

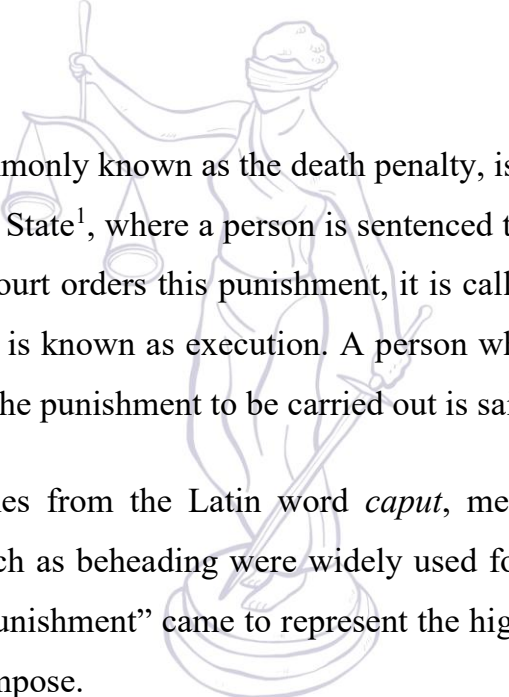
THE FEASIBILITY OF CAPITAL PUNISHMENT IN INDIA: A CRITICAL ANALYSIS

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Capital punishment, commonly known as the death penalty, is the most severe form of punishment given by the State¹, where a person is sentenced to death for committing a serious crime. When a court orders this punishment, it is called a death sentence, and the act of carrying it out is known as execution. A person who has been sentenced to death and is waiting for the punishment to be carried out is said to be on death row.

The term “capital” comes from the Latin word *caput*, meaning “head.” In earlier periods, punishments such as beheading were widely used for serious offences. Over time, the term “capital punishment” came to represent the highest level of punishment that a legal system can impose.

According to Cesare Beccaria, one of the earliest critics of the death penalty, punishment must be proportionate and necessary, and the State does not possess the moral authority to take away human life unnecessarily.²

Many thinkers and scholars have questioned the morality of the death penalty. For example, Albert Camus described it as a highly deliberate form of killing carried out by the State³. Globally, the use of capital punishment differs across countries. According

¹ *Capital punishment definition and concept.*

² Cesare Beccaria, *On Crimes and Punishments* (Hackett Publishing, 1986).

³ Albert Camus, *Reflections on the Guillotine in Resistance, Rebellion and Death* (Justin O'Brien trans., Alfred A. Knopf, 1961).

to Amnesty International, several countries still retain and use the death penalty, while others have abolished it or rarely apply it.

In the Indian context, capital punishment is legally allowed, but it is used only in exceptional situations. The principle of awarding the death penalty only in the “rarest of rare cases” was established by the Supreme Court of India in the landmark case of *Bachan Singh v. State of Punjab*⁴. This principle ensures that such punishment is given only when the crime is extremely serious and no other punishment is considered sufficient.

The debate on capital punishment is closely connected with Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. Although the judiciary has upheld the constitutional validity of the death penalty, critics argue that execution violates the principles of dignity and humane treatment embedded within Article 21. Upendra Baxi argues that the criminal justice system must prioritize constitutional morality and human rights rather than vengeance-oriented punishment.⁵ Similarly, the Law Commission of India in its 262nd Report recommended abolition of the death penalty for all offences except terrorism-related offences and waging war against the State, emphasizing that there is no conclusive evidence to prove that the death penalty acts as a greater deterrent than life imprisonment.⁶

Internationally, there has been a gradual movement toward abolition of capital punishment. The International Covenant on Civil and Political Rights recognizes the inherent dignity of every human being and encourages progressive restriction of the death penalty⁷. The Second Optional Protocol to the ICCPR specifically aims at abolition of capital punishment⁸. Amnesty International has repeatedly emphasized that

⁴ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

⁵ Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing).

⁶ Law Commission of India, 262nd Report on the Death Penalty, Govt. of India, 2015.

⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁸ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414.

the death penalty constitutes cruel, inhuman, and degrading punishment and violates the basic principles of human rights.⁹

As of 2023, more than two-thirds of the world's countries have abolished the death penalty in law or in practice, reflecting a clear global consensus against its continued use. According to Amnesty International's annual global report for 2023, executions were recorded in only 16 countries, the lowest number of retentionist states ever documented by the organisation, even as the total number of recorded executions rose to 1,153 worldwide.¹⁰ This paradox, with a shrinking group of states accounting for an increasing proportion of executions, reinforces the assessment that capital punishment is becoming the preserve of a progressively smaller minority of countries operating outside the mainstream of international human rights norms.

