

**PUNISHMENT OR REDEMPTION? REASSESSING THE DEATH
PENALTY THROUGH THE LENS OF THE RAREST OF THE RARE
DOCTRINE AND REFORMATIVE JUSTICE**

by

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ABSTRACT

The death penalty is the law's most irreversible act. It is also its most contested. In imposing death, the state does not merely punish but it forecloses every future possibility of the person it executes, including the possibility of change. This irrevocability is what makes capital punishment philosophically distinct from every other sanction in criminal law's arsenal, and what makes the question at the heart of this article both legally urgent and morally inescapable: ought the justice system prioritize penalization, or ought it invest in the possibility of human reformation?

This article critically examines this framework by exploring the judicial standards that were set with the '*Rarest of the Rare*' doctrine and operationalised further in cases like *Machhi Singh* and more. It further examines the international standards which have been working on its abolition and its progressive narrowing which reflect a global legal order increasingly uncomfortable with the state-sanctioned death. This article interrogates whether the rarest of the rare doctrine has functioned as a genuine constitutional safeguard or merely as a rhetorical containment. It asks whether international law provides a more principled basis for limiting or abolishing capital punishment and it engages seriously with the reformatory justice paradigm: whether criminal culpability extinguishes the capacity for moral change or not. This article arrives at a non-prescriptive conclusion but argues that unresolved tension between retribution and redemption is a gap that law cannot afford to leave.

INTRODUCTION

Few questions expose the fault lines of a legal system as starkly as the death penalty. At its core, the debate is not merely about punishment. It is about what punishment is for. Is the state's role to exact proportionate retribution for the gravest wrongs, or to invest in the rehabilitation of those who commit them? And when these two aims collide in a capital case, which must yield?

In India, the answer has historically been deferred to the judiciary through the '*rarest of the rare*' doctrine which is a constitutional threshold for the imposition of death that promises principled restraint but has delivered, in practice, troubling inconsistency. Internationally, the trend has moved decisively toward abolition, with human rights instruments increasingly treating the right to life as incompatible with state-sanctioned execution. Yet retentionist jurisdictions persist, and even within abolitionist frameworks; the theoretical tension between punishment and redemption remains unresolved.

This tension is visible even in India's own conduct on the international stage. India voted against the ninth United Nations General Assembly resolution calling for a moratorium on the use of the death penalty, which was adopted in December 2022 with the support of one hundred and twenty five member states, maintaining that the matter falls within the sovereign right of states to determine their own criminal justice systems. This position has remained consistent across successive governments since the first such resolution in 2007, and it sits uneasily beside the constitutional promise that capital punishment be reserved only for the rarest of cases.¹

This article does not seek to resolve that tension by prescription. Instead, it critically examines three interlocking questions: the extent to which the rarest of the rare doctrine has succeeded or failed in confining capital punishment; whether international law offers a more principled

¹ 'Missing Persons, Extrajudicial Executions, Death Penalty Moratorium among Rights Questions of Six Draft Resolutions Approved by Third Committee' (UN Meetings Coverage, 11 November 2022) <<https://press.un.org/en/2022/gashc4367.doc.htm>> accessed 16 August 2026.

framework; and whether reformatory justice which carries the proposition that a convicted person retains the capacity for moral change ought to alter the calculus of capital sentencing.

THE RAREST OF THE DOCTRINE: PROMISE AND FAILURE

The constitutional framework for the death penalty in India was laid in *Bachan Singh v. State of Punjab*², where a five-judge constitutional bench of the Supreme Court of India upheld the validity of the death penalty under Section 302 of the Indian Penal Code, 1860 (now Section 103 of Bharatiya Nyay Sanhita), while simultaneously imposing a significant limiting principle: it could only be imposed in the ‘rarest of the rare’ cases, where the alternative of life imprisonment was ‘unquestionably foreclosed’. The court acknowledged that life and personal liberty under Article 21 demanded that the extreme sanction be reserved for the most extreme circumstances, and directed sentencing courts to weigh aggravating and mitigating factors in every capital case.

