These types of cases are described as documented cases of extreme cruelty, glaring social rejection, and Killings that undermine a nation's security. This last aspect was meant to promote fairness and balance in the court's assessment of the death penalty, and to avoid an arbitrary and harsh punishment.

¹⁴ Narcotic Drugs and Psychotropic Substances Act 1985, s 31A

¹⁵ Protection of Children from Sexual Offences (Amendment) Act 2019, s 6

¹⁶ *Bachan Singh v State of Punjab* AIR 1980 SC 898

¹⁷ *Macchi Singh v State of Punjab* AIR 1983 SC 957

3. JUDICIAL DISCRETION & INCONSISTENCY

While these legal protections exist, one of the main criticisms made against India's death penalty system is that it has inconsistent and arbitrary sentencing. As even the best legal systems do, courts are required to interpret the sentencing standard of "rarest of rare" in different ways, which results in inconsistent outcomes for similar offenses. For example, two individuals who are convicted of the same crime may receive vastly different sentences that depend on how the judge weighs the mitigation factors or, moreover, on their perspectives that are situated within the realms of the social and political contexts of the trial. The inconsistencies of sentencing were given further support in the 2016 Death Penalty Report that was published by the National Law University Delhi,¹⁸ where it was documented that many death-row prisoners came from marginalized groups such as Dalits, religious minorities, or other social strata of the poor.

The report suggested that there are many instances where the lower court's sentencing was overturned or reduced in the higher courts, thus highlighting the inconsistencies and randomness in the application of the death penalty as it ultimately relates to expectations and not clear rules. In addition, it has been reported that courts are influenced by public significance or news coverage regarding sentencing, particularly in cases that are classified as 'media-centred'. The 2012 Nirbhaya case exemplifies the way in which public outrage seemed to have influenced the timing and severity of the sentencing. While it's hard to completely separate judicial decisions from public awareness, letting this influence decisions that determine life or death brings up serious ethical and legal issues.

KEY CASE LAWS

I. *Bachan Singh v. State of Punjab (1980)*

The case of *Bachan Singh v. State of Punjab*¹⁹ is a key moment in India's death penalty law. The Supreme Court had to decide if the death penalty under Section 302 of the Indian Penal Code went against Articles 14, 19, and 21 of the Constitution. The Court ruled that the death penalty is constitutional but should only be used in the "rarest of rare" cases. The judgment

¹⁸ Anup Surendranath and others, *The Death Penalty India Report Volume I* (National Law University Delhi, 2016)

¹⁹ *Bachan Singh v State of Punjab* AIR 1980 SC 898.

set up a system where courts must look at both the seriousness of the crime and factors that might lessen the punishment, like the crime's cruelty, the motive, the offender's background, and chances of reform. This approach still guides courts today, although some criticize how it is applied.

II. *Macchi Singh v. State of Punjab (1983)*

In *Macchi Singh v. State of Punjab*,²⁰ the Supreme Court sought to clarify and expand on the vague contours of the "rarest of rare" doctrine established in *Bachan Singh*. The Court laid out specific categories where the death penalty might be justified, including cases involving extreme depravity, crimes against women and children, or offenses that shock the collective conscience of society. It emphasized the manner of commission, motive, magnitude, and impact on society as critical dimensions in the sentencing process. This case became essential for standardizing how courts assess the threshold for capital punishment, though the inherent subjectivity of these factors continued to generate inconsistency in application.

III. *Shatrughan Chauhan v. Union of India (2014)*

In a significant decision for fairness in legal procedures, the Supreme Court in *Shatrughan Chauhan v. Union of India* (2014)²¹ ruled that unreasonable delays in handling mercy petitions under Article 72 or Article 161 can be a reason to change a death sentence to life imprisonment. The Court explained that keeping someone waiting for a long time under the constant threat of execution causes psychological suffering and violates Article 21. It also set out important steps to follow, like deciding on mercy petitions promptly, informing prisoners of the decisions, and allowing mental health assessments. This case represented a move towards a more human rights-focused approach to death penalty processes.