In recent times, there has been increasing discussion about whether the death penalty should continue, especially¹¹ from the perspective of human rights and justice. High-profile cases like *Mukesh & Anr v. State (NCT of Delhi)*¹² have brought strong public attention to this issue.

Further, the Law Commission of India, in its 262nd Report (2015), recommended that the death penalty should be abolished for most crimes, except in cases related to terrorism.

The debate surrounding capital punishment ultimately raises important questions concerning the objectives of punishment itself. While retributive theories advocate proportionate punishment for grave offences, reformative theories focus on rehabilitation and reintegration of offenders into society. H.L.A. Hart observed that

⁹ Amnesty International, *Death Sentences and Executions Report* (2023).

¹⁰ Amnesty International, *Death Sentences and Executions 2023* (Amnesty International 2024) <<https://www.amnesty.org/en/documents/act50/7952/2024/en/>> accessed 12 September 2026.

¹² *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

punishment must be guided by fairness, proportionality, and social necessity rather than emotional retaliation.¹³

In this background, it becomes necessary to carefully examine whether capital punishment is truly effective, whether it serves the purpose of justice, and whether it is consistent with modern human rights principles.

OVERVIEW OF CAPITAL PUNISHMENT IN INDIA

In ancient India, the death penalty was used as a form of punishment for a variety of crimes. The ancient Hindu legal text, the *Manusmriti*¹⁴, describes several different types of execution, including death by being trampled by elephants, impaled on a stake, and drowned in water.

In addition to these physical forms of execution, the *Manusmriti* also describes a number of other methods of punishment that could be imposed, including fines, mutilation, and banishment¹⁵. The severity of the punishment was often based on the social status of the offender, with higher-caste individuals being subject to less severe punishment than lower-caste individuals.

Some ancient Indian philosophers argued that the death penalty was not a deterrent to crime and that it was more humane to impose other forms of punishment.

During the British colonial period in India, the death penalty was used as a form of punishment for a variety of crimes. Under British rule, capital punishment could be imposed for offences such as murder, treason, and certain types of theft. Executions were typically carried out by hanging.

Under the Code of Criminal Procedure, 1973, a significant procedural change was made regarding the sentencing for capital offences. Section 354(3) of that Code required courts to record special reasons in writing whenever the death sentence was imposed, effectively making life imprisonment the default punishment. This was a marked

¹³ H.L.A. Hart, *Punishment and Responsibility* (Oxford University Press, 2nd edn., 2008).

¹⁴ *Manusmriti* (G. Buhler trans., Sacred Books of the East Series, Oxford University Press, 1886).

¹⁵ *Ibid.*

departure from the pre-1973 regime under which the death penalty had been the default sentence for murder.

The “rarest of rare” doctrine was established by the Supreme Court of India in the *Bachan Singh case*, which stated that the death penalty should be imposed only in cases where the crime was particularly heinous and there were no other suitable forms of punishment.

The first recorded execution in post-independence India took place in November 1949. The execution was carried out by hanging, and the person who was executed was a man named Nathuram Godse, who was convicted of assassinating Mahatma Gandhi. Godse was hanged in Ambala jail in the state of Punjab (now Haryana).

The most recent executions in India took place on 20 March 2020, when the four convicts in the 2012 Nirbhaya gang rape and murder case, namely Mukesh Kumar Singh, Vinay Kumar Sharma, Pawan Gupta, and Akshay Kumar, were hanged simultaneously at Tihar Jail in New Delhi. This was the first instance since independence of four persons being executed together. The immediately preceding execution had been that of Yakub Memon, who was hanged on 30 July 2015 at Nagpur Central Jail, Maharashtra, following his conviction for involvement in the 1993 Bombay serial bomb blasts.

Although the doctrine aimed to limit arbitrary sentencing, scholars and legal experts have criticized it for being vague and subjective.¹⁶ Different benches of courts have interpreted the doctrine inconsistently, leading to disparities in sentencing. The *Death Penalty India Report* conducted by National Law University Delhi observed that socio-economic background, lack of effective legal aid, and judicial subjectivity significantly influence death sentencing in India.¹⁷ These findings raise concerns regarding fairness, equality, and uniformity in the administration of criminal justice.

More recent data from Project 39A at National Law University, Delhi corroborates the systemic concerns identified in the 2016 report. The eighth edition of the *Death Penalty in India: Annual Statistics Report*, released in February 2024, found that 561 prisoners

¹⁶ Anup Surendranath, “Death Penalty Jurisprudence in India,” National Law University Delhi Journal.

