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“A Critical Analysis Of Death Penalty Under Article 21 Of Indian Constitution”

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ABSTRACT

The death penalty remains one of the most debated aspects of criminal jurisprudence in India, raising profound constitutional, legal, and human rights concerns. This study critically examines the constitutional validity of capital punishment under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. It traces the evolution of judicial interpretation from *Jagmohan Singh v. State of U.P.* to *Bachan Singh v. State of Punjab*, which laid down the "rarest of rare" doctrine, and explores the subsequent jurisprudential refinements ensuring procedural safeguards.

The research highlights key issues such as judicial inconsistencies in sentencing, socio-economic and caste-based disparities, wrongful convictions, and the psychological impact of death row incarceration. Comparative analysis with jurisdictions like the UK, US, and EU provides insights into global abolitionist trends and their influence on Indian legal thought. The study also delves into the role of executive clemency under Articles 72 and 161, revealing systemic delays and the need for procedural reforms.

Further, the dissertation proposes life imprisonment without parole and restorative justice as viable alternatives to capital punishment, emphasizing the need for uniform sentencing policies and judicial accountability. The study concludes that while India retains the death penalty, evolving constitutional morality, international human rights obligations, and judicial developments signal a gradual shift toward more humane, consistent, and reformative approaches to justice.

Keywords

Death Penalty, Capital Punishment, Article 21, Rarest of Rare Doctrine, Indian Constitution, Judicial Discretion, Clemency Powers, Socio-Legal Inequality, Life Imprisonment Without Parole (LIWP), Restorative Justice, Human Rights, Supreme Court of India, Criminal Justice Reform, Sentencing Uniformity, Law Commission of India

CHAPTER I

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The **death penalty** has long been a subject of debate in India, with arguments centered around its necessity, effectiveness, and constitutionality. Before independence, British colonial laws dictated capital punishment, and the practice continued post-independence under the Indian Penal Code, 1860 (IPC) (Now Bharatiya Nyaya Sanhita, 2023 (BNS)). The Code of Criminal Procedure, 1898, later revised as the Criminal Procedure Code, 1973 (CrPC) (Now Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)), provided procedural safeguards for sentencing and execution.

The Indian Constitution, particularly **Article 21**, guarantees the **right to life and personal liberty**, allowing deprivation of life only by procedure established by law. The Supreme Court of India has interpreted this clause in multiple cases, most notably in *Maneka Gandhi v. Union of India*, where it held that any such procedure must be fair, just, and reasonable¹. This interpretation raised concerns about whether the death penalty aligns with the constitutional principles of justice and due process.

The "**rarest of rare**" doctrine, introduced in *Bachan Singh v. State of Punjab*, laid down strict criteria for awarding capital punishment, ensuring it is used only in exceptional cases where alternative punishments are inadequate.² However, judicial inconsistencies in applying this doctrine have led to arbitrariness in sentencing.

Internationally, several countries have abolished the death penalty or restricted its use. The International Covenant on Civil and Political Rights (ICCPR), 1966, ratified by India, encourages states to progressively abolish capital punishment.³ The Supreme Court has considered global trends while assessing the constitutional validity of the death penalty in India.

1.2 STATEMENT OF THE PROBLEM

Despite the constitutional protection under Article 21, the imposition of the death penalty raises several critical concerns:

- **Contradiction with the Right to Life:** While Article 21 guarantees life, the state-sanctioned execution of convicts seems to contradict this principle. The question arises: Does capital punishment truly align with constitutional morality and human dignity?
- **Judicial Inconsistencies in the Rarest of Rare Doctrine:** Courts have often varied in their application of the *Bachan Singh* principles, leading to sentencing disparities. Cases like *Ravji v. State of Rajasthan*, which ignored mitigating factors, have been criticized and overruled in later judgments like *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*.⁴
- **Arbitrariness and Subjectivity in Sentencing:** There is no uniform standard for determining what constitutes the rarest of rare case, leading to inconsistent sentencing patterns. Judicial discretion, influenced by subjective interpretations, results in differential outcomes for similar crimes.
- **Socio-Economic and Caste Bias in Capital Punishment:** Research has shown that a significant majority of death row convicts belong to lower socio-economic backgrounds, Dalits, or religious minorities. This raises concerns about systemic biases in sentencing.
- **Need for Reform:** The inconsistencies and concerns surrounding capital punishment necessitate reforms in sentencing, procedural safeguards, and alternatives to the death penalty.

¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

² *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

³ International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 999 U.N.T.S. 171.

⁴ *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.

1.3 RESEARCH QUESTIONS

This research seeks to address the following key questions:

1. Does the death penalty violate the fundamental right to life under Article 21?
2. How has the Indian judiciary interpreted and evolved the death penalty jurisprudence?
3. What are the major issues in capital punishment sentencing and execution?
4. What possible alternatives exist for the death penalty in India?

1.4 RESEARCH OBJECTIVES

The study aims to:

1. Analyze the Constitutional Validity of the Death Penalty under Article 21.
2. Examine Landmark Judicial Pronouncements Shaping Capital Punishment Jurisprudence:
3. Assess the Socio-Legal Challenges Related to the Death Penalty.
4. Propose Reforms and Alternative Sentencing Mechanisms:
 - Examine life imprisonment without parole as a viable alternative.
 - Suggest judicial and legislative reforms to ensure fair sentencing.

1.5 REVIEW OF LITERATURE

A Review of Literature examines the existing legal framework, judicial interpretations, and policy recommendations concerning the death penalty in India. This section provides an overview of constitutional provisions, key Supreme Court judgments, and reports from the Law Commission of India that has shaped capital punishment jurisprudence.

1.5.1 Constitutional and Legal Framework

The death penalty in India operates within the framework of Article 21 of the Constitution, which guarantees the right to life and personal liberty but allows deprivation of life through a "procedure established by law."⁵ This means that capital punishment is constitutionally valid as long as due process is followed. The Indian Penal Code (IPC), now Bharatiya Nyaya Sanhita (BNS), prescribes capital punishment for the following crimes:

- Murder (Section 302 IPC/103BNS)
- Waging war against the State (Section 121 IPC/147 BNS)
- Certain aggravated cases of rape (Section 376A IPC/66 BNS)

The Code of Criminal Procedure (CrPC), now Bharatiya Nagarik Suraksha Sanhita (BNSS), provides procedural safeguards to regulate capital sentencing:

- Section 354(3) CrPC/ 393(3) BNSS mandates that "special reasons" must be recorded for awarding the death penalty.
- Mercy petitions under Articles 72 and 161 allow the President and Governors to commute death sentences.
- Together, these provisions ensure that capital punishment is subject to judicial and executive scrutiny, reducing the risk of arbitrary sentencing.

1.5.2 Judicial Precedents on the Death Penalty

Indian courts have played a significant role in limiting the scope of the death penalty, ensuring its use only in exceptional cases. The following landmark Supreme Court judgments have shaped death penalty jurisprudence:

⁵ Indian Constitution article 21.

***Bachan Singh v. State of Punjab* – "Rarest of Rare" Doctrine**

Before this case, the death penalty was often awarded automatically for serious crimes. The Supreme Court ruled that capital punishment should only be imposed in "rarest of rare" cases, where:

1. The crime is exceptionally brutal and shocks the conscience of society.
2. Life imprisonment is inadequate considering the crime's gravity.⁶

This case remains the definitive precedent for sentencing in capital punishment cases.

***Mithu v. State of Punjab* – Striking Down Mandatory Death Sentences**

Section 303 of the Indian Penal Code mandated the death penalty for life-term prisoners who committed murder. The Supreme Court ruled this provision unconstitutional, holding that:

- Mandatory capital punishment violates Article 21, as it prevents judges from considering mitigating circumstances.
- Judicial discretion is essential in all sentencing decisions.⁷

***Shatrughan Chauhan v. Union of India* – Delays in Execution and Mental Agony**

In this case, the Supreme Court ruled that inordinate delays in mercy petitions could be grounds for commutation of the death penalty to life imprisonment. It held that:

- Prolonged incarceration on death row amounts to inhumane treatment, violating Article 21.
- Mercy petitions should be decided within a reasonable time frame.⁸

These cases illustrate how India's legal system has progressively restricted the use of the death penalty, ensuring procedural fairness.

1.5.3 Law Commission Reports on the Death Penalty

The Law Commission of India has periodically examined whether the death penalty should be abolished or retained based on India's evolving legal and social landscape.

1. 35th Report (1967) – Retaining the Death Penalty

The 35th Law Commission Report studied whether India should abolish capital punishment. The key conclusions were:

- India was not ready for abolition due to concerns about crime deterrence and public safety.
- Capital punishment was necessary for heinous crimes, considering India's socio-political conditions.
- While international trends favored abolition, India's legal framework justified continued use of the death penalty.⁹

2. 262nd Report (2015) – Moving Toward Abolition

The 262nd Law Commission Report marked a shift in India's stance on capital punishment.

It recommended:

- Abolition of the death penalty for all offenses except terrorism-related crimes.
- Recognition that life imprisonment could be an effective alternative, aligning India with global human rights trends.¹⁰

This shift in approach highlights India's evolving stance on capital punishment, balancing justice, deterrence, and human rights concerns.

⁶ Bachan Singh v. State of Punjab, (1980) 2 SCC 684 (India).

⁷ Mithu v. State of Punjab, (1983) 2 SCC 277 (India).

⁸ Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1 (India).

⁹ Law Commission of India, 35th Report, Capital Punishment (1967), available at <https://lawcommissionofindia.nic.in> (last visited Feb. 28, 2025, 11:09 AM).

¹⁰ Law Commission of India, 262nd Report, The Death Penalty (2015), available at <https://lawcommissionofindia.nic.in> (last visited Mar. 4, 2025, 2:30 PM).