IV. *Yakub Menon (2015)*

Yakub Memon was executed in 2015²² after being convicted in the 1993 Bombay blasts case. His execution sparked a lot of debate both in India and internationally. Although the Supreme Court upheld his death sentence, many critics questioned whether the punishment

²⁰ *Macchi Singh v State of Punjab* AIR 1983 SC 957.

²¹ *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1

²² *Yakub Abdul Razak Memon v State of Maharashtra* (2015) 9 SCC 552.

was fair, especially since he had surrendered voluntarily and cooperated with the investigation. Several last-minute petitions and an unusual midnight hearing were held to try to stop the execution, but the Court refused to intervene. This case raised important questions about how transparent the clemency process is, the finality of court decisions, and whether convicts are treated differently based on public opinion.

V. *Nirbhaya Case (2020)*

The 2012 Nirbhaya gang rape case²³ led to the death penalty for four men, who were executed in 2020 after years of legal battles. The incident sparked protests across the country and brought major changes to sexual assault laws, including the Criminal Law (Amendment) Act, 2013. Many saw the executions as justice for the victim, but some legal experts and human rights activists felt the process was driven more by public anger than by fair legal principles. The case reopened the debate about whether the death penalty actually prevents crimes against women or simply serves as an outlet for society's anger.

ARGUMENTS IN FAVOUR

1. DETERRENCE

Deterrence is one of the most enduring and contentious rationales for support of the death penalty. Deterrence is ultimately a utilitarian idea that the fear of punishment will deter future criminal behaviour by scaring potential offenders. Regarding capital punishment, deterrence theory assumes that the fear of death is the ultimate fear to deter individuals from committing serious crimes. In India, there is often an appeal to deterrence in capital cases when describing awful crimes such as terrorism, horrific murders, or sexual violence. Deterrence sorts of crimes can be described about cases such as Ajmal Kasab for the 2008 Mumbai terrorist attacks, and the Nirbhaya gang rape case from December 2012 where ultimately four convicts were executed in 2020. The reasoning is that in these cases, the death penalty marks an announcement of deterrence through deserving punishment to send a strong social message. In these instances, courts and government have referenced deterrence as either a goal of the legislation but also as a mechanism for reinforcing the rule of law amidst public anger.

²³ *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1

At times, the Indian judiciary has accepted deterrence as a viable penal purpose. In a 1980 case, *Bachan Singh v. State of Punjab*, where the Supreme Court upheld the constitutionality of the death penalty, the majority opinion recognized deterrence as a key rationale for maintaining the death penalty. The Court noted that death, when used in the case of the "rarest of rare" cases,²⁴ could serve both as a deterrence and retribution, because it could help maintain public order in the sense of expressing societal disapproval of "morally abhorrent acts." The rationale for supporting death as a penalty was echoed in *Macchi Singh v. State of Punjab*. In that case, the Supreme Court noted that certain crimes offend almost all of humanity and are so irrational that they shock the "collective conscience" of communities that punishment by the state is warranted in the event of murder. This is also compassionate, as certain punishments are not considered to meet community expectations when we consider the nature or degree of the crime, and then fail to mete out punishment consistent with those cognitions. The decision stated that when a crime attack takes the very fundamentals of civilized society and produces fear in communities, sufficient punishment must be meted out so that the degree of punishment deters the individuals conducting the attack.

While Deterrence remains an important political argument, the Constitution of India requires a regulated approach. The "rarest of rare" doctrine not only seeks to limit the death penalty, but also ensures that the death penalty is not only applied appropriately, but that it is applied fairly and justly. The courts take deterrence into account, but also take into account fairness, consistency, and changing perspectives of what it means to be a human being.