¹⁷ National Law University Delhi, *Death Penalty India Report* (2016).

were living under a sentence of death in India at the end of 2023, the highest death row population recorded in nearly two decades, representing a 45.71 per cent increase since 2015.¹⁸ Trial courts imposed 120 death sentences during 2023, while appellate courts confirmed the fewest death sentences since 2000, with the Supreme Court not confirming any death sentence for the second consecutive calendar year. The divergence between trial court sentencing practice and appellate-level scrutiny underscores the deepening structural inconsistency in the administration of capital punishment in India.

In some cases, the bodies of people who are executed may be donated to medical institutions for the purposes of study or research. This would only be done with the consent of the next of kin and in accordance with the laws and regulations of the state in which the execution took place.

LEGAL VALIDITY OF CAPITAL PUNISHMENT IN INDIA

The death penalty is allowed in India under certain circumstances, as determined by the Supreme Court of India.

Article 21 of the Indian Constitution¹⁹ guarantees the right to life and personal liberty. However, the Constitution also allows for the imposition of the death penalty under certain circumstances.

The Supreme Court of India has interpreted Article 21 to mean that the death penalty can be imposed in cases of the "rarest of rare" crimes, where the crime is particularly heinous and there are no other viable sentencing options.

¹⁸ Project 39A, *Death Penalty in India: Annual Statistics Report 2023* (National Law University Delhi 2024); '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 12 September 2026.

¹⁹ Constitution of India, Article 21.

The specific section of the CrPC²⁰ that deals with the death penalty is Section 354(3). This section states that, when the accused is convicted of an offence punishable with death, the court shall, subject to the provisions of Section 354(5) (which relates to the power of the President to grant pardons, etc.), sentence the accused to death.

Section 354(5) of the CrPC provides for the possibility of commutation of the death sentence to life imprisonment in certain circumstances.

It is important to note that the Code of Criminal Procedure, 1973 has since been repealed and replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1 July 2024.²¹ The sentencing provisions previously located in Sections 354(3) and 354(5) of the CrPC are now substantially reflected in Section 392 of the BNSS, and the requirement of recording special reasons before imposing the death sentence has been retained under the new legislative framework. While references to the CrPC in earlier case law and scholarship remain legally instructive, practitioners and researchers must account for the recodification of these provisions under the BNSS.

In the *Bachchan Singh* case²², the Supreme Court laid down several guidelines for the lower courts to follow when imposing the death penalty.

These guidelines included:

- The nature and gravity of the crime
- The conduct of the accused
- The motive for the crime
- The impact of the crime on society
- The likelihood of the accused committing similar crimes in the future
- The possibility of reform and rehabilitation of the accused

²⁰ Code of Criminal Procedure, 1973, Section 354(3).

²¹ Bharatiya Nagarik Suraksha Sanhita 2023, s 392; 'Primacy to Suraksha: Understanding the Bharatiya Nagarik Suraksha Sanhita, 2023' (SCC Online Blog, 5 May 2024) <<https://www.scconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/>> accessed 12 September 2026.

²² *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

The Bachchan Singh case is considered to be a significant ruling on the death penalty in India and has shaped the way in which the death penalty is imposed in the country.

The Supreme Court of India has the authority to review death penalty cases and can either confirm or set aside the death sentence.

FACTORS TO BE CONSIDERED BEFORE AWARDING THE DEATH PENALTY

The death penalty is given for the crime in question and not the circumstances of the accused. It is pertinent to note that the Supreme Court has done much in that regard to consider mitigating circumstances.

EXAMPLE: *Machi Singh and others versus the State of Punjab*²³ case.

There have been cases in India where people have been wrongly convicted and sentenced to death. These cases raise concerns about the reliability of the criminal justice system and the possibility of executing innocent people²⁴.

The quality of legal representation available to accused persons in capital cases is a critical and frequently underappreciated factor behind wrongful convictions and disproportionate sentencing. The *Death Penalty India Report* (2016), published by National Law University Delhi, found that more than three-fourths of prisoners on death row in India belonged to socially, economically, or educationally disadvantaged groups, with economic vulnerability highest among Scheduled Caste and Scheduled Tribe prisoners at 85.4 per cent compared to 64.4 per cent in the general category.²⁵ A significant proportion of those on death row had been represented under legal aid schemes with severely limited engagement with their appointed counsel, raising

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

²⁴ *Issues of wrongful convictions in capital cases*.