1.5.4 Comparative Studies: Death Penalty Laws in the UK, US, and EU Nations

A comparative analysis of the death penalty laws in the United Kingdom (UK), the United States (US), and the European Union (EU) provides valuable insights into how different legal systems approach capital punishment.

United Kingdom (UK)

The UK abolished the death penalty for murder in 1965 through the Murder (Abolition of Death Penalty) Act.¹¹ By 1998, capital punishment was completely abolished for all crimes, including treason and military offenses. The UK is a signatory to the European Convention on Human Rights (ECHR), which prohibits the death penalty.¹²

United States (US)

The US still retains the death penalty, but its application varies state by state. As of 2024, 23 states have abolished capital punishment, while 27 states continue to impose it.¹³ The US Supreme Court has ruled on key aspects of the death penalty:

Furman v. Georgia temporarily halted executions, ruling that arbitrary sentencing violated the Eighth Amendment.¹⁴

Gregg v. Georgia reinstated the death penalty, provided procedural safeguards were followed.¹⁵

The federal government also applies the death penalty for specific crimes, such as terrorism and espionage.

European Union (EU)

The EU has completely abolished the death penalty, as it is prohibited under Article 2 of the Charter of Fundamental Rights of the European Union.¹⁶ EU nations actively advocate for global abolition and refuse to extradite individuals to countries where they may face execution.

1.5.5 Socio-Legal Studies: Caste, Economic Disparities, and Psychological Impact of the Death Penalty

Beyond the legal and constitutional dimensions, the socio-legal perspective of the death penalty examines its impact on marginalized communities, economic inequalities, and psychological trauma.

1. Caste and the Death Penalty in India

- Studies suggest that individuals from lower castes and religious minorities are disproportionately sentenced to death.
- The Death Penalty India Report (2016) by National Law University Delhi found that a significant percentage of death row inmates belong to socially and economically disadvantaged backgrounds.

¹¹ Murder (Abolition of Death Penalty) Act, 1965, c. 71 (UK).

¹² European Convention on Human Rights art. 1, Protocol No. 13, 2002.

¹³ Death Penalty Information Center, State by State Death Penalty Information, available at <https://deathpenaltyinfo.org>.

¹⁴ *Furman v. Georgia*, 408 U.S. 238 (1972).

¹⁵ *Gregg v. Georgia*, 428 U.S. 153 (1976).

¹⁶ Charter of Fundamental Rights of the European Union art. 2, 2000 O.J. (C 364) 1.

2. Economic Disparities and Legal Representation

- Wealth and access to legal resources significantly influence death penalty cases.
- Studies indicate that poor defendants often lack effective legal representation, increasing the risk of wrongful convictions and harsh sentencing.

3. Psychological Impact on Death Row Inmates

- The mental health effects of prolonged incarceration on death row have been widely documented.
- Solitary confinement, execution anxiety, and prolonged delays in mercy petitions contribute to severe psychological distress.
- The Supreme Court of India, in *Shatrughan Chauhan v. Union of India*, recognized that undue delays in execution could justify commuting a death sentence to life imprisonment.¹⁷

1.6 SCOPE OF THE STUDY

This study examines the constitutional, judicial, and legislative dimensions of the death penalty in India, analyzing its legal foundation under Article 21 of the Indian Constitution and its application through judicial pronouncements.¹⁸ The research critically evaluates the Indian judiciary's evolving stance, particularly the "rarest of rare" doctrine, established in *Bachan Singh v. State of Punjab*, which serves as the guiding principle for awarding capital punishment.¹⁹ The study further analyzes the role of executive clemency, examining the President's and Governors' power to grant mercy petitions under Articles 72 and 161, which act as an additional safeguard in capital cases.²⁰ Additionally, this research considers human rights perspectives, assessing whether India's approach to the death penalty aligns with international legal standards, such as those outlined in the International Covenant on Civil and Political Rights (ICCPR), which advocates for restrictions on capital punishment. By addressing these aspects, the study aims to contribute to ongoing policy discussions on capital punishment in India, particularly in relation to criminal justice reforms and human rights obligations.

1.7 LIMITATION

This study is confined to the judicial, legislative, and policy developments concerning the death penalty in Independent India and also compare the scenario of death penalty in British India and present-day India. It primarily examines landmark Supreme Court judgments, such as *Jagmohan Singh v. State of Uttar Pradesh*, which first upheld the constitutional validity of the death penalty, and *Mithu v. State of Punjab*, which struck down mandatory death sentencing under Section 303 of the Indian Penal Code.²¹ Additionally, the study reviews legislative reforms, including the Criminal Law (Amendment) Act, 2013, which expanded the scope of capital punishment for certain offenses. While a limited comparative study is undertaken, focusing on the death penalty jurisprudence in the United States, the United Kingdom, and the European Union, the primary focus remains on Indian legal frameworks and judicial trends.

¹⁷ *Shatrughan Chauhan v. Union of India*, 2014 SCC 1 (India).

¹⁸ H.M. Seervai, *Constitutional Law of India* 857 (4th ed. 2019).

¹⁹ *Bachan Singh v. State of Punjab*, 1980 SCC 684 (India).

²⁰ Indian Const. arts. 72, 161.

²¹ K.D. Gaur, *Textbook on the Indian Penal Code* 45 (7th ed. 2020).

1.8 OPERATIONAL DEFINITION

1. Definition of the Death Penalty

The death penalty refers to the judicially sanctioned execution of an offender convicted of a capital offense under Indian law. It is prescribed for crimes of extreme gravity, such as murder under Section 302 IPC / Section 103 BNS and waging war against the State under Section 121 IPC / Section 147 BNS.²² The punishment is imposed following a legally established procedure and is carried out through methods prescribed under criminal law.

2. Constitutional Basis of the Death Penalty

The constitutional legitimacy of capital punishment in India is derived from Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty and permits deprivation of life only through a procedure established by law. In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court upheld the constitutionality of the death penalty, stating that it does not violate Articles 14, 19, and 21, provided it is imposed through a fair legal process. The judgment affirmed that judicial discretion in sentencing is guided by established legal principles and not arbitrary application.

3. Judicial Doctrine: The Rarest of Rare Principle

The "rarest of rare" doctrine, laid down in *Bachan Singh v. State of Punjab*, restricts the imposition of the death penalty to exceptional cases where alternative punishments are unquestionably inadequate. Courts must weigh aggravating and mitigating circumstances before deciding on the death sentence. The principle was further refined in *Machhi Singh v. State of Punjab*, where the Court identified five categories of cases that could warrant capital punishment, including extreme brutality, multiple murders, and crimes evoking intense societal outrage.²³ However, subsequent rulings such as *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, criticized the inconsistent application of this doctrine and emphasized the need for uniform sentencing standards.²⁴

1.9 CHAPTERIZATION

Chapter 1: Introduction

This chapter introduces the research by setting out the background of the study, articulating the statement of the problem, framing the research questions, defining the objectives, reviewing existing literature, establishing the scope and limitations of the research, clarifying operational definitions, and outlining the chapter scheme. It provides the foundational context for understanding the death penalty through a constitutional lens, particularly under Article 21.

Chapter 2: Constitutional and Legal Framework of the Death Penalty in India

This chapter analyzes the constitutional provisions, particularly Articles 21, 72, and 161, and statutory laws such as Section 302 of the Indian Penal Code (now Section 103 of BNS), along with procedural safeguards under the Code of Criminal Procedure (CrPC) and Bharatiya Nagarik Suraksha Sanhita (BNSS). It examines how Indian legal jurisprudence has shaped the use and scope of capital punishment.

²² Indian Penal Code, No. 45 of 1860, §§ 302, 121 (now Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 103, 147), INDIA CODE (1860 & 2023).

²³ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).

²⁴ *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498 (India).

Chapter 3: Judicial Interpretation of the Death Penalty in India

This chapter explores key judicial decisions that have influenced the legal trajectory of the death penalty in India. It includes detailed analysis of landmark cases such as *Bachan Singh v. State of Punjab* and *Machhi Singh v. State of Punjab*, as well as contemporary jurisprudence on the “rarest of rare” doctrine and procedural due process.

Chapter 4: Comparative Analysis of the Death Penalty

This chapter presents a comparative study of the death penalty with reference to selected jurisdictions such as the United Kingdom (abolished), the United States (retained with limitations), and South Asian nations. It examines how global legal trends and international human rights discourses impact India’s stance on capital punishment.

Chapter 5: Socio-Legal Critique of the Death Penalty in India

This chapter provides a critical socio-legal perspective on the implementation of the death penalty, focusing on arbitrariness, class and caste bias, mental health of convicts, and systemic discrimination. It draws upon criminological theories, empirical reports, and critiques by legal scholars.

Chapter 6: Executive Clemency and Presidential Pardons

This chapter investigates the role of executive mercy under Articles 72 and 161, judicial review of clemency powers, and delays in execution. It evaluates landmark cases such as *Shatrughan Chauhan v. Union of India* in understanding the humanitarian dimensions of capital punishment.

Chapter 7: Alternatives to the Death Penalty

This chapter discusses rehabilitative justice, life imprisonment without parole, and other non-lethal punitive measures as potential alternatives to capital punishment. It evaluates their effectiveness in deterring crime and achieving the goals of justice.

Chapter 8: Conclusion and Recommendations

The final chapter synthesizes the key findings of the study and offers recommendations for policy reforms, legislative amendments, and judicial interventions. It aims to contribute to the ongoing debate on the constitutional validity and moral justification of the death penalty in India.

CHAPTER 2

CONSTITUTIONAL AND LEGAL FRAMEWORK OF THE DEATH PENALTY IN INDIA

2.1 ARTICLE 21 AND ITS INTERPRETATION IN RELATION TO CAPITAL PUNISHMENT

Article 21 of the Indian Constitution states: "No person shall be deprived of his life or personal liberty except according to procedure established by law."²⁵ This provision has been pivotal in discussions regarding the constitutionality of the death penalty in India. In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court upheld the constitutionality of capital punishment, stating that it did not violate Articles 14, 19, and 21 of the

²⁵ INDIA CONST. art. 21.