2. RETRIBUTION & PUBLIC SENTIMENTS

Retribution is perhaps the oldest and most deeply entrenched rationale for punishment in criminal law. The retributive concept of justice holds that when a serious crime is committed, the offender deserves punishment consistent with the harm they caused. Retributive justice doesn't care whether it stops others from committing the same or similar crimes or whether the offender has an opportunity for rehabilitation; it is purely about moral entitlement being determined such that the punishment is commensurate with the seriousness of the crime. From this perspective, justice is served when the offender is essentially "releasing" their debt to society for the crime they committed. Additionally, this rationale has special potency when

²⁴ *Bachan Singh v State of Panjab* AIR 1980 SC 898 [209]-[210]

there is found cruelty or disregard for human dignity is found.

In India, retributive rationales often stand as support for the death penalty, particularly in emotional or high-profile cases when the death sentence is not perceived as just a legal option and instead as a moral obligation. Additionally, this was displayed when the Supreme Court examined *Mukesh v. State (NCT of Delhi)* about the 2012 Nirbhaya gang rape and murder case. In this case, the Supreme Court characterized the crime as "diabolical," it "shocked the collective conscience of society."²⁵ This phrase has since been included in several judicial opinions in support of capital punishment, i.e., the court justified the death penalty on not just legal, but moral grounds, as a moral outrage by the law to show that the law was in sync with public morals and abhorrence. It is essential to comprehend the implications of the connection between punishment and public sentiment in a democracy like India, where processes can be easily influenced by public and media pressure. Simply put, the Nirbhaya case sparked widespread protests across the country and sustained media coverage, generating a sense of urgency. The pressure appears to have accelerated the trial, conviction, and execution state process for the perpetrators. While the judiciary is to be independent, the emotionality of the situation raises questions about legitimacy regarding whether judges are influenced by public opinion when the consequences cannot be undone.²⁶

In India, public sentiment has favoured the death penalty for really horrible crimes like sexual violence or terrorism. Typically, this public support has been fueled by the notions of revenge or symbolic justice rather than by reasoned legal rationales. Here, retribution is shared as a collective emotive response to the crime, a way for society to condemn the act, and create moral boundaries. The state, when meting out the punishment, is seen as not only doing justice but also giving expression to the emotive release of society. Many advocates against the death penalty argue that a legal system needs to rise above the emotive moment. People need to trust the courts, but not at the expense of fairness and reasoned justice. The over-reliance on "collective conscience" in deciding the legitimacy of death penalties has led to inconsistencies in cases where the courts are attempting to determine what society will allow, which is a highly subjective position. Those more attuned to the legal intricacies remind us that the politically approved use of the death penalty assists the judiciary, or judges, from outside the control of law, is another way of allowing popular opinion to steer or determine legal expectations, rather

²⁵ *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1 [361]

²⁶ Alok Prasanna Kumar, 'Nirbhaya: Justice or Mob Justice?' (2013) 48(6) *Economic and Political Weekly* 16

than hold steadfast to the process and constitutional principles of decent justice. In conclusion, while retributive justice and societal emotions are compelling reasons for the retention of the death penalty within India, they are also representative of critical impediments to fairness and the integrity of the courts.

3. VICTIM'S RIGHTS & EMOTIONAL CLOSURE

One of the most potent emotional rationales for supporting the death penalty is that it recognizes the suffering and trauma of victims and their family members. This is different from arguments based on the deterrence of crime or fairness. Here, the analysis is strictly on what victims and their loved ones feel and not on their more cognitive rights or entitlements. Families that have gone through crimes of extreme violence like rape, child abuse, terrorism, or murder that is planned often live with deep emotional and sometimes even ontological pain. For many, the execution of the criminal is the way they would see resolution and a symbolic way to restore moral order to safety in a world they perceive to be broken. The feelings of resolution are not only personal but also social. Executions that are made public for particularly tragic cases may provide relief and closure on some level by sending the message that the state understands the suffering experienced by the victim and is prepared to take reasonable action that is reasonable against a person who has broken the laws of a society invested in enforcing them. The people who are advocating for the death penalty are often addressing a moral question whereby anything less feels unjust or insufficient.