Three years later, *Machhi Singh v. State of Punjab*³ attempted to operationalize this threshold by identifying five categories of cases that could qualify:

- (i) The manner of commission;
- (ii) The motive;
- (iii) The anti-social or socially abhorrent nature of the crime;
- (iv) The magnitude of the crime, and
- (v) The personality of the victim.

While this taxonomy offered guidance, it also introduced a degree of subjectivity that courts have struggled to constrain. The categories are broad, overlapping, and do not resolve the deeper question of whether ‘rarest of the rare’ is a descriptor of crime, the criminal or both.

The consequences of this ambiguity have been extensively documented. In *Sangeet v. State of Haryana*⁴, the Supreme Court itself acknowledged that the sentencing framework had not been applied consistently, with similar crimes attracting different outcomes across benches. The Law Commission of India, in its landmark 262nd Report, found that the arbitrariness embedded in

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

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

⁴ *Sangeet v. State of Haryana*, (2013) 2 SCC 452.

capital sentencing which is compounded by inadequate legal representation and socio-economic bias has made the doctrine incapable of delivering principles justice⁵. The commission recommended abolition of the death penalty for all offences except terrorism-related crimes. Recent empirical data corroborate these findings. Project 39A's 2023 annual statistics report recorded that India's death row population reached five hundred and sixty one prisoners by the end of that year, the highest figure in nearly two decades and a rise of over forty five per cent since 2015, even as appellate courts confirmed death sentences at the lowest rate recorded since 2000. This divergence between rising trial court sentencing and falling appellate confirmation illustrates precisely the inconsistency that the Law Commission identified.⁶

High-profile cases such as *Mukesh v. State (NCT of Delhi)*⁷ commonly known as the Nirbhaya Case and the execution of Dhananjay Chatterjee have periodically reinvigorated public debate, but they have also illustrated how the doctrine bends under the weight of public sentiment. Courts have acknowledged the mitigating role of the convict conduct and reformability⁸, and yet these factors remain inconsistently applied and sometimes determinative or dismissed. The rarest of rare doctrine, in its current form, offers a threshold that is more rhetorical than operational.

INTERNATIONAL FRAMEWORKS: ABOLITIONIST TRENDS AND THE LIMITS OF 'MOST SERIOUS CRIME'

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides the primary international legal framework for capital punishment⁹. It does not mandate abolition but restricts the death penalty to the '*most serious crimes*'. This phrase has been interpreted narrowly to mean only intentional killing by the UN Human Rights Committee. Crucially Article 6(6) expresses an

⁵ Law Commission of India, 262nd Report on the Death Penalty (August 2015).

⁶ Project 39A, National Law University Delhi, 'Death Penalty in India: Annual Statistics Report 2023' (2024), discussed in '561 Inmates on Death Row, Highest in Two Decades: Report' The Print (New Delhi, 10 February 2024) <<https://theprint.in/india/561-inmates-on-death-row-highest-in-two-decades-report/1961978/>> accessed 16 August 2026.

⁷ *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

⁸ *Ediga Anamma v. State of Andhra Pradesh*, (1974) 4 SCC 443.

⁹ International Covenant on Civil and Political Rights, Art. 6, 999 UNTS 171 (1966).

aspirational preference for abolition, framing the right to life as the ultimate goal toward which state parties should move.

The UNGA has reinforced this trajectory through successive resolutions calling for a global moratorium on executions¹⁰. As of the annual 2024 report of Amnesty International, over 113 countries have abolished the death penalty for all crimes, while more than 144 countries have abolished it in law or practice¹¹. The European Union and Council of Europe have made abolition of a condition of membership, and protocol no. 13 to the European convention on Human Rights prohibits capital punishment absolutely, in all circumstances¹². Yet this abolitionist trajectory coexists with a troubling short term reversal in practice. Amnesty International recorded one thousand one hundred and fifty three executions worldwide in 2023, an increase of more than thirty per cent over the previous year and the highest total in almost a decade, driven substantially by a sharp rise in executions across the Middle East. The trend illustrates that formal legal abolition and the actual restraint of state killing do not always move in tandem.¹³