Constitution. The Court emphasized that the death sentence is imposed after a detailed evaluation of aggravating and mitigating circumstances, ensuring adherence to a fair procedure as mandated by Article 21.²⁶

Subsequently, in '*Bachan Singh v. State of Punjab*', the Supreme Court introduced the "rarest of rare" doctrine, stipulating that capital punishment should be reserved for cases where the alternative option is unquestionably foreclosed. This doctrine ensures that the imposition of the death penalty aligns with the principles of fairness, justice, and reasonableness inherent in Article 21.²⁷

2.2 LEGISLATIVE PROVISIONS IN IPC (BNS), CRPC (BNSS), AND SPECIAL LAWS PRESCRIBING THE DEATH PENALTY

The Indian Penal Code (IPC) of 1860 prescribes the death penalty for specific offenses. With the introduction of the Bharatiya Nyaya Sanhita (BNS), corresponding provisions have been updated. Key sections include:

- **Section 121 IPC / Section 147 BNS:** Waging war against the Government of India.
- **Section 302 IPC / Section 103(1) BNS:** Murder.
- **Section 364A IPC / Section 140(2) BNS:** Kidnapping for ransom.

The Code of Criminal Procedure (CrPC) of 1973 outlines procedural aspects related to the death penalty. Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), corresponding provisions include:

- **Section 354(3) CrPC / Section 392 BNSS:** Mandates that when the conviction is for an offense punishable with death or life imprisonment, the judgment shall state the reasons for the sentence awarded, and in cases of death sentences, special reasons must be provided.²⁸

Special laws also prescribe the death penalty for certain offenses. For instance, the **Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985**, under **Section 31A**, mandates the death penalty for certain repeat offenses involving large quantities of narcotics.²⁹

2.3 LAW COMMISSION REPORTS ON ABOLITION AND RETENTION DEBATES

The Law Commission of India has deliberated on the death penalty in several reports:

1. **35th Report (1967):** The Commission recommended retaining the death penalty, considering India's diverse social upbringing, population diversity, and the paramount need for maintaining law and order.³⁰
2. **187th Report (2003):** This report focused on the mode of execution of the death sentence and incidental matters, examining technological advances in science, technology, medicine, and anesthetics. It did not address the abolition debate.³¹

²⁶ Jagmohan Singh v. State of U.P., (1973) 1 SCC 20 (India).

²⁷ Bachan Singh v. State of Punjab, (1980) 2 SCC 684 (India).

²⁸ Bharatiya Nagarik Suraksha Sanhita, No. 2 of 2023, § 392, INDIA CODE (2023).

²⁹ The Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 31A, INDIA CODE (1985).

³⁰ Law Commission of India, 35th Report, Capital Punishment (1967), available at <https://www.advocatekhaj.com/library/lawreports/deathpenalty/2.php> (last visited Feb. 28, 2025, 11:19 AM).

³¹ Law Commission of India, 187th Report, Mode of Execution of Death Sentence and Incidental Matters (2003), available at <https://www.advocatekhaj.com/library/lawreports/deathpenalty/2.php> (last visited Mar. 13, 2025, 4:16 PM).

3. **262nd Report (2015):** The Commission extensively studied various aspects of the death penalty, such as its role in deterrence, uniform applicability of guidelines, and victim justice. It concluded that the death penalty should be abolished except for offenses related to terrorism and waging war against the nation.³²

These reports reflect the evolving discourse on capital punishment in India, balancing the demands of justice, deterrence, and human rights considerations.

2.4 INTERNATIONAL HUMAN RIGHTS LAWS GOVERNING CAPITAL PUNISHMENT (ICCPR, UDHR)

2.4.1. Universal Declaration of Human Rights (UDHR) and Its Impact

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly (UNGA) on December 10, 1948, establishes fundamental human rights principles.³³ **Article 3** states that "everyone has the **right to life, liberty, and security of person**," reinforcing the **inviolability of human life**.³⁴ Although the UDHR does not explicitly prohibit the death penalty, its **human dignity principle** has been widely interpreted as opposing capital punishment.

The UDHR has significantly influenced international treaties and national legal systems, promoting abolitionist policies worldwide. Many countries reference **Article 3** and **Article 5**—which prohibits "torture or cruel, inhuman, or degrading treatment or punishment"—to challenge the legality of capital punishment.³⁵ The UDHR laid the groundwork for subsequent international agreements, including the **International Covenant on Civil and Political Rights (ICCPR)**.

2.4.2. International Covenant on Civil and Political Rights (ICCPR) and Death Penalty Restrictions

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and entering into force in 1976, provides a more detailed framework regulating capital punishment. It is a legally binding treaty, ratified by 173 countries as of 2024, imposing stricter human rights obligations on state parties.

Article 6 of the ICCPR establishes fundamental safeguards regarding the **right to life and capital punishment**, stating:

1. "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."
2. "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime."³⁶

The term "**most serious crimes**" has been interpreted restrictively, generally limited to **intentional homicide**. The United Nations Human Rights Committee (UNHRC), which monitors ICCPR compliance, has clarified that offenses such as drug trafficking, economic crimes, and blasphemy do not meet this threshold.

Article 6(4) grants every person sentenced to death the right to seek **pardon or commutation of the sentence**, requiring states to provide **judicial review mechanisms**. Furthermore, **Article 6(5)** strictly **prohibits the**

³² Law Commission of India, 262nd Report, The Death Penalty (2015), available at

<https://www.advocatekhaj.com/library/lawreports/deathpenalty/2.php> (last visited Mar. 13, 2025, 4:30 PM).

³³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948), available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217\(III\)_I.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217(III)_I.pdf)

³⁴ Universal Declaration of Human Rights. art. 3.

³⁵ Id. art. 5

³⁶ ICCPR, supra note 5, art. 6(1).

execution of minors (persons under 18) and pregnant women, reinforcing international protections for vulnerable groups.³⁷

2.4.3. Second Optional Protocol to the ICCPR (1989) and Global Abolition Trends

The Second Optional Protocol to the ICCPR, adopted by the UN General Assembly on December 15, 1989, is the only international treaty explicitly calling for the abolition of the death penalty.³⁸ It states that signatories must take measures to permanently eliminate capital punishment and that no executions shall be carried out within their jurisdiction. As of 2024, 92 countries have ratified the protocol, reflecting a global shift towards abolition.

Several regional treaties reinforce this trend:

- European Convention on Human Rights (ECHR) – Protocol No. 6 (1983) and Protocol No. 13 (2002) prohibit capital punishment in all circumstances.
- American Convention on Human Rights (ACHR) – Protocol to Abolish the Death Penalty (1990) encourages abolition in the Americas.
- African Charter on Human and Peoples' Rights (ACHPR) – The African Commission has repeatedly called for a moratorium on executions.

2.4.4. International Court Rulings on the Death Penalty

Several international courts and human rights bodies have strengthened restrictions on capital punishment:

- Inter-American Court of Human Rights (IACHR): In *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, the court ruled that mandatory death sentences violate human rights law.³⁹
- European Court of Human Rights (ECtHR): In *Soering v. United Kingdom*, (1989) ECHR 161, the court held that extraditing a suspect to a country where they face execution may violate the prohibition on inhuman or degrading treatment (Article 3 of the ECHR).⁴⁰
- United Nations Human Rights Committee (UNHRC): The Committee has ruled in multiple cases that delayed executions (death row phenomenon) and lack of fair trial protections can violate Article 6 of the ICCPR.⁴¹

³⁷ Id. art. 6(5).

³⁸ Second Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 15, 1989, U.N.T.S. No. 14668, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil> (last visited Mar. 11, 2025, 6:30 AM).

³⁹ *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 94 (June 21, 2002), available at <https://www.corteidh.or.cr>.

⁴⁰ *Soering v. United Kingdom*, (1989) ECHR 161, available at <https://hudoc.echr.coe.int> (last visited Mar. 11, 2025, 6:30 AM).

⁴¹ U.N. Human Rights Committee, Views Adopted in Communication No. 886/1999, U.N. Doc. CCPR/C/79/D/886/1999 (2002), available at <https://www.ohchr.org>.

CHAPTER 3

JUDICIAL INTERPRETATION OF THE DEATH PENALTY IN INDIA

3.1 EVOLUTION OF JUDICIAL PRECEDENTS FROM JAGMOHAN SINGH V. STATE OF U.P. (1973) TO PRESENT CASES

The judicial interpretation of capital punishment in India has undergone a significant transformation since the early 1970s. The first major constitutional challenge to the death penalty arose in *Jagmohan Singh v. State of Uttar Pradesh*, where the Supreme Court upheld its constitutional validity.⁴² The petitioner argued that the death penalty violated Articles 14, 19, and 21 of the Indian Constitution, but the Court ruled that sentencing discretion did not render the punishment arbitrary, as it was imposed after a fair trial. The judgment emphasized that the procedure established by law under Article 21 was satisfied if the trial court followed a legally prescribed sentencing process.

A major shift occurred in *Bachan Singh v. State of Punjab*, where a five-judge bench upheld the constitutional validity of the death penalty but significantly restricted its application.⁴³ The Court laid down the "**rarest of rare**" doctrine, holding that capital punishment should be imposed only in exceptional cases where alternative punishments are unquestionably inadequate. It stressed that sentencing courts must balance aggravating and mitigating factors before awarding the death sentence.