²⁵ National Law University Delhi, *Death Penalty India Report* (NLU Delhi Press 2016) vol II; '3/4th Death Row Convicts Socio-Economically Backward: Report' *Deccan Herald* (Bengaluru, 17 February 2016) <<https://www.deccanherald.com/amp/story/india/34th-death-row-convicts-socio-2063312>> accessed 12 September 2026.

profound questions about whether the criminal justice system can guarantee the procedural safeguards necessary before an irreversible punishment such as death is administered.

In India, there are several legal safeguards in place to try to prevent wrongful convictions and ensure that justice is served. These include the right to a fair trial, the right to appeal, and the right to seek a review of a death sentence.

The arguments for the retention of death penalty in India states that the punishment is not arbitrary because, it comes out of a judicial process and further, at present in India, it is implemented in the 'rarest of the rare' cases. The hanging of Ajmal Kasab and Yakub Memon, after giving them a full and free trial inspite of it being apparent that they have committed such heinous offences shows that India commits to the protection of life.

Despite these safeguards, wrongful convictions can still occur due to a variety of factors, including mistakes or errors by law enforcement or prosecution, witness misidentification, and misconduct by authorities.

The issue of wrongful convictions is a serious concern in any criminal justice system, and it is important that steps are taken to address this issue and ensure that justice is served. There have been several cases of wrongful convictions and death sentences in India. Some examples of the accused include:

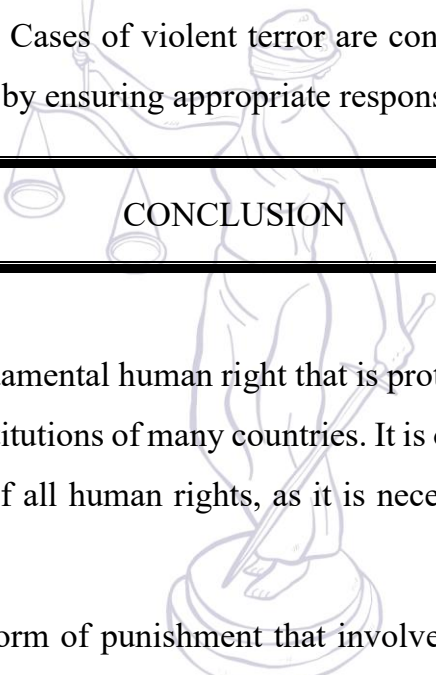
Dhananjay Chatterjee: Chatterjee was convicted and sentenced to death for the rape and murder of a young girl in 1990. However, there were serious doubts about the reliability of the evidence against him but he was eventually hanged in 2004.

- Sushil Sharma: Sharma was convicted and sentenced to death for the murder of his wife in 1995. The Delhi High Court confirmed his death sentence in 2007. The Supreme Court subsequently commuted the sentence to life imprisonment in 2013, finding that the case did not meet the threshold for the rarest of rare doctrine and that the accused was capable of reformation.²⁶.

- Nisar Ahmed: Ahmed was convicted and sentenced to death for the murder of a young girl in 1996. As there were serious infirmities in the prosecution's evidence, he was eventually acquitted in 2014.

These cases highlight the importance of ensuring that justice is served and that wrongful convictions are avoided. They also underscore the need for legal safeguards to prevent wrongful convictions and ensure that the criminal justice system is fair and reliable.

The 262nd Law Commission of India Report²⁷ could not recommend the absolute abolition of punishment. Cases of violent terror are constant reminders of the need to protect national stability by ensuring appropriate responses to such actions.



CONCLUSION

The right to life is a fundamental human right that is protected by international law and is recognised in the constitutions of many countries. It is often considered to be the most basic and fundamental of all human rights, as it is necessary for the enjoyment of all other rights.

The death penalty is a form of punishment that involves the state taking the life of a person who has been convicted of a crime. The use of the death penalty has been the subject of much debate and controversy, as it raises questions about the right to life and the nature of punishment.

Some people argue that the death penalty is a necessary tool for ensuring public safety and serves as a deterrent for serious crimes.

Others argue that the death penalty violates the right to life and is a cruel and inhumane form of punishment. The international community is divided on the issue, with some countries maintaining the death penalty and others having abolished it.

²⁷ Law Commission of India, 262nd Report (2015).

In conclusion, although supporters of capital punishment continue to justify its existence on grounds of deterrence and societal protection, its effectiveness remains uncertain and heavily debated. The increasing emphasis on constitutional morality, human rights jurisprudence, and reformatory justice suggests the need for India to reconsider the continued retention of the death penalty. A modern criminal justice system must strive not only to punish offenders but also to uphold the principles of dignity, fairness, and humanity that form the cornerstone of a democratic society.²⁸

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²⁸ Roger Hood, "Capital Punishment: A Global Perspective," 3 *Punishment & Society* 331 (2001).