Several court matters in India have taken into account the emotional aspect of law. In the Nirbhaya case (*Mukesh v. State (NCT of Delhi)*), the Supreme Court held that the "collective conscience of society" had been shocked and that "not imposing the death penalty would be a setback to the public's trust in the justice delivery system".²⁷ The phrase of "collective conscience" is vague, while it might be argued that it caters to public opinion, it serves to highlight the court's balancing act of justice with what society and a victim might expect. Further, Indian courts have ventured into the area of victimology, the understanding and study of the victim's role in criminal law. Courts express concern that justice is more about acknowledging suffering inflicted upon victims as well as offering modalities of restitution, psychological, moral, and symbolic. In *Machhi Singh v. State of Punjab*, the Court observed

²⁷ *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1 [361]

that crimes and their significant outrage expressed by society can manifest in appropriate death penalty cases, particularly where there is a severe violation of the dignity of the victim.²⁸

Nevertheless, not every victim's families desire the death penalty. Some families prefer life upon request for a range of reasons; for some, the death penalty simply prolongs violence and does not address the need to address the root causes of crime. The types of reasons they consider during sentencing can also vary. Research with groups like Project 39A has indicated cases in which families explicitly share that the act of healing is far more important than the act of revenge.²⁹ It is very clear that the types of victims' wishes differ, and capital punishment is never going to address all needs. Simultaneously, to ethically and legally justify the death penalty using emotional closure keeps moving punishments from the legal domain to the domain of feelings, threatening the very foundation of justice. If an offender's emotion based on a victim is a core determinant in sentencing, we will see equally gross punishment without any judicial discretion, if not mob justice, particularly in a country like India, which is full of diversity.

In summary, while emotional closure for the families of victims is an immensely compelling justification for the death penalty, all victims' voices must be balanced with constitutional rights, basic human rights, and justice. Real justice acknowledges the guilt of one and respects the victim's voice without damaging the rights of the accused. Balancing victim emotion along with better psychological service provisions, restorative justice, or modest compensation for victims, may go further towards aiding the healing process more than punishment alone.

ARGUMENTS AGAINST

1. NO CONCLUSIVE EVIDENCE OF DETERRANCE

The argument that the death penalty can deter serious crime has been a mainstay of death penalty retention arguments for a long time. However, empirical evidence from jurisdictions across the world has consistently debunked this claim. Most, if not all, of the criminological studies that have been conducted in different parts of the world, primarily in the United States and Europe, find no statistically significant association between capital punishment and crime. The studies indicate that the offender's perception of the certainty of arrest, the efficiency of

²⁸ *Machhi Singh v State of Punjab* AIR 1983 SC 957 [33]

²⁹ Project 39A, *The Death Penalty India Report Volume I* (National Law University Delhi 2016) 54–55

the justice systems, and socio-economic conditions are more impactful deterrents to crime than the harshness of the punishment. In studying this issue in the Indian context, the Law Commission of India, after consulting lawyers, law enforcement, and criminal justice scholars, concluded that “there is no empirical evidence to prove that the death penalty deters them from committing crime, including terrorism.”³⁰ The Commission cautioned that the emotive power of deterrence is not always connected to empirical evidence, nor should public policy be determined strictly by conjecture and uneasiness.