The European court of human rights contributed a distinct doctrinal strand in *Soering v. United Kingdom*¹⁴, where the court held that extradition to face the ‘death row phenomenon’ is an inhuman treatment under Article 3 of ECHR as it involve the prolonged psychological suffering attendant on awaiting execution. This was significant not because it abolished the death penalty directly, but because it acknowledged that the manner and process of its imposition carries independent human rights implications.

The United States presents a more complex picture. While retentionist at the federal level, the supreme court in *Furman v. Georgia*¹⁵, struck down existing death penalty statutes as applied in an arbitrary and capricious manner. Subsequent decisions have progressively narrowed its application, excluding those with intellectual disabilities¹⁶ and, more recently, limiting it to crimes

¹⁰ UN General Assembly Resolution 62/149, ‘Moratorium on the Use of the Death Penalty’ (2007).

¹¹ Amnesty International, ‘Death Sentences and Executions 2023’ (Amnesty International Ltd. 2024) 7.

¹² Protocol No. 13 to the European Convention on Human Rights, ETS No. 187 (2002).

¹³ Amnesty International, Death Sentences and Executions 2023 (Amnesty International Ltd, 2024); ‘Death Penalty Report 2023’ Amnesty International UK (29 May 2024) <<https://www.amnesty.org.uk/knowledge-hub/all-resources/death-penalty-report-2023/>> accessed 16 August 2026.

¹⁴ *Soering v. United Kingdom*, (1989) 11 EHRR 439.

¹⁵ *Furman v. Georgia*, 408 U.S. 238 (1972).

¹⁶ *Atkins v. Virginia*, 536 U.S. 304 (2002).

involving intentional homicide¹⁷. This trajectory mirrors, at a different pace, the international movement toward restriction even where outright abolition has not been embraced.

What these frameworks collectively reveal that the global direction of travel is abolitionist, even if the destination remains contested. More importantly for present purposes, both international and comparative law have increasingly demanded that capital sentencing be individualized and that it account for the particular circumstances of the offender, not the offence. This demand sits uncomfortably with purely retributive rationales and opens a doctrinal space for reformatory considerations to enter the sentencing calculus¹⁸.

REFORMATIVE JUSTICE AND THE QUESTION OF A SECOND CHANCE

The reformatory theory of punishment holds that the primary aim of the penal system ought to be rehabilitation and reintegration of the offender into society. It is premised on the view that human character is not fixed and that even those who commit grave wrongs retain the capacity for moral and behavioral change. On this view, execution forecloses a possibility that the law has not genuinely tested.

Indian Constitutional jurisprudence has not been indifferent to this argument. In *Ediga Anamma v. State of Andhra Pradesh*¹⁹, the supreme court held that the personal circumstances and background of the accused such as poverty, youth, and mental condition were relevant mitigating factors in capital sentencing. Bachan Singh itself expressly listed the possibility of reform as a consideration weighing against imposition of death. And in *Shatrughan Chauhan v. Union of India*²⁰, the court held that inordinate delay in execution could itself be a ground of commutation, recognizing the psychological deterioration that death row causes along with the acknowledgement that time and circumstance can alter the character of a condemned person in ways the original sentencing court could not have anticipated.

¹⁷ Kennedy v. Louisiana, 554 U.S. 407 (2008).

¹⁸ William A. Schabas, *The Abolition of the Death Penalty in International Law* (3rd ed., Cambridge University Press 2002) 6-9.

¹⁹ *Ediga Anamma v. State of Andhra Pradesh*, (1974) 4 SCC 443.