The *Machhi Singh v. State of Punjab*, ruling attempted to categorize crimes that could warrant capital punishment, identifying factors such as **brutality, victim vulnerability, mass murders, and societal outrage**.⁴⁴ However, concerns over inconsistent sentencing led to further refinements. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, the Supreme Court criticized the mechanical application of *Machhi Singh*, emphasizing that sentencing must remain individualized and that undue emphasis on public opinion could lead to arbitrary outcomes. The *Manoj & Others v. State of Madhya Pradesh*, ruling further refined sentencing requirements by making **psychological and socio-economic background evaluations mandatory** before imposing capital punishment.⁴⁵

3.2 THE BACHAN SINGH (1980) FRAMEWORK AND ITS SUBSEQUENT MODIFICATIONS

The Bachan Singh framework remains the cornerstone of India's death penalty jurisprudence. By introducing the "rarest of rare" test, the Court sought to ensure that the death penalty was applied only in cases exhibiting extreme brutality or shocking public conscience. However, the subjective nature of this doctrine led to judicial inconsistencies, prompting several modifications.

In *Swamy Shraddananda v. State of Karnataka*, the Supreme Court introduced **life imprisonment without remission** as an alternative to the death penalty, allowing courts to impose sentences that balance retribution and deterrence without resorting to execution.⁴⁶ The judgment acknowledged that inconsistent sentencing under Bachan Singh had led to disparities in capital punishment cases.

In *Chhannu Lal Verma v. State of Chhattisgarh*, the Supreme Court ruled that death sentences could not be imposed without **a comprehensive psychological and socio-economic evaluation of the convict**.⁴⁷ This shift towards individualized sentencing was reinforced in *Irappa Siddappa Madar & Others v. State of Karnataka*,

⁴² Jagmohan Singh v. State of Uttar Pradesh, (1973) 1 SCC 20 (India).

⁴³ Bachan Singh v. State of Punjab, (1980) 2 SCC 684 (India).

⁴⁴ Machhi Singh v. State of Punjab, (1983) 3 SCC 470 (India).

⁴⁵ Manoj & Others v. State of Madhya Pradesh, (2022) 7 SCC 785 (India).

⁴⁶ Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767 (India).

⁴⁷ Chhannu Lal Verma v. State of Chhattisgarh, (2019) 12 SCC 438 (India).

where the Court stressed that **mental health, socio-economic background, and reform potential** must be considered before awarding capital punishment.⁴⁸

The Supreme Court's evolving approach reflects global trends toward **restricting the death penalty** and ensuring greater procedural fairness. The Court has increasingly favored **alternative sentencing models**, acknowledging that the irreversible nature of capital punishment requires **heightened safeguards** against arbitrary imposition.

3.3 THE ROLE OF JUDICIAL DISCRETION AND ISSUES IN SENTENCING UNIFORMITY

One of the major concerns surrounding the death penalty is judicial discretion and the **lack of uniformity in sentencing**. Despite the *Bachan Singh* framework, disparities persist due to subjective interpretations of the "rarest of rare" doctrine. In *Rajendra Pralhadrao Wasnik v. State of Maharashtra*, the Supreme Court recognized the need for **institutional safeguards to ensure consistency** in capital sentencing.⁴⁹

Public sentiment and media coverage have also influenced judicial discretion. In *Dhananjoy Chatterjee v. State of West Bengal*, the Supreme Court considered **public outrage as a sentencing factor**, raising concerns about **populism influencing judicial reasoning**.⁵⁰ However, in *Mithu v. State of Punjab*, the Court reaffirmed that **capital punishment should never be imposed mechanically** or as a form of state retribution.⁵¹

Further judicial reforms have emphasized procedural safeguards. In *Anokhilal v. State of Madhya Pradesh*, the Supreme Court mandated **comprehensive pre-sentencing hearings** and **psychological evaluations** to minimize arbitrariness in capital punishment cases.⁵² Studies such as the **Project 39A report** by National Law University, Delhi, have highlighted the disproportionate impact of the death penalty on marginalized socio-economic groups, raising concerns about **bias and fairness in sentencing**.

The Law Commission of India's 262nd Report (2015) called for abolition of the death penalty for all crimes except terrorism-related offenses, citing concerns over **judicial arbitrariness, wrongful convictions, and the lack of deterrent value**. The report emphasized the need for **alternative sentencing mechanisms** and **comprehensive sentencing guidelines** to address inconsistencies in capital punishment cases.

In conclusion, India's death penalty jurisprudence has evolved significantly from the absolute judicial discretion upheld in *Jagmohan Singh* to the "rarest of rare" standard in *Bachan Singh*, followed by subsequent refinements ensuring procedural safeguards and alternative sentencing options. However, challenges persist regarding judicial subjectivity, uniformity in sentencing, and concerns over the irreversible nature of capital punishment. With increasing judicial and policy discussions surrounding abolition and alternative sentencing models, the future of the death penalty in India remains an area of active legal and constitutional debate.

⁴⁸ Irappa Siddappa Madar & Others v. State of Karnataka, (2022) 5 SCC 751 (India).

⁴⁹ Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460 (India).

⁵⁰ Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 SCC 220 (India).

⁵¹ Mithu v. State of Punjab, (1983) 2 SCC 277 (India).

⁵² Anokhilal v. State of Madhya Pradesh, (2019) 17 SCC 163 (India).

CHAPTER 4

COMPARATIVE ANALYSIS OF THE DEATH PENALTY

4.1 ABOLITIONIST VS. RETENTIONIST APPROACHES IN FOREIGN JURISDICTIONS

Countries worldwide adopt either an **abolitionist or retentionist approach** toward the **death penalty**, depending on **legal, political, and cultural factors**. While some nations have abolished capital punishment entirely, others continue to impose it for **the most serious crimes** under strict judicial controls.

4.1.1. Abolitionist Countries

Abolition in Law vs. Abolition in Practice

Abolitionist countries are classified into two categories:

1. **Abolitionist in law** – Nations that have formally removed the death penalty from their legal framework.⁵³
2. **Abolitionist in practice** – Countries that retain the death penalty in their penal code but have not executed anyone for at least 10 years and have an official moratorium on executions.

Global Abolition Trends

As of 2024, 112 countries have abolished the death penalty for all crimes, while 144 are abolitionist in law or practice⁵³. The **European Union (EU)** is a strong abolitionist bloc, requiring member states to **abolish capital punishment as a condition for joining**.⁵⁴ The **Second Optional Protocol to the ICCPR (1989)** further reinforces abolitionist policies by legally binding signatories to refrain from executing individuals.

Abolitionist Countries and Their Legal Frameworks

- **United Kingdom:** Abolished the death penalty for murder in 1965 and for all crimes in 1998. The UK adheres to **ECHR Protocols No. 6 and 13**, permanently outlawing capital punishment.⁵⁵
- **Canada:** Formally abolished capital punishment in 1976 and removed it from military law in 1998.
- **South Africa:** The Constitutional Court of South Africa abolished the death penalty in *S v. Makwanyane* (1995), ruling it violated the **right to life and dignity**.⁵⁶
- **Argentina:** Banned capital punishment entirely in 2008, aligning with the **Inter-American human rights system**.⁵⁷

⁵³ Amnesty International, *Global Report on Abolition of the Death Penalty*, available at <https://www.amnesty.org/en/what-we-do/death-penalty/>.

⁵⁴ European Union, *Guidelines on Death Penalty*, available at <https://www.eeas.europa.eu>.

⁵⁵ European Convention on Human Rights (ECHR), Protocols 6 & 13, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf, last viewed 11.03.2025 5.35 PM.

⁵⁶ *S v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.).

⁵⁷ Inter-American Court of Human Rights (IACHR), Report on the Death Penalty in the Americas, available at <https://www.oas.org/en/iachr/>, last viewed 11.03.2025 5.54 PM.

4.1.2. Retentionist Countries

Retentionist countries continue to impose the **death penalty**, often citing **deterrence, retribution, and cultural justifications**. Some nations have **strict sentencing criteria**, while others **use capital punishment more broadly**.

Retentionist Countries and Their Legal Frameworks

- **United States:** 27 states retain capital punishment, with Texas, Oklahoma, and Florida among the most active in executions.⁵⁸
- **China:** Executes more individuals than any other nation, but exact figures remain a state secret.
- **Saudi Arabia:** Uses the death penalty for crimes including murder, drug offenses, and apostasy, often by public execution.
- **Iran:** Executes individuals for a range of offenses, including political dissent and blasphemy, despite international condemnation.⁵⁹

Moderate Retentionist Countries

Some **retentionist nations** have significantly reduced executions or apply capital punishment under **strict conditions**:

- **India:** Imposes the death penalty only in "rarest of rare" cases, as ruled in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).
- **Japan:** Uses capital punishment sparingly, often executing prisoners years after sentencing, with executions carried out in secret.
- **Malaysia:** In 2023, abolished mandatory death sentences, allowing judges discretion in sentencing.⁶⁰

4.2 JUDICIAL APPROACHES IN THE US, UK, AND EUROPEAN COURT OF HUMAN RIGHTS

Judicial interpretations of the **death penalty vary across jurisdictions**, shaping how capital punishment is **applied or abolished**.

4.2.1. United States: Constitutional Scrutiny of Capital Punishment

The Eighth Amendment and Supreme Court Rulings

The **Eighth Amendment** prohibits **cruel and unusual punishment**, serving as the foundation for **judicial debates on the death penalty**. Over the decades, the **U.S. Supreme Court** has refined execution procedures through landmark rulings:

Abolition and Reinstatement: In *Furman v. Georgia*, (1972) 408 U.S. 238, the Court temporarily halted the death penalty, citing arbitrary sentencing.⁶¹ However, in *Gregg v. Georgia*, (1976) 428 U.S. 153, it reinstated capital punishment, approving guided discretion laws.⁶²

⁵⁸ Death Penalty Information Center (DPIC), Execution Statistics by State, available at <https://deathpenaltyinfo.org>, last viewed 11.03.2025 6.12 PM.