Moreover, international legal organizations and human rights activists fully support this claim. Many nations and non-governmental organizations, including the United Nations Office on Drugs and Crime and Amnesty International[UNODC], have repeatedly stated that injurious deterrence is an affirmatively unsubstantiated claim, intended as a political tool and dismissed as factual around the world.³¹ Amnesty’s worldwide and yearly reports record that countries that have abolished the death penalty do not report an increase in crime, and this finding indicates the death penalty is not a necessary method for establishing or maintaining the rule of law.³² Regardless, in the past decades, especially, many jurisdictions within India have relied on, and referred to, deterrence when either legally pursuing its use or attempting to justify execution as a method of addressing public outrage after heinous crimes. Rather than creating an actual deterrent, the death penalty often exists as a measure of symbolic politics and may primarily symbolize the pain of retribution, a politically tenable move instead of truly impacting crime prevention. Thus, reliance on capital punishment as a form of deterrence without substantive evidence is highly troubling within the justice system and illustrates a lack of care in retaining this irreversible form of brutality.

2. JUDICIAL FRAGILITY

The finality of the death penalty amplifies the implications of judicial weakness, basic imperfections, or weaknesses of the system. It is particularly worrying in India, where weaknesses come not only from the constraints of the system, such as inadequate legal aid, custodial torture, extracted confessions, and lapses in procedure in a legitimized investigation and trial. These realities disproportionately harm marginalized communities, especially Dalits,

³⁰ Law Commission of India, *Report No 262: The Death Penalty* (August 2015) 14

³¹ United Nations Office on Drugs and Crime, *Drug Control, Crime Prevention and Criminal Justice: A Human Rights Perspective* (UNODC 2016) 37.

³² Amnesty International, *Death Sentences and Executions 2023* (Amnesty International 2024) 6–7

Adivasis, religious minorities, and the people living in poverty, as they often do not have access to equitable, quality legal aid.³³ The absence of trained public defenders at the trial stage, where the majority of death sentences are given, rightly increases the possibility of miscarriages of justice. The case of *Shatrughan Chauhan v Union of India* was groundbreaking for acknowledging this weakness. The Supreme Court determined that delays that are excessive in deciding mercy petitions and a lack of procedural fairness may amount to violations of Article 21, which entitles the death penalty to life imprisonment.³⁴ The Court even relied on the fact that the system may continue to perpetuate an injustice against persons accused of a crime even after they are convicted of the crime through inhumane treatment and a lack of procedural fairness.

Empirical evidence attests to such judicial anxieties. For instance, the *Death Penalty India Report* (2016) was based on interviews with 373 death row convicts and found that almost 75% were acquitted or had their conviction changed under appeal in a higher court. That staggering percentage manifests a deeply troubling habit; trial courts are sometimes able to impose capital punishment on innocents through processes they know to be miscarriages of justice that are righted only through cumbersome and, generally, ineffective, legal news -if at all. It poses the moral peril of imposing irreversible punishment within a system with demonstrably too much room for error. While the unduly long histories of executions in India underline that we have been killing innocents, legal scholar Arvind Narrain has written that the death penalty in India reveals a criminal justice system that is "fragile at its core." An individual victim's experience reveals the clear underlying story of how injustice will predominate, especially among the voiceless and powerless.³⁵ The risk of innocents being executed, who are victims of legal error, means that capital punishment is not morally defensible, and it is certainly not legally sustainable for a democratic state that professes to support due process and the human dignity of its citizens.

3. ARBITRARINESS AND CLASS BIAS

The Indian death penalty framework has faced substantial criticism for how those sentenced to death have been applied, which has been arbitrary and inconsistent, especially in the context

³³ Anup Surendranath and others, *The Death Penalty India Report Volume I* (National Law University Delhi 2016) 45–48

³⁴ *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1 [33]–[37]

³⁵ Arvind Narrain, 'Death Penalty and the Marginalised: Evidence from India' (2016) 2(1) *Indian Journal of Human Rights Law Review* 11, 17.

of the socio-economic backgrounds of sentenced individuals. While the Supreme Court of India attempted to offer regulation of capital sentencing through the "rarest of rare" doctrine in *Bachan Singh v State of Punjab*,³⁶ lower courts continue to use the doctrine inconsistently and often based on an individual judge's subjective moral compass.³⁷ Given the lack of uniformity in determining what is a sufficient "rarest" set of circumstances, comparable fact patterns have led to inconsistency in sentencing outcomes among cases with like-minded fact patterns. This variable, unfixed standard in determining suitable factors in capital punishment undermines the finality and significance of the sentence to be one of grand significance, which is awarded significant judicial discretion that approaches arbitrariness, thus rendering the substantive due process limiting to be susceptible to institutional bias and moral inconsistency which could save the substantial and unique error and impact being capital punishment.