²⁰ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

Yet the reformatory framework raises difficult questions of its own. The most significant is one of verification: can reformation be assessed, predicted, or guaranteed? The Law Commission's 262nd Report acknowledged the empirical difficulty of predicting recidivism or rehabilitation with confidence²¹. Prison conditions in India which are overcrowded, under-resourced and structurally ill-equipped for genuine rehabilitation indicates that the rhetoric of reformatory justice often outpaces its institutional reality²². This institutional gap is measurable. The National Crime Records Bureau's Prison Statistics India 2023 report recorded an all India prison occupancy rate exceeding one hundred and twenty per cent, with some state systems operating at close to double their sanctioned capacity, and found roughly one mental health professional for every twenty three thousand inmates nationally. Conditions of this kind make it difficult to sustain the individualised psychological assessment that any credible claim of reform, or its absence, would require.²³ To ask whether a convict has reformed, or is capable of reforming, within an environment that does not support reformation is to pose a question the system itself has compromised with the ability to answer.

There is also a deeper philosophical difficulty. The argument that a criminal is capable of human emotion and moral change and that they are not defined by the worst act of their life is intuitively compelling, and supported by psychological research on neuroplasticity, trauma, and behavioral change. Longitudinal criminological research on desistance lends some empirical weight to this claim, showing that the propensity for offending among even serious young offenders tends to decline sharply as neurological and psychosocial maturation continues into the mid twenties. This body of research does not establish that any specific individual will reform, but it does complicate any assumption that a person's worst act is a reliable predictor of their permanent character.²⁴ But it does not, by itself, answer the retributive claim that certain crimes demand a proportionate response irrespective of subsequent conduct. The victim's family in a heinous murder case may

²¹ Law Commission of India, 262nd Report on Death Penalty (August 2015).

²² Project 39 A, 'Death Penalty India Report' (National Law University Delhi 2016) 45-47.

²³ National Crime Records Bureau, Prison Statistics India 2023, discussed in 'NCRB's Prison Statistics India 2023: Overcrowding, Undertrials, and Mental Health' The Policy Edge (2025) <<https://www.policyedge.in/p/ncrbs-prison-statistics-india-2023>> accessed 16 August 2026.

²⁴ Center for Law, Brain & Behavior, Massachusetts General Hospital, 'Juvenile & Emerging Adult Justice' (referencing Edward P Mulvey, Pathways to Desistance, 2011) <<https://clbb.mgh.harvard.edu/juvenilejustice/>> accessed 16 August 2026.

reasonably ask why the possibility of the offender's future reformation should govern the sentence, when the victim's future was entirely extinguished.

This tension is not resolvable by legal doctrine alone. The US Supreme Court in *Lockett v. Ohio*²⁵ held that a death sentence cannot constitutionally be imposed without allowing the defendant to present any relevant mitigating evidence including the evidence of character and potential for reform. But it stopped short of holding that reform evidence was determinative. It is a consideration, not a conclusion. Indian law has reached a similar position. Reform is a mitigating factor that the court while sentencing must weigh, but it does not automatically displace the retributive imperative in the most serious cases.

What the reformatory framework does, however, is shift the burden of inquiry. If the state is to take a life, it ought to be required to demonstrate not merely that the crime was horrific but that the author of the crime is beyond any possibility of change. The 262nd report implicitly endorses this shift when it notes that no reliable mechanism exists to make such a determination, and uses that epistemic gap as a ground for abolition²⁶. The irreversibility of death makes this gap uniquely consequential.

IRREVERSIBILITY, WRONGFUL CONVICTIONS, AND THE SECOND CHANCE QUESTION

Perhaps the most powerful argument against capital punishment apart from its retributive and reformatory frameworks is the irreversibility of its error. A wrongful conviction that results in imprisonment can be corrected; a wrongful execution cannot. The empirical record on wrongful convictions in capital cases is sobering: in the United States, over 200 death row inmates (202, as of April 2025) have been exonerated since 1973. While systematic data for India is harder to establish, the project 39A Death Penalty India Report documented significant concerns about the quality of legal representation and the reliability of evidence in capital cases, raising the question

²⁵ *Lockett v. Ohio*, 438 U.S. 586 (1978).