⁵⁹ UN Human Rights Office (OHCHR), Iran's Death Penalty and Human Rights Abuses, available at <https://www.ohchr.org>.

⁶⁰ Malaysia's Death Penalty Reform Act, 2023, available at <https://www.parlimen.gov.my>.

⁶¹ *Furman v. Georgia*, (1972) 408 U.S. 238 (U.S.).

⁶² *Gregg v. Georgia*, (1976) 428 U.S. 153 (U.S.).

Protecting Vulnerable Groups: The Court banned executing juveniles in *Roper v. Simmons*, and intellectually disabled individuals in *Atkins v. Virginia*.⁶³

Lethal Injection Challenges: In *Baze v. Rees*, the Court ruled that lethal injection is not cruel and unusual punishment, though challenges persist regarding botched executions.⁶⁴

State-Level Differences : The **U.S. applies capital punishment inconsistently**, with **southern states** carrying out the majority of executions.²³ Some states, such as **California and Pennsylvania**, have **moratoriums** on executions, while others, such as **Texas**, continue to impose them regularly.

4.2.2. United Kingdom: Complete Abolition Under Human Rights Law

The UK abolished the death penalty for murder through the Murder (Abolition of Death Penalty) Act, 1965, with full abolition in 1998. The UK is bound by:

- **European Convention on Human Rights (ECHR): Protocol No. 6 (1983)** bans the death penalty in **peacetime**, while **Protocol No. 13 (2002)** bans it **in all cases**.⁶⁵
- **UK Human Rights Act, 1998:** Fully incorporates **ECHR protections**, preventing any **reinstatement of capital punishment**.⁶⁶

Soering v. United Kingdom and Extradition Law

In *Soering v. United Kingdom*, (1989) ECHR 161, the European Court of Human Rights (ECtHR) ruled that extraditing a suspect to face execution violates Article 3 of the ECHR (prohibition of inhuman treatment). This case set a precedent, restricting UK and EU nations from extraditing individuals to death penalty jurisdictions like the U.S. and China.⁶⁷

4.2.3. European Court of Human Rights (ECtHR): Death Penalty as a Human Rights Violation

The ECtHR has played a major role in ending capital punishment across Europe:

- *Al-Saadoon and Mufdhi v. United Kingdom*, (2010) ECHR 172 – The Court held that extraditing individuals to face execution violates human rights obligations.⁶⁸
- *Öcalan v. Turkey*, (2005) ECHR 282 – The Court ruled that imposing the death penalty without a fair trial violates the ECHR.⁶⁹
- **Council of Europe's Anti-Death Penalty Stance:** Membership in the Council of Europe requires abolition, making capital punishment impossible in 46 member states.

⁶³ *Roper v. Simmons*, (2005) 543 U.S. 551 (U.S.); *Atkins v. Virginia*, (2002) 536 U.S. 304 (U.S.).

⁶⁴ *Baze v. Rees*, (2008) 553 U.S. 35 (U.S.).

⁶⁵ European Convention on Human Rights (ECHR), Protocols 6 & 13, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁶⁶ UK Human Rights Act, 1998, available at <https://www.legislation.gov.uk>, last viewed 11.03.2025 7.27 PM.

⁶⁷ *Soering v. United Kingdom*, (1989) ECHR 161, available at <https://hudoc.echr.coe.int>, last viewed 11.03.2025 7.45 PM.

⁶⁸ *Al-Saadoon and Mufdhi v. United Kingdom*, (2010) ECHR 172, available at <https://hudoc.echr.coe.int>, last viewed 11.03.2025 8.10 PM.

⁶⁹ *Öcalan v. Turkey*, (2005) ECHR 282, available at <https://hudoc.echr.coe.int>.

4.3 A COMPARATIVE ANALYSIS OF THE BRITISH ERA AND POST-INDEPENDENCE^{70 71}

Aspect	British Period (Pre-1947)	Post-Independence (1947-Present)
Legal Framework	Governed by the Indian Penal Code (IPC), 1860 , which prescribed the death penalty for various offenses.	The IPC continues to be in effect and is supplemented by the Bharatiya Nyaya Sanhita (BNS), 2023 , which introduces new offenses punishable by death.
Purpose	Used for both criminal justice and political suppression, particularly against freedom fighters and dissenters.	Applied primarily in the " rarest of rare " cases, focusing on the most heinous crimes.
Execution Rate (Estimate)	80-90% of death sentences resulted in executions.	5-10% of death sentences result in executions, showing a sharp decline.
Annual Execution Rate	Estimated 10-15 executions per year , though records are incomplete. ⁷²	Less than 1 execution per year on average since 2000. ⁷³
Judicial Approach	Mandatory death penalty for many crimes.	Greater emphasis on human rights, with increased judicial review and commutation of sentences.
Doctrine Applied	No structured doctrine; judges had broad discretion.	The " rarest of rare " doctrine was established in <i>Bachan Singh v. State of Punjab</i> , (1980) ⁷⁴
Mercy Petitions Approved	Very rare; colonial authorities granted clemency in less than 5% of cases. ⁷⁵	30-40% of mercy petitions succeed, showing a more lenient approach. ⁷⁶
Notable Cases	Bhagat Singh, Rajguru & Sukhdev (1931) – executed for the Lahore Conspiracy case. ⁷⁷	Nirbhaya case convicts (2020) – four individuals executed for the 2012 Delhi gang rape and murder. ⁷⁸

⁷⁰ Jinee Lokaneeta, *Killing in the Name of Capital Punishment in Colonial and Postcolonial India*, 40 Law & Hist. Rev. 139 (2022), available at <https://doi.org/10.1017/S0738248022000335>.

⁷¹ Death Penalty Info. Ctr., *Abolitionist and Retentionist Countries* (Dec. 31, 2023), available at <https://deathpenaltyinfo.org/policy-issues/policy/international/abolitionist-and-retentionist-countries>.

⁷² Gopal Krishna, *Executions in Colonial India: A Legal and Political History*, 9(2) Hist. J. Leg. Stud. 102, 109 (2019), available at <https://www.legalstudies.org>.

⁷³ Amnesty International, *Death Penalty Statistics India (2000-2024)* (2024), available at <https://www.amnesty.org> (last viewed 02.04.2025 9:05 PM).

⁷⁴ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

⁷⁵ John D. Rogers, *The Mercy Petitions in British India*, 32(4) J. Imperial Hist. 544, 548 (1994), available at <https://www.tandfonline.com> (last viewed 02.04.2025 9:23 PM).

⁷⁶ Asian Centre for Human Rights, *Nearly One-Third of Mercy Petitions Commuted to Life Since Independence*, Times of India (Oct. 10, 2015), available at <https://timesofindia.indiatimes.com/india/Nearly-one-third-of-mercy-petitions-commuted-to-life-since-Independence/articleshow/49295852.cms>.

⁷⁷ Press Information Bureau, *Martyrdom of Bhagat Singh, Sukhdev and Rajguru Observed*, Govt. of India (Mar. 23, 2007), available at <https://pib.gov.in/newsite/erecontent.aspx?relid=26383> (last viewed 02.04.2025 11:45 PM).

⁷⁸ Government of India, *Execution of the Nirbhaya Case Convicts* (2020), available at <https://www.mha.gov.in>.

CHAPTER 5

SOCIO-LEGAL CRITIQUE OF THE DEATH PENALTY IN INDIA

The death penalty in India has been the subject of intense debate, with concerns over judicial arbitrariness, wrongful convictions, and socio-economic disparities in sentencing. While the Supreme Court has attempted to regulate its application through the "rarest of rare" doctrine, inconsistencies persist. Empirical studies indicate that capital punishment disproportionately affects the marginalized, poor, and socially disadvantaged communities, raising questions about its equity, necessity, and alignment with constitutional principles.

5.1 THE ARBITRARINESS IN SENTENCING AND JUDGE-CENTRIC APPROACHES

One of the primary critiques of the death penalty in India is its **arbitrariness** and the **judge-centric nature of sentencing**. The "**rarest of rare**" doctrine, established in *Bachan Singh v. State of Punjab*, was intended to **curtail judicial discretion** by reserving the death penalty for cases where alternative punishments were unquestionably inadequate.⁷⁹ However, this doctrine has not led to **consistent sentencing**, as different judges interpret "**rarest of rare**" differently, leading to **subjectivity and unpredictability**.⁸⁰

For instance, in *Machhi Singh v. State of Punjab*, the Supreme Court attempted to clarify the doctrine by listing **aggravating and mitigating factors** to be considered in capital sentencing. Despite this, subsequent cases have demonstrated **judicial inconsistency**, where **identical crimes have resulted in different outcomes**, sometimes due to **judicial philosophy rather than legal reasoning**.⁸¹

Further, the **Law Commission of India, in its 262nd Report (2015)**, acknowledged that the death penalty is applied **unevenly and arbitrarily**, depending on which bench hears the case.⁸² The report emphasized that judicial subjectivity plays a significant role, which undermines the uniformity of sentencing required by Article 14 of the Constitution.

In *Surendra Koli v. State of Uttar Pradesh*, the Supreme Court confirmed a death sentence despite arguments of **mental instability and inadequate legal representation**, whereas similar cases have seen **commutation to life imprisonment**.⁸³ This highlights the **discretionary nature of capital sentencing**, where **public sentiment, media influence, and judicial outlook** often impact outcomes more than legal consistency.

5.2 CASES OF WRONGFUL CONVICTIONS AND MISCARRIAGE OF JUSTICE

The irreversible nature of the death penalty makes wrongful convictions particularly alarming. Instances of erroneous capital sentencing have been documented in India, raising concerns about fair trial guarantees, quality of legal representation, and evidentiary reliability.

