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Capital Punishment in India: Historical Evolution, Constitutional Framework & Judicial Safeguards

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Abstract: *Capital punishment remains one of the most debated aspects of the criminal justice system, raising important questions concerning justice, deterrence, human dignity and constitutional safeguards. In India, the death penalty continues to be a legally permissible punishment for certain serious offences, although its application is restricted by judicial principles. This article examines the historical development of capital punishment in India, its legislative framework and the constitutional principles governing its imposition. It traces the evolution of the death penalty from ancient and colonial practices to the contemporary legal system, highlighting legislative efforts towards abolition and the retention of capital punishment under the Bharatiya Nyaya Sanhita, 2023. Particular emphasis is placed on Article 21 of the Constitution and the judicial doctrine of the "rarest of the rare," established in Bachan Singh v. State of Punjab. Landmark judgments have been discussed to understand the development of sentencing principles and procedural safeguards. The article also explores the importance of balancing aggravating and mitigating circumstances, considering the offender's background, mental health and prospects for rehabilitation before imposing the death penalty. Furthermore, it highlights concerns regarding inconsistent judicial interpretation, socioeconomic disparities, wrongful convictions and the irreversible consequences of judicial error. Although supporters consider capital punishment necessary for addressing exceptionally heinous crimes and threats to national security, its effectiveness as a deterrent remains contested. The article concludes that the continued application of capital punishment requires rigorous judicial scrutiny, fair sentencing procedures and careful consideration of constitutional morality, human rights and the possibility of reform.*

Key Words: *Capital punishment, death penalty, Indian Constitution, rarest of the rare, Article 21, judicial safeguards, criminal justice,*

1. INTRODUCTION

Capital punishment, commonly known as the death penalty, is a state-imposed punishment in which a person convicted of a serious crime is executed following a legal process. It is the most severe and irreversible form of criminal sanction because it brings the offender's life to an end.[1] The term "capital" is historically associated with the Latin word caput, meaning "head," reflecting the former practice of execution by beheading. A person who has been sentenced to death and is awaiting the outcome of legal proceedings or execution is often described as being on death row. However, a death sentence does not always lead to execution. An appellate court may overturn it, the sentence may be commuted to imprisonment, or executive clemency may be granted.[2]

Capital punishment remains controversial in India because it brings the aims of punishment into conflict with constitutional rights and human dignity. Supporters emphasise deterrence, public safety, retribution, and the seriousness of exceptionally violent crimes. Opponents point to the possibility of wrongful convictions, unequal access to legal representation, inconsistent sentencing, and the irreversible consequences of execution. India's death-row population reached 574 prisoners by the end of 2025, which it describes as the highest level since the beginning of the century. It gives figures of 378 prisoners in 2019, 561 in 2023, 564 in 2024, and 574 in 2025, and identifies Uttar Pradesh as having the largest share, followed by Gujarat and Haryana. This trajectory represents a steep increase of nearly 50% since 2015, driven primarily by a widening gap between aggressive sentencing in trial courts and slow disposal or high reversal

rates in appellate courts.[3] In recent years, more than half of the death sentences imposed by trial courts have been for sexual offences involving rape and murder, frequently involving victims under the age of 12.[4]

2. HISTORICAL CONTEXT AND LEGISLATIVE EVOLUTION

The history of capital punishment in India reflects a gradual movement from earlier forms of retributive punishment towards a legal approach that treats the death penalty as an exceptional measure. Ancient legal and religious texts, including Kautilya's Arthashastra and the Manusmriti, referred to severe penalties for grave offences such as homicide, treason, and serious violations of social or governmental rules. Punishments in earlier periods could be public and physically harsh, with methods varying according to the offence, the ruling authority, and the historical era.[5]

During periods of Islamic rule, criminal justice was influenced in part by principles associated with Islamic law. Capital punishment was applied under the principles of Hadd, relating to specified serious offences, and Qisas, associated with retaliation or equivalent punishment. Their application was not uniform and could vary according to the ruler and circumstances. These historical phases show that the use of capital punishment changed over time rather than following one consistent model.[6] Under British colonial rule, criminal law became increasingly codified and centralised. Capital punishment was retained for specified offences, including crimes treated as threats to the State. Penalty was used against some people involved in resistance to British rule. Following independence in 1947, India retained much of the inherited penal framework, but legislative and judicial developments progressively restricted the use of the death penalty.[7]

An important change was the movement away from treating death as the ordinary sentence for murder. Section 354(3) of the Code of Criminal Procedure, 1973 (equivalent to Section 393(3) of Bharatiya Nagarik Suraksha Sanhita 2023) required courts to record "special reasons" when imposing death rather than life imprisonment. The principle is that life imprisonment is the usual option, and a death sentence requires specific justification. India therefore remains a retentionist country, although executions are rare and death sentences are subject to substantial judicial scrutiny.[8] The entire framework balances public demand for deterrence against severe judicial safeguards to prevent irreversible errors.