The socio-economic profile of those on death row compounds this issue. The Death Penalty India Report (2016), produced by National Law University Delhi, reported that a disproportionate number of prisoners sentenced to death came from Dalit and Adivasi communities and that most of them had very limited access to education and or economic opportunities.³⁸ The significance of this report is that the death penalty is often applied in India, not merely for the gravity of the offence, but because of the identity and poverty of the accused. Marginalised people often receive poor quality legal representation at trial, where most death sentences are imposed. This is concerning in and of itself because if there is a miscarriage of justice, an appellate court is more likely to give substantive review, but not always, so the miscarriage is not corrected. Because of this, the death penalty process unduly punishes those least able to defend themselves and perpetuates structural inequalities based on caste, religion, and class.

4. VIOLATION OF HUMAN RIGHTS

The global discourse around capital punishment increasingly treats it as an egregious violation of fundamental human rights, more specifically, the right to life and the prohibition on cruel, inhuman, or degrading treatment.³⁹ These rights are universally protected and affirmed in

³⁶ *Bachan Singh v State of Punjab* AIR 1980 SC 898 [209]–[210].

³⁷ Anup Surendranath, 'The Rarest of Rare Doctrine and Arbitrariness in Capital Sentencing in India' (2015) 50(32) *Economic and Political Weekly* 52.

³⁸ Anup Surendranath and others, *The Death Penalty India Report Volume I* (National Law University Delhi 2016) 54–59

³⁹ *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)) arts 3 and 5

several valuable human rights instruments, including the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). They both codify the importance of human dignity and the right to life as a matter of justice.⁴⁰ In India, Article 21 of the Constitution guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law." At the same time, the Supreme Court of India has upheld the constitutionality of the death penalty, but only to be imposed in "the rarest of rare cases" in *Bachan Singh v State of Punjab* (1980).⁴¹ However, many argue that the "rarest of rare" doctrine fails to prevent arbitrary and differing usages of capital punishment. As a result, it violates the right which it purports to protect.⁴² Because executions are irreversible, a single wrongful conviction leads to an irreversible injustice, which is fundamentally at odds with the fundamentals of a rights-based democracy.

Additionally, the global legal landscape is rapidly evolving toward abolition, recognizing that it is increasingly incompatible with modern notions of justice and dignity for all persons. More than 140 countries have abolished the death penalty in law or practice as of 2025. Major international organizations have made requests for a global moratorium on executions, such as the United Nations, European Union, and Amnesty International, yet India has voted against UN resolutions for moratoriums, even following the recent executions for the 2020 Nirbhaya case.⁴³ This continued use of the death penalty pushes India further away from accepted global human rights norms and obligations. In light of the entrenched systemic issues like custodial torture, improper investigations, and inadequate legal aid, continuing the death penalty in India not only represents a preferential choice of penal policy but also indicates a serious normative departure from the global human rights movement.