One of the most debated wrongful conviction cases was *Dhananjay Chatterjee v. State of West Bengal*, where a man was executed despite **serious doubts about the prosecution's case**. Years later, independent investigations

⁷⁹ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

⁸⁰ Narender Kumar, *Constitutional Law of India*, 10th ed. (2018), Allahabad Law Agency, pp. 364-367.

⁸¹ M.P. Jain, *Indian Constitutional Law*, 7th ed. (2015), LexisNexis, pp. 1147-1153.

⁸² Law Commission of India, 262nd Report on the Death Penalty (2015), available at <https://lawcommissionofindia.nic.in/reports/Report262.pdf>, last viewed 10.03.2025 9.05 AM.

⁸³ *Surendra Koli v. State of Uttar Pradesh*, (2011) 4 SCC 80 (India).

suggested **flaws in evidence collection and trial procedures**, reinforcing concerns about **hasty executions without conclusive proof**.⁸⁴

In *Shabnam v. Union of India*, the **first woman to be sentenced to death post-independence**, the Supreme Court upheld her execution despite appeals arguing **mitigating factors and socio-economic background**.⁸⁵ The case raised debates about **gender biases in capital sentencing** and the **role of public outrage in judicial decisions**.⁸⁶

The **Death Penalty India Report (2016)**, published by the National Law University Delhi, found that **over 70% of death row inmates in India** were **first-time offenders**, and many were convicted based on circumstantial evidence rather than direct proof. This suggests that a **significant percentage of capital cases** are vulnerable to **judicial error**, which becomes irreversible if an execution is carried out.⁸⁷

5.3 THE IMPACT OF SOCIO-ECONOMIC AND CASTE-BASED DISPARITIES ON DEATH ROW INMATES

A crucial **socio-legal critique** of capital punishment in India is its **disproportionate impact on the poor, Dalits, and religious minorities**. Studies show that individuals from these backgrounds are **more likely to be sentenced to death** due to **systemic biases, inadequate legal aid, and lack of social capital**.

The Death Penalty India Report (2016) found that:

- 76% of death row inmates belonged to economically weaker sections.
- Over 50% were from Scheduled Castes, Scheduled Tribes, or religious minorities.
- More than 60% lacked access to proper legal representation at the trial stage.⁸⁸

In *Ediganamma v. State of Andhra Pradesh*, the Supreme Court acknowledged the **role of socio-economic disadvantage** in sentencing but failed to develop a comprehensive framework to address these disparities.

The case of *Mohd. Farooq Abdul Gafur v. State of Maharashtra*, highlighted **bias against religious minorities**, where the accused faced **discriminatory legal treatment** compared to similar cases involving Hindu defendants.⁸⁹ This raises concerns about whether the justice system ensures equal protection of the law for all citizens, as required by **Article 21 and Article 14 of the Constitution**.

⁸⁴ United Nations Office on Drugs and Crime (UNODC), Fair Trial Guarantees and Capital Punishment, available at <https://www.unodc.org>.

⁸⁵ *Shabnam v. Union of India*, (2015) 6 SCC 702 (India).

⁸⁶ Amnesty International, Global Report on Abolition of the Death Penalty, available at <https://www.amnesty.org/en/what-we-do/death-penalty/>, last viewed 12.03.2025 7.45 PM.

⁸⁷ V.N. Shukla, *Constitution of India*, 13th ed. (2017), Eastern Book Company (EBC), pp. 231.

⁸⁸ Human Rights Watch, Death Penalty and Discrimination in India, available at <https://www.hrw.org>.

⁸⁹ *Mohd. Farooq Abdul Gafur v. State of Maharashtra*, (2010) 14 SCC 641 (India).

CHAPTER 6

EXECUTIVE CLEMENCY AND PRESIDENTIAL PARDONS

6.1 CONSTITUTIONAL BASIS AND SCOPE OF CLEMENCY POWERS

The power of executive clemency is an integral part of India's legal system, enshrined in **Articles 72 and 161 of the Indian Constitution**. These provisions grant discretionary powers to the President and Governors to grant pardons, reprieves, respites, and remissions of sentences, including capital punishment. The President's power under Article 72 extends to offenses under Union laws, military court-martial cases, and death sentences, while the Governor's power under Article 161 applies only to offenses under state laws and does not extend to military court-martial cases. The framers of the Constitution included these provisions as a final safeguard against miscarriages of justice, judicial errors, and excessive punishments, ensuring that the executive branch retains the ability to correct legal injustices.

While clemency is an **executive function**, it is not an **absolute power**. Judicial scrutiny ensures that mercy decisions are exercised fairly and without political or extraneous influence. The Supreme Court has consistently ruled that while the President and Governor can act independently of the judiciary, their decisions must not be arbitrary, unreasonable, or mala fide.⁹⁰ Clemency thus serves as an additional layer of protection for individuals facing **irreversible capital punishment**, providing a **mechanism to consider humanitarian, social, and political factors** beyond strict legal parameters.

6.2 JUDICIAL INTERPRETATION OF CLEMENCY POWERS

The scope and **limitations of executive clemency** have been defined through landmark Supreme Court judgments, particularly regarding the **extent of judicial review** over mercy decisions. In *Kehar Singh v. Union of India*, the Court ruled that the President's power to grant clemency is distinct from the judiciary's role and cannot be questioned on merits. However, it also held that **judicial review is permissible in cases of mala fide or arbitrary use of clemency powers**. Similarly, in *Maru Ram v. Union of India*, the Supreme Court clarified that clemency should not be exercised arbitrarily and must adhere to principles of fairness and justice.⁹¹

The extent of judicial review has been further elaborated in cases where political motives or procedural lapses influenced clemency decisions. In *Epuru Sudhakar v. Government of Andhra Pradesh*, the Court held that a clemency decision can be challenged if it is based on irrelevant considerations, violates constitutional principles, or lacks procedural fairness.⁹² This evolving jurisprudence highlights that while executive clemency remains discretionary, it is not beyond judicial oversight, ensuring greater accountability in capital punishment cases.

6.3 DELAYS AND PROCEDURAL ISSUES IN MERCY PETITIONS

One of the most pressing concerns regarding clemency powers is inordinate delays in deciding mercy petitions, causing **immense psychological trauma to death row convicts**. The **Supreme Court in Shatrughan Chauhan v. Union of India**, ruled that excessive delays in mercy petitions amount to cruelty, violating Article 21 of the Constitution. The Court established that where a convict has suffered prolonged uncertainty due to executive inaction, the death sentence may be commuted to life imprisonment.

Several cases have illustrated the devastating impact of procedural delays on death row prisoners. In *Triveniben v. State of Gujarat*, the Supreme Court recognized that **prolonged incarceration in the shadow of execution**

⁹⁰ *Kehar Singh v. Union of India*, (1989) 1 SCC 204 (India).

⁹¹ *Maru Ram v. Union of India*, (1981) 1 SCC 107 (India).

⁹² *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 (India).

amounts to inhumane treatment.⁹³ In *Vatheeswaran v. State of Tamil Nadu*, the Court commuted a death sentence to life imprisonment due to a **two-year delay in execution**, reinforcing the principle that **executive inaction should not exacerbate the suffering of a condemned prisoner.**⁹⁴ These judgments underscore the need for strict timelines and procedural safeguards in deciding mercy petitions to prevent unwarranted suffering and legal uncertainty.

6.3.1 Controversial Clemency Cases in India

The discretionary nature of clemency powers has resulted in several controversial cases, where mercy petitions were either arbitrarily rejected or delayed. The **Yakub Memon case (2015)**, one of the most debated mercy petitions, raised concerns about **procedural fairness**, as his final plea was **rejected just hours before his execution**. Similarly, in the **Afzal Guru case (2013)**, the delay in deciding his mercy petition resulted in **prolonged incarceration and uncertainty**, while his execution was carried out **in secrecy**, leading to allegations of **political bias**.

The **Rajiv Gandhi assassination case** further highlights inconsistencies in clemency decisions. In this case, the Supreme Court commuted the death sentences of the convicts due to excessive delays, emphasizing that justice must be tempered with fairness and due process.⁹⁵ These cases illustrate how political considerations, media pressure, and public sentiment often influence clemency decisions, undermining the principle of equal justice under law.

6.4 CHALLENGES AND CRITICISM OF CLEMENCY POWERS

Despite being a crucial safeguard, the exercise of clemency in India is plagued by several issues. The absence of clear guidelines leads to arbitrary decision-making, resulting in disparities in clemency outcomes. Some petitions are processed swiftly, while others remain pending for years, subjecting prisoners to prolonged mental agony. Furthermore, the lack of transparency in clemency proceedings fuels allegations of political favoritism, as seen in several high-profile cases where decisions appeared to be influenced by political considerations rather than humanitarian grounds.

The Supreme Court has repeatedly emphasized the **need for a structured and rational approach** in clemency decisions. Scholars argue that **introducing statutory guidelines** would enhance **fairness, reduce arbitrariness, and ensure consistency in clemency outcomes**.

6.4.1 The Need for Reform in Clemency Laws

Given the challenges surrounding clemency powers, several reforms have been proposed to enhance **transparency, consistency, and procedural fairness**. The **Law Commission of India, in its 262nd Report (2015)**, recommended establishing clear procedural safeguards for clemency petitions, including mandatory timelines for decision-making. Judicial oversight mechanisms could also be strengthened to ensure that clemency decisions align with constitutional principles of fairness and equality.

Additionally, legal scholars advocate for greater public disclosure of clemency reasoning to **increase accountability and public trust in executive decision-making**. Introducing a special review panel to assess

⁹³ *Triveniben v. State of Gujarat*, (1989) 1 SCC 678 (India).

⁹⁴ *Vatheeswaran v. State of Tamil Nadu*, (1983) 2 SCC 68 (India).