3. LEGAL FRAMEWORK OF THE DEATH PENALTY

The statutory framework has changed with the replacement of the Indian Penal Code, 1860, by the Bharatiya Nyaya Sanhita, 2023. Murder, waging war against the Government of India, and dacoity accompanied by murder as offences for which capital punishment may be available under specified circumstances (Sections 302, 121, and 396 of the former Code and Sections 101, 147, and 310 of the Bharatiya Nyaya Sanhita as corresponding provisions).

Abolition of the death penalty has been considered in Indian legislative debate for many years. An attempt in 1931 by Gaya Prasad Singh, a member of the Central Legislative Assembly from Bihar, to introduce a bill seeking abolition of death penalty for certain crimes under British rule. The proposal was unsuccessful.[9] Later, the Death Penalty (Abolition) Bill, 2019, was introduced in the Lok Sabha by Kanimozhi on 26th July 2019. The bill proposed abolishing capital punishment for all offences but did not become law. Most MPs felt that India needed the death penalty to deal with crimes like terrorism, brutal murders, and crimes against women or children. Hence, the death penalty consequently remains available for specified crimes.[10]

4. CONSTITUTIONAL FRAMEWORK AND JUDICIAL DOCTRINE

The constitutional position of capital punishment has been shaped by the Supreme Court's interpretation of fundamental rights. Article 21 of the Constitution states that no person may be deprived of life or personal liberty except according to a procedure established by law. Such a procedure must be fair, just, and reasonable rather than arbitrary or oppressive. These safeguards are particularly important in death penalty cases because an execution cannot be reversed if the conviction or sentence is later found to be mistaken. The 'rarest of rare' doctrine represents India's unique constitutional compromise on capital punishment, one that neither abolishes the death penalty nor permits its routine imposition. Rooted in Article 21, the doctrine aspires to protect human dignity while acknowledging exceptional circumstances where society may demand the ultimate punishment.[11]

In *Jagmohan Singh v. State of Uttar Pradesh*[12], the Supreme Court upheld the constitutional validity of capital punishment, holding that judicial sentencing discretion within the legal framework did not violate Articles 14 and 21 of the constitution. The issue was considered further in *Rajendra Prasad v. State of Uttar Pradesh*[13], where Justice Krishna Iyer argued that the death penalty should be limited to cases involving extraordinary social danger. These decisions formed part of the background to *Bachan Singh v. State of Punjab*[14]. In Bachan Singh, a Constitution Bench upheld the validity of the death penalty for murder but restricted its application through the "rarest of the rare" doctrine. The Court held that: "A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality". The doctrine rests on three central ideas: life imprisonment is the normal sentencing position, death is

an exception, and courts must record special reasons for imposing it. The judgment rejected automatic death sentences and required courts to consider both the crime and the individual offender. Thus, this case formally established the doctrine of the 'rarest of the rare' case ruling that capital punishment is reserved only for exceptional cases where life imprisonment is inadequate thereby introducing a balancing test requiring courts to weigh aggravating and mitigating circumstances.

In *Machhi Singh v. State of Punjab*[15], the Court identified factors that might help determine whether a case falls within the 'rarest of the rare' category. These included the manner in which the murder was committed, the motive, the socially abhorrent character of the crime, the magnitude of the offence where several victims were involved, and the vulnerability or characteristics of the victim. The categories were intended to guide judicial discretion, but critics argue that they may be applied subjectively and can lead courts to focus excessively on the crime rather than the offender. A fair sentencing decision requires consideration of aggravating and mitigating circumstances. Aggravating factors may increase the seriousness of the offence, while mitigating factors may justify a lesser sentence. Relevant matters include the offender's age, socio-economic background, prior criminal record, mental health, emotional circumstances, and prospects for rehabilitation. The possibility of reform is important because the court must consider whether life imprisonment is truly inadequate in the particular case.