POSSIBLE POLICY AND REFORM

1. LAW COMMISSION OF INDIA REPORT No. 262 (2015)

One of the more significant policy initiatives in recent times has been the work of the Law Commission of India, which in its 262nd Report (2015), recommended that States abolish the death penalty for all crimes other than those associated with terrorism. The Commission, led

⁴⁰ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6 and 7

⁴¹ *Bachan Singh v State of Punjab* AIR 1980 SC 898 [209]

⁴² Arvind Narrain, 'A Critique of the Death Penalty in India' (2015) 50(5) *Economic and Political Weekly* 13

⁴³ *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1

by Justice A.P. Shah, undertook a comprehensive review of the death penalty and its jurisprudence, which involved a review of statistical evidence and looked to see if criminal law in India measures up to international human rights obligations. It determined, based on the evidence concerning capital sentences, that the death penalty appears to demonstrate no deterrent effect, in that in terms of deterring crime, it is no more effective than life in prison, death penalty produces arbitrary results, and the death penalty is applied which excludes a lot of homicides is in itself flawed. In India, the emotionally complex relationship to the death penalty is alive and well, particularly around cases of terrorism, and it makes sense that the Law Commission would not be inclined to go there in a report recommending overall abolition. Though they recorded the review, hanging on to the death penalty for acts of terrorism was far more sensibly framed as an exercise of political expediency than a necessity of evidence, and it still, at the end of the day, recommended full abolition of the death penalty.

2. ALTERNATIVES TO THE DEATH PENALTY

As a result of the limitations and ethical conundrums presented by the death penalty, life sentences without the possibility of parole (LWOP) are increasingly being interpreted as a safe and humane alternative. Under the laws in India, a life sentence lasts for the convict's natural life, although the convict may apply for remission as prescribed by statute. While the law appears unambiguously to require that a "life" sentence is a sentence of imprisonment for the natural life of the convict it is not particularly clear as to how courts have interpreted the circumstances of the crime and exercise their discretion that a life sentence does not allow for remission or parole, particularly in trying circumstances involving heinous crimes. In *Swamy Shraddananda v State of Karnataka*, the Supreme Court provided a "special category of sentence", which is an intermediate sentence between a life sentence and a death sentence, which means the convict can live but will not be released on any account.⁴⁴ The rationale for this form of punishment is an effort to calibrate society's demand for severe punishment, while preserving the principle of human dignity and the irreplaceable burden of death that is imposed by the ethical act of executing a person, and without the possibility of remorse or reconciliation. Life sentences are viewed favourably under international law by many countries that have abolished the death penalty, and indicate the best method to safely protect citizens without transgressing essential human rights standards.

⁴⁴ *Swamy Shraddananda v State of Karnataka* (2008) 13 SCC 767 [54]

3. PRESIDENTIAL MERCY: DELAYS AND OPACITY

Another significant area of concern is the use of the clemency power under Article 72 of the Indian Constitution based on the President's authority to grant mercy to those sentenced to death. Though this was intended as a humanitarian safety valve, the process of considering applications for mercy has routinely turned into a process fraught with delay, political favouritism, and lack of transparency. In *Shatrughan Chauhan v Union of India*, the Supreme Court held that excessive, unexplained delays in considering mercy petitions can constitute cruel and inhuman treatment, and can be grounds for a commutation of a death sentence.⁴⁵ In many instances, petitions sit undecided for years on end, causing untold harm to petitioners who are forced to live with the constant and terrifying uncertainty, something many scholars call the "death row phenomenon." Furthermore, the entire decision-making process is obscured behind layers of opacity, as there are no tangible guidelines or time limits, apart from the enormity of the undertaking for how the President, or the Governors of states, should be expected to act. This damages public confidence in the clemency mechanism and embeds the characterization of the death penalty as arbitrary and politically driven even more deeply into public consciousness.

PUBLIC OPINION AND MEDIA INFLUENCE

Public opinion and media stories shape discourse, and policy options about the death penalty are heavily in the Indian context. The contemporary media landscape; a 24/7 news cycle, televised debate shows, and social media campaigns, has made it a near-impossibility to separate emotional reactions to violent crimes from the reality of the death penalty and potentially marred law reform efforts in the wake of high-profile criminal cases (especially involving sexual violence or terrorism). In all these instances, the media tend to frame the debate in differentiating terms: justice or injustice, guilt or impunity. This brand of sensationalism consistently reiterates the emotional quality of retributive justice and elevates the death penalty to a morally quantified result. Public sentiment can and often does leave nuanced legal debates smothered, and a climate of harsh punishment becomes the norm, subsequently pushing judges and lawmakers to comply with popular narratives and set them on the edges of reformist aspirations.