²⁶ Law Commission of India, 262nd Report on the Death Penalty (August 2015).

of how confident a legal system must be before it acts irreversibly. Indian appellate courts have themselves supplied troubling illustrations of this concern. In a single year, the Supreme Court acquitted eight men who had been sentenced to death, in judgments that exposed falsified evidence, investigative lapses, and failures by the prosecution and defence at every stage of the proceedings. Each of these men had already spent years awaiting execution before the errors in their convictions were finally recognised.²⁷

The supreme court has not been unaware of this concern. In *Deena v. Union of India*²⁸ procedural safeguards around the method of execution were examined, and the court has consistently held that the constitutional protection of life under Article 21 requires that the procedure establishing guilt meet the highest standards²⁹. But even the most rigorous procedure cannot eliminate the possibility of error. The only difference is that in a capital case that error is final and irreversible.

The intersection of irreversibility with the reformation debate is pointed out. If we accept that a person convicted of a capital offence may be capable of change, then the act of execution does not merely punish but also destroys the possibility of a future that might have been different. This is not a sentimental claim but a structural one. The finality of death is not merely punitive in proportion to the crime but it is punitive in proportion to the entirety of the remainder of a human life, including all that life might have become.

CONCLUSION

The death penalty debate, at its most honest, does not admit of easy resolution. The rarest of the rare doctrine was an attempt to contain a potentially arbitrary power within principled constitutional bounds but decades of inconsistent application have revealed the limits of ambition. International law has moved toward abolition, but retentionist jurisdictions continue to find doctrinal space within frameworks that permit capital punishment for the ‘most serious crimes’. And the reformatory justice paradigm, for all its moral and psychological force, runs into the hard

²⁷ ‘Supreme Court Acquittal of 8 Men on Death Row Reveals Failures by Police, Prosecution & Lower Courts’ Article 14 (2022) <<https://article-14.com/post/supreme-court-acquittal-of-8-men-on-death-row-reveals-failures-by-police-prosecution-lower-courts-63c45f79e9af3>> accessed 16 August 2026.

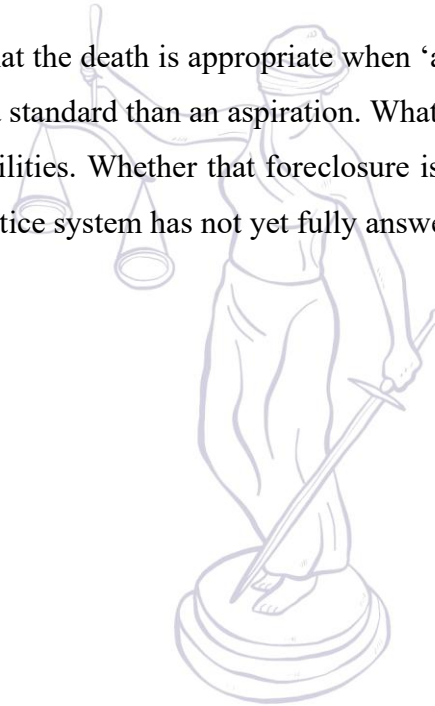
²⁸ *Deena v. Union of India*, (1983) 4 SCC 645.

²⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

institutional reality that the legal system is poorly equipped to assess, much less guarantee, the reformation it invokes.

What emerges from this analysis is not an argument for or against the death penalty per se, but a set of demands that a credible capital sentencing regime must meet: individualized assessment of the offender, not just the offence; genuine engagement with mitigating evidence including evidence of reform potential; acknowledgement with epistemic limits of predicting future character; and a reckoning with the irreversibility that distinguishes death from every other sanction in the criminal law's arsenal.

The law's current answer that the death is appropriate when 'alternative option is unquestionably foreclosed' is perhaps less a standard than an aspiration. What it forecloses, ultimately, is not just liberty but all future possibilities. Whether that foreclosure is ever justified, and on what terms, remains the question the justice system has not yet fully answered.



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