The justification for imposing death should be based on reasoned legal principles, such as retribution, deterrence, public safety, or incapacitation, rather than public anger alone. In cases involving sexual violence and terrorism, including *Mukesh & Anr. v. State for NCT of Delhi & Ors*. (Nirbhaya's case)[16] 2017, courts have referred to society's "collective conscience." Critics warn that public outrage must not replace careful legal analysis or weaken constitutional safeguards[17].Fair trial and due process are non-negotiable prerequisites before any capital punishment ruling in India. In *Manoj v. State of Madhya Pradesh*,[18] the Supreme Court emphasised the need for a meaningful pre-sentencing process and relevant information about the accused. Information about personal history, social circumstances, mental health, and potential for reform can help courts reach an individualised decision. Such procedural safeguards are essential to ensure that a death sentence is supported by evidence and justified in the circumstances of the case.

5. METHOD OF EXECUTION OF CAPITAL PUNISHMENT

In India, the prescribed method of executing a death sentence is hanging by the neck until death. Section 354(5) of the Code of Criminal Procedure, 1973 (CrPC) expressly provided for this method, and the corresponding provision under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is **Section 393(5)**. In *Deena v. Union of India*[19], the Supreme Court upheld the constitutional validity of execution by hanging under Section 354(5) of the CrPC, holding that the method, when properly carried out, did not violate Article 21 of the Constitution. The Court emphasised that the execution of a lawful death sentence must be conducted with decency and without unnecessary cruelty, torture or degradation. Thus, hanging remains the statutorily prescribed method of execution under Indian criminal procedure.

In *Smt. Shashi Nayar v. Union of India*[20], the Supreme Court reaffirmed the constitutionality of capital punishment and upheld hanging by the neck as a lawful method of execution. Rejecting the contention that hanging was barbaric and dehumanising, the Court relied on its earlier ruling in *Deena v. Union of India*, which had characterised hanging as a scientific and one of the least painful methods of executing a death sentence. The decision therefore reinforced the judicial position that hanging did not violate Article 21 of the Constitution.

In a landmark judgement namely, *Rishi Malhotra v. Union of India*[21],(decided on 18 August 2026), the Supreme Court of India examined the constitutional validity of Section 354(5) of the Code of Criminal Procedure, 1973, corresponding to Section 393(5) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The petitioner challenged hanging as cruel and inhuman and contended that a more humane alternative, such as lethal injection, should be adopted. The Court dismissed the petition, holding that no convincing scientific or empirical evidence had been produced to establish that hanging violated Article 21 of the Constitution or that lethal injection was demonstrably more humane. Relying on *Deena v. Union of India* and *Shashi Nayar v. Union of India*, the Court declined to refer the matter to a larger Bench for reconsideration. Nevertheless, it clarified that future constitutional scrutiny would remain possible if compelling scientific, medical or empirical evidence emerged, and observed that the Union Government could undertake a comprehensive expert review of alternative methods of execution to minimise unnecessary suffering while preserving the dignity of the condemned prisoner.

6. CONCLUSION

Capital punishment continues to occupy a difficult position in India's criminal justice system. It remains legally available for specified offences, but constitutional principles and judicial decisions require its use to be exceptional. The

'rarest of the rare' doctrine, the preference for life imprisonment, the requirement to record special reasons, and consideration of mitigating evidence are designed to reduce the risk of arbitrary or disproportionate sentencing.

Supporters maintain that the death penalty is necessary for certain extreme crimes and serious threats to national security. Critics emphasise the danger of wrongful conviction, inconsistent application, and irreversible judicial error, and question whether execution provides a reliable deterrent when serious crimes continue to occur. The central issue is therefore not simply whether capital punishment should be retained, but whether the safeguards governing its use are sufficiently robust. Every case involving a possible death sentence requires a fair trial, meaningful sentencing hearings, careful assessment of mitigating circumstances, and rigorous appellate scrutiny. Further debate should be informed by reliable legal and empirical evidence and should give due weight to constitutional values, human dignity, public safety, and the possibility of reform. The death penalty fails to fulfil the promise of retributive justice because brutal crimes continue to occur. Another important issue that needs to be pondered is that if a justice system focuses solely on capital punishment as its ultimate retributive tool, it addresses only the symptom of the crime rather than its root causes. Brutal crimes often stem from systemic issues, such as severe socio-economic economic disparities, mental health crises, and institutional failures. Execution removes the individual but leaves the environments that breed such violence completely intact, ensuring that new crimes continue to emerge.

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