⁴⁵ *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1 [33]–[37]

One of the most glaring examples of media-driven reform in Indian law was the response to the 2012 Nirbhaya gang rape case. The violent nature of the offence, which was followed by national outrage exacerbated by round-the-clock media coverage, led to unprecedented protests all over India. In response, the government quickly formed the Justice Verma Committee, which came up with a highly influential report that suggested a wide range of reforms to India's sexual violence laws.⁴⁶ While the committee did not recommend the death penalty, the government nevertheless instituted the Criminal Law (Amendment) Act, 2013 which introduced the death penalty for selected forms of aggravated rape.⁴⁷ This demonstrates how the pressure exerted by public and media forces can override expert advice and take the place of evidence-informed policymaking in favour of immediate popularity.

Moreover, media portrayals of crime often lack nuance around due process, with a propensity for impurities that presume guilt and call for immediate punishment before trial. This not only abrogates the accused's rights but also can undermine the legal process itself.⁴⁸ "Trial by media" may lead to rushed decisions as courts feel public pressure to restore faith in the justice system by issuing overly harsh sentences. Although independence of the judiciary is enshrined in the Indian Constitution, the effects of public rhetoric on sentencing trends, especially in capital cases, have to be recognized.

In conclusion, while public engagement and media activism are integral to democratic accountability, uncritical fetishism of the death penalty as a symbol of justice has sidelined meaningful legal analysis of the issue, and highlights the need for a more nuanced and responsible public discourse around the topic, which considers the complexities of criminal justice rather than reduces them to emotional binaries.

CONCLUSION

The question of whether or not to impose the death penalty in India will always be an extremely complicated and highly contested question. The death penalty remains viable and constitutionally valid, as held in several cases and recognized under the 'rarest of rare' theory, the question of whether capital punishment is arbitrary, socio-economically biased and procedurally unfair, begs the question of discretionary decision-making; these issues are

⁴⁶ Nivedita Menon, 'The Nirbhaya Case and the Politics of Sexual Violence in India' (2013) 48(6) *EPW* 8

⁴⁷ Criminal Law (Amendment) Act 2013, ss 376A and 376D

⁴⁸ Aparna Chandra, 'Trial by Media: The Price of Instant Justice' (2017) *The Wire*

paramount, notwithstanding the necessity for accountability and preservation of public faith. It is evident from numerous empirical studies, including the Death Penalty India Report, that the death penalty negatively impacts the poor, marginalized, and unrepresented sections of society, raising serious questions about equality before the law. There are contested views on whether or not the death penalty is a more effective deterrent than life in prison. From a human rights point of view, the execution of a human being, irreversible and typically performed after a tragic and protracted series of flawed judicial processes, makes capital punishment an extraordinarily risky and ethically dubious undertaking within a democratic framework that emphasizes adhering to and enforcing constitutional and fair processes.

Given these realities, India must urgently pursue systematic, principled policy reform. Reform should reconsider the scope and rationale for the death penalty and elaborate and fortify legal protections, sentencing frameworks, and try to eliminate systemic problems related to investigation, legal representation, and judicial discretion. Furthermore, there should be a new clemency option that is transparent, time-bound, and accountable, instead of the current non-transparent and politically influenced process. Most importantly, India should start having a national discussion about alternatives, i.e., life imprisonment without parole, and build toward a criminal justice system based on justice, rehabilitation, and human dignity instead of a criminal justice system based on vengeance. In doing so, India can help to maintain penal philosophy while conforming to international human rights standards and addressing the needs of victims and society.