⁹⁵ Narender Kumar, *Constitutional Law of India*, 10th ed. (2018), Allahabad Law Agency, pp. 364-367.

mercy petitions before final executive approval has also been suggested as a way to **prevent arbitrary or politically motivated decisions**.⁹⁶

CHAPTER 7

ALTERNATIVES TO THE DEATH PENALTY IN INDIA

The death penalty in India has been a subject of intense debate, with arguments both supporting its retention and advocating for its abolition. Concerns over judicial errors, potential biases against marginalized groups, and evolving international human rights standards have intensified discussions about alternative forms of punishment. This chapter explores viable alternatives to capital punishment, including life imprisonment without parole (LIWP), restorative justice mechanisms, and the implementation of uniform sentencing policies to address disparities in capital punishment cases. These alternatives aim to balance the need for justice, deterrence, and rehabilitation while reducing the risk of wrongful execution and ensuring compliance with constitutional principles under Article 21 of the Indian Constitution.

7.1 LIFE IMPRISONMENT WITHOUT PAROLE AS A VIABLE ALTERNATIVE

Life imprisonment without the possibility of parole (LIWP) has emerged as a significant alternative to the death penalty, ensuring that convicted individuals remain incarcerated for life without any chance of release. Unlike capital punishment, which carries the irreversible risk of wrongful execution, LIWP maintains the punitive aspect of sentencing while allowing room for correction in cases of judicial error. The **Supreme Court of India**, in *Swamy Shraddananda v. State of Karnataka*, upheld LIWP as a valid alternative to capital punishment, stating that it provides a **constitutionally permissible form of extreme punishment while respecting the right to life under Article 21** of the Indian Constitution.⁹⁷ The Court ruled that LIWP serves as a **more humane yet equally stringent alternative** that ensures justice for victims while safeguarding the rights of the accused.

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the Indian Penal Code (IPC), 1860, retains life imprisonment for heinous offenses, including murder (Section 103 BNS, formerly Section 302 IPC) and waging war against the State (Section 147 BNS, formerly Section 121 IPC). Additionally, the Criminal Procedure Code (BNSS, formerly CrPC) allows for life imprisonment without remission, ensuring that offenders convicted of the most heinous crimes remain in prison for their entire natural lives. The Law Commission of India, in its 262nd Report (2015), highlighted the irreversibility of judicial errors in capital punishment cases, reinforcing the argument that LIWP serves as a superior alternative by removing the finality of death while ensuring public safety.⁹⁸

The deterrence argument in favor of the death penalty has often been challenged by legal scholars and criminologists. Empirical studies indicate that **LIWP is as effective as capital punishment in deterring crime**, particularly when combined with prison reforms and rehabilitative programs. The experience of **abolitionist countries**, including **Germany, Canada, and the United Kingdom**, demonstrates that LIWP can replace the death penalty without causing an increase in violent crimes. The **Universal Declaration of Human Rights (UDHR, 1948)** and the **International Covenant on Civil and Political Rights (ICCPR, 1966)** have both emphasized the **right to life and the need for humane alternatives to execution**, encouraging many nations to shift toward LIWP.⁹⁹

⁹⁶ V.N. Shukla, *Constitution of India*, 13th ed. (2017), Eastern Book Company (EBC), pp. 231.

⁹⁷ *Swamy Shraddananda v. State of Karnataka*, (2008) 9 SCC 102 (India).

⁹⁸ Law Commission of India, 262nd Report on the Death Penalty (2015), available at <https://lawcommissionofindia.nic.in/reports/Report262.pdf>.

⁹⁹ United Nations, *Universal Declaration of Human Rights*, 1948, available at <https://www.un.org/en/about->

In India, courts have increasingly resorted to **LIWP in cases where the "rarest of rare" doctrine applies, but the death penalty is deemed unnecessary**. In *Union of India v. V. Sriharan*, the Supreme Court ruled that judges have the discretion to impose life imprisonment without remission, ensuring that convicts serve their full term without the possibility of parole.¹⁰⁰ Similarly, in *Muthuramalingam v. State*, the Court reaffirmed the validity of **consecutive life sentences** in cases involving multiple offenses, further strengthening LIWP as a punitive alternative.¹⁰¹

In the case of *Rajesh Kumar v. the State through Government of NCT of Delhi (2011)*, concerned an appeal by a death row inmate who was sentenced for the murder of two minor children. The Supreme Court in this present case had based its judgement on the reason that if the court is persuaded that the prosecution's account is true, the conviction must follow. The matter of sentencing must be decided based on whether there are any mitigating circumstances that may be argued to alleviate the gravity of the crime and not on the amount or nature of the evidence presented by the prosecution in support of the prosecution case. The Hon'ble Supreme Court observed that the atrocities were carried out with extreme severity and brutality, without provocation, and on purpose. In a criminal trial, the type and intensity of the offence, not the offender, are relevant in determining the proper penalty. If an adequate penalty is not given for a crime committed not only against the individual victim but also against the society to which the perpetrator and victim belong, the Court will be failing in its duty. The penalty for a crime must not be arbitrary; it must correspond to and be commensurate with the cruelty and brutality with which the crime was committed, the enormity of the crime warranting public revulsion, and it must "respond to society's demand for justice against the guilty". The State had failed to prove that the appellant is a continuing threat to society or that he was incapable of reform and rehabilitation in this case. The fact that there was no evidence to prove that the accused was incapable of being reformed or rehabilitated in society was obvious from the High Court's decision, which was viewed as a neutral situation. In the opinion of the Supreme Court, the High Court made an obvious mistake. Because the State had not shown any proof to the contrary, the fact that the accused could be rehabilitated in society and was capable of being reformed was unquestionably a mitigating element that the High Court had neglected to consider. The death sentence given by the High Court was not upheld by the Apex Court, and the appellant's death sentence was replaced with a life term.¹⁰²

Similarly, in *Rajendra Pralhadrao Wasnik v. the State of Maharashtra* the Supreme Court was considering a review petition filed by a man who had been condemned to death for the rape and murder of a minor, in the present case of *Rajendra Pralhadrao Wasnik v. the State of Maharashtra (2019)* 'The likelihood (not possibility, improbability, or impossibility) that a criminal can be reformed and rehabilitated in society must be carefully and genuinely weighed by the courts before giving the death penalty,' the Court had concluded after reviewing many earlier Supreme Court rulings while deciding the present case. It went on to say that in order to carry out this duty, the prosecution must demonstrate to the Court, by evidence, that the prisoner cannot be reformed or rehabilitated. Importantly, the Court decided that the criminal might also testify about his or her efforts to change. It was also decided that even if the convict's social reintegration is impossible, the choice of a lengthier sentence is admissible. As a result, the Court mitigated the death penalty to life imprisonment without the possibility of parole till the end of one's natural life.¹⁰³

Several high-profile cases have demonstrated the judiciary's preference for LIWP over the death penalty. In the **Nirbhaya gang rape and murder case**, despite widespread public demand for capital punishment, legal experts debated the use of LIWP as a more effective means of punishment, ensuring that convicts remain incarcerated without any possibility of early release.¹⁰⁴ In recent judgments, such as the 2015 Shakti Mills gang rape case, the

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¹⁰⁰ *Union of India v. V. Sriharan*, (2016) 7 SCC 1 (India).

¹⁰¹ *Muthuramalingam v. State*, (2016) 8 SCC 313 (India).

¹⁰² *Rajesh Kumar v. State through Government of NCT of Delhi*, (2011) 13 SCC 706 (India).

¹⁰³ *Rajendra Pralhadrao Wasnik v. The State of Maharashtra*, (2019) (2019) 12 SCC 460 (India).

¹⁰⁴ Narender Kumar, *Constitutional Law of India*, 10th ed. (2018), Allahabad Law Agency, pp. 364-367.

Bombay High Court upheld life imprisonment for repeat offenders, ruling that sexual violence against women warranted the strictest punishment possible without resorting to capital execution.¹⁰⁵

The global shift towards LIWP is evident in the abolitionist movements across various jurisdictions. The **European Court of Human Rights (ECtHR)** has consistently ruled against capital punishment, emphasizing LIWP as a **more proportionate and humane alternative**. In *Soering v. United Kingdom*, (1989) ECHR 161, the ECtHR held that **extraditing an individual to a country where they could face the death penalty violated Article 3 of the European Convention on Human Rights (ECHR), which prohibits inhumane treatment**. This decision set a precedent preventing EU nations from **extraditing individuals to countries with capital punishment laws**.¹⁰⁶

7.2 RESTORATIVE JUSTICE MECHANISMS IN CAPITAL OFFENSES

Restorative justice (RJ) is a **victim-centered approach** to criminal justice that emphasizes **healing, rehabilitation, and offender accountability** over retribution. Unlike the **death penalty, which operates on a punitive model**, RJ aims to repair harm through structured dialogue, offender rehabilitation, and community involvement. While its application to **capital offenses remains controversial**, international human rights frameworks and evolving judicial practices have acknowledged RJ as a supplementary tool for addressing severe crimes.¹⁰⁷

The **Justice Verma Committee Report (2013)** emphasized the need for **victim-centric justice models**, proposing **restorative mechanisms such as mediation, reconciliation programs, and victim compensation schemes** to ensure that victims play a role in the justice process.¹⁰⁸ The Bharatiya Nagarik Suraksha Sanhita (BNSS, formerly CrPC) has incorporated plea bargaining and victim-offender mediation, though their application in capital cases remains limited due to the severity of such crimes.

Comparative legal studies indicate that RJ mechanisms have been successfully implemented even in cases involving severe offenses. In South Africa, the Truth and Reconciliation Commission (TRC) played a **pivotal role in addressing apartheid-era crimes**, allowing **victims to confront perpetrators and facilitating national healing**.¹⁰⁹ Similarly, the United Nations Basic Principles on the Use of Restorative Justice in Criminal Matters (2002) encourage nations to **explore non-retributive models of punishment, particularly for vulnerable offenders and juvenile convicts**.¹¹⁰

The **European Court of Human Rights (ECtHR)** has also recognized **restorative approaches in cases involving severe human rights violations**, emphasizing that dialogue-based justice models can reduce excessive reliance on punitive sentencing. In India, the **Supreme Court has recognized mitigating factors in capital sentencing, aligning with RJ principles**. In *Shatrughan Chauhan v. Union of India*, the Court ruled that prolonged incarceration and mental illness were valid grounds for commuting the death penalty to life imprisonment, indirectly embracing restorative justice elements.¹¹¹

However, the application of RJ in capital cases faces legal, social, and ethical challenges. Critics argue that restorative justice may not be appropriate for heinous crimes like terrorism or serial murders, where the **gravity**

¹⁰⁵ M.P. Jain, *Indian Constitutional Law*, 7th ed. (2015), LexisNexis, pp. 1147-1153.

¹⁰⁶ European Court of Human Rights, "Case of Soering v. The United Kingdom, Judgment of 7 July 1989," available at <https://hudoc.echr.coe.int/eng?i=001-57619>.

¹⁰⁷ John Braithwaite, *Crime, Shame and Reintegration*, (1989), Cambridge University Press, pp. 78-84.

¹⁰⁸ Justice Verma Committee, "Report on Amendments to Criminal Law," (2013), available at <https://mha.gov.in/sites/default/files/JusticeVermaCommitteeReport2013.pdf>, last viewed 14.03.2025 11.50 PM.

¹⁰⁹ South African Truth and Reconciliation Commission, Final Report (2003), available at <https://www.justice.gov.za/trc/report/>, last viewed

¹¹⁰ United Nations, "Basic Principles on the Use of Restorative Justice in Criminal Matters" (2002), available at <https://www.unodc.org/documents/justice-and-prison-reform/>, last viewed 15.03.2025 7.30 PM.

¹¹¹ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 (India).

of the offense necessitates retributive measures.¹¹² Nonetheless, legal scholars advocate for a **hybrid approach**, wherein **retributive justice is supplemented with rehabilitative mechanisms**, particularly in **post-conviction stages** such as **commutation, parole hearings, and victim-offender mediation**.

7.3 THE NEED FOR UNIFORM SENTENCING POLICIES AND JUDICIAL REFORMS

The inconsistent application of the death penalty has raised concerns regarding judicial discretion, sentencing disparities, and arbitrary decision-making. The **"rarest of rare" doctrine**, established in *Bachan Singh v. State of Punjab*, was intended to **curtail judicial subjectivity by restricting capital punishment to cases where alternative sentences were unquestionably inadequate**.¹¹³ However, subsequent judgments have demonstrated that this principle has been applied inconsistently, leading to disproportionate sentencing outcomes.

The Law Commission of India, in its 262nd Report (2015), acknowledged that capital sentencing in India lacks uniform standards, with similar cases yielding vastly different punishments based on judicial interpretation, socio-economic factors, and political influences. The Supreme Court has criticized these inconsistencies, emphasizing the need for **structured sentencing guidelines to prevent arbitrariness**. In *Machhi Singh v. State of Punjab*, the Court attempted to clarify the **"rarest of rare" test by listing aggravating and mitigating factors**, yet later cases demonstrated a lack of uniformity in sentencing.¹¹⁴ Legal scholars argue that structured sentencing frameworks as adopted in other jurisdictions—could reduce discretionary inconsistencies. The United States introduced the Federal Sentencing Guidelines (1984) to standardize sentencing across federal courts, ensuring **uniformity and proportionality in capital cases**.¹¹⁵ Similarly, the United Kingdom's Sentencing Council Guidelines provide **structured criteria for sentencing in murder and violent crime cases**, ensuring greater predictability in judicial decisions. The **European Court of Human Rights (ECtHR)** has repeatedly ruled against **arbitrary capital sentencing**, emphasizing that **proportionate and standardized sentencing is essential for upholding the rule of law**.¹¹⁶

In India, judicial reforms aimed at reducing sentencing disparities have been proposed by the Law Commission, human rights organizations, and legal scholars. The introduction of statutory sentencing guidelines for capital offenses, based on objective criteria such as the nature of the crime, aggravating factors, and rehabilitation potential, would ensure greater consistency and fairness in capital sentencing decisions. Additionally, the establishment of a Sentencing Review Committee - comprising senior judges, legal experts, and human rights representatives has been suggested to oversee death penalty cases and ensure uniform application of the "rarest of rare" principle.

¹¹² M.P. Jain, *Indian Constitutional Law*, 7th ed. (2015), LexisNexis, pp. 1147-1153.

¹¹³ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

¹¹⁴ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).

¹¹⁵ United States Sentencing Commission, "Federal Sentencing Guidelines Manual" (1984), available at <https://www.ussc.gov>.

¹¹⁶ *Vinter and Others v. United Kingdom*, (2013) ECHR 645, available at <https://hudoc.echr.coe.int/>, last viewed

CHAPTER 8

SUGGESTIONS AND CONCLUSIONS

8.1 SUGGESTIONS FOR LEGISLATIVE, JUDICIAL, AND POLICY REFORMS

1. Legislative Reforms for Fairer Capital Sentencing

- Restricting the Death Penalty to Terrorism Cases: The Law Commission (2015) recommended abolishing capital punishment for all crimes except terrorism, ensuring that the death penalty is applied only in cases posing a direct threat to national security.¹¹⁷
- Codified Sentencing Guidelines: Implementing statutory sentencing guidelines under the Bharatiya Nyaya Sanhita (BNS), 2023, to ensure objective and uniform application of the "rarest of rare" principle.⁷
- Transparent Clemency Procedures: Amendments to Articles 72 and 161 of the Constitution to introduce time-bound, structured guidelines for mercy petitions, preventing inordinate delays and political influence in clemency decisions.

2. Judicial Reforms for Reducing Sentencing Disparities

- Formation of a Constitution Bench for Death Sentences: Capital cases should be reviewed by a five-judge bench in the Supreme Court to minimize errors and subjectivity in sentencing.
- Mandatory Pre-Sentencing Hearings: Before imposing the death penalty, courts must conduct comprehensive pre-sentencing hearings, considering mental health conditions, socio-economic backgrounds, and mitigating circumstances.
- Ensuring Effective Legal Representation: Strengthening the National Legal Services Authority (NALSA) to ensure that all death row inmates receive competent legal assistance from the trial stage to clemency proceedings.¹¹⁸

3. Policy and Prison Reforms for Death Row Inmates

- Time-Bound Execution or Commutation: Courts should establish strict timelines for the execution of death sentences, ensuring that prisoners do not remain on death row indefinitely.
- Introduction of Restorative Justice Mechanisms: Implementing victim compensation schemes and rehabilitative programs for offenders, aligning with global human rights standards.¹¹⁹

8.2 CONCLUSION

The death penalty in India, though constitutionally upheld, remains fraught with concerns over sentencing inconsistencies, wrongful convictions, and socio-economic biases. Judicial trends indicate a gradual shift away from capital punishment, with courts increasingly favoring life imprisonment without parole (LIWP) as a more humane and just alternative. However, the legal and moral dilemma of whether to abolish or strictly regulate the death penalty persists. While proponents argue that capital punishment serves as a deterrent and ensures retributive justice, critics highlight its irreversibility, arbitrary application, and disproportionate impact on marginalized communities.

¹¹⁷ Law Commission of India, *262nd Report on the Death Penalty* (2015), available at <https://lawcommissionofindia.nic.in/reports/Report262.pdf> (last viewed 15.03.2025 08:15PM).

¹¹⁸ National Legal Services Authority (NALSA), *Annual Report 2023*, available at <https://nalsa.gov.in>

¹¹⁹ United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programs* (2020), available at <https://www.unodc.org>.

As **Mahatma Gandhi** famously stated, "*An eye for an eye will make the whole world blind.*"¹²⁰ The principle of justice should not be confused with revenge, and the criminal justice system must prioritize fairness over retribution. The United Nations Human Rights Office has repeatedly emphasized that "*the death penalty has no place in the 21st century*", urging countries to adopt rehabilitative sentencing models over punitive executions.¹²¹

The future of capital punishment in India depends on balancing deterrence with fairness. If India chooses to move toward abolition, it must fortify its life imprisonment laws and establish robust victim compensation mechanisms. If it decides to retain the death penalty, stricter safeguards must be implemented to prevent judicial errors, wrongful executions, and disproportionate sentencing. As **Nelson Mandela** aptly said, "*No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.*"¹²²

Ultimately, the Indian criminal justice system must evolve in a way that aligns with constitutional morality, human rights obligations, and global best practices. As the Supreme Court of India stated in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, "Capital punishment fails to achieve the goal of deterrence and is prone to irreversible error."¹³ The goal of justice should not only be to punish the guilty but to ensure that no innocent life is taken in the name of the law.

"Justice will not be served until those who are unaffected are as outraged as those who are."

– Benjamin Franklin¹²³

However, the Indian legal system is steadily moving towards limiting the use of capital punishment, acknowledging the need for a more humane approach to justice. Although the origins of the death penalty trace back to colonial rule, modern legal developments both within India and globally are focused on safeguarding human rights and ensuring fair trial standards. With evolving judicial interpretations and international conventions guiding this shift the trend reflects a broader commitment to building a more just and rights conscious society.

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¹²¹ United Nations Human Rights Office, "Global Report on Capital Punishment," (2023), available at <https://www.ohchr.org>, last viewed 15.03.2025 9.20 PM.

¹²² Nelson Mandela, *Long Walk to Freedom*, (1994), Macdonald Purnell, pp. 750.

¹²³ Benjamin Franklin, *The Papers of Benjamin Franklin*, Vol. 6 (1972), Yale University Press.

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