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# THE DEATH PENALTY IN INDIA: JUSTICE OR RETRIBUTIVE SENTIMENT

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Tripti Mishra<sup>1</sup>, Nandita Dubey<sup>2</sup> & Anuradha Padhy<sup>3</sup>

## I. ABSTRACT

*The death penalty remains one of the most divisive and morally complex issues in India's criminal justice system. This research paper critically examines whether capital punishment serves the ends of justice or merely reflects society's retributive instincts. Although the Supreme Court in Bachan Singh v. State of Punjab (1980) upheld its constitutionality under the "rarest of rare" doctrine, the doctrine's inconsistent application raises serious doubts about fairness and equality before the law. The study draws on both primary data through surveys assessing public perception and secondary sources, including judicial precedents, scholarly writings, and empirical reports such as those by Project 39A and the People's Union for Democratic Rights (PUDR). The findings reveal that a majority of respondents favor retaining the death penalty, often justifying it on grounds of deterrence and justice. However, deeper analysis suggests that such support largely stems from emotional and retaliatory impulses rather than rational belief in its deterrent value. The research also highlights how media sensationalism, political narratives, and public outrage influence judicial decision-making, often transforming justice into a performance to appease popular sentiment. Further, the disproportionate impact on marginalized and economically weaker sections exposes inherent biases within the system. The paper argues that the death penalty, as currently practiced, undermines constitutional values of dignity, equality, and due process. It concludes that India must move towards codifying clearer sentencing standards, strengthening legal aid, and eventually embracing humane alternatives such as life imprisonment without parole. In doing so, the criminal justice system would better align with global human rights principles and the evolving moral conscience of a democratic society.*

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## II. KEYWORDS

Death Penalty, Rarest of rare doctrine, Retributive sentiment, Capital Punishment, India.

## III. INTRODUCTION

In India, capital punishment has always remained a contentious topic. Some argue that it is rather a reaction than justice, whereas others hold the view that it is necessary to give justice in the most heinous crimes. The debate often comes around to whether the punishment really prevents crime or is only a reflection of how the public perceives certain events. Public calls for the death penalty have been re-stoked in recent years by sensational cases, especially in the case of rape or terrorism. Yet despite this, issues remain about consistency and fairness in the use of this penalty.

Individuals who come from disadvantaged and deprived regions are most likely to be given death penalties, as many experts claim, raising serious questions about the impartiality of the judicial system. The “rarest of rare” doctrine, which is supposed to act as a guideline for judges while pronouncing the death penalty, is applied very often in an uncertain and unequal fashion. Due to this, it is difficult to know when the death penalty is necessarily justified. The question underlying the issue at hand is whether or not the death penalty is a manifestation of justice or if it is society seeking revenge. By examining the current usage and perception of the death penalty in India, this essay seeks to answer that issue.

### A. Statement of problem

The capital punishment remains among the most contentious issues in India’s criminal justice system. Though constitutionally allowed in the “rarest of rare” cases, its continuation arouses deep concern about the principles of justice, and fairness and judicial decision-making based on retributive sentiment. The lack of clarity in determining what is the “rarest of rare” has led to disparate sentencing, which is often influenced by public pressure, media trials, and political pressures and not a consistent

legal standard. In addition, the issue of conscience of whether capital punishment is a means of imparting justice or merely satisfies an urge for vengeance within society has been left unresolved. Against the backdrop of emerging human rights standards and world trends against the death penalty, it is important to ascertain whether India's recourse to capital punishment is driven by a true quest for justice or retribution.

### **B. Research Objective**

1. To critically assess whether India's death penalty is motivated by retaliation or serves the interests of justice.
2. To examine the laws pertaining to the death penalty, including the "rarest of rare" theory.
3. To investigate how the media, public opinion, and political discourse affect cases involving the death penalty.

### **C. Research Questions**

1. Does the death penalty in India align with the principles of justice, or is it primarily driven by retributive sentiment?
2. How consistently is the "rarest of rare" doctrine applied by Indian courts in awarding capital punishment?
3. What role do media, public opinion, and political narratives play in shaping the discourse around the death penalty?

### **D. Research methodology**

1. Research Design: The study uses descriptive and analytical research design with empirical methods.
2. Data Collection: Data is collected through surveys, interviews, questionnaires, case law, journal articles, government reports, and international legal frameworks.
3. Sampling: Specific death penalty cases are selected for focused legal analysis.

4. Data Analysis: Qualitative thematic analysis and quantitative statistical analysis are used to interpret the data.
5. Comparative Analysis: India's death penalty laws are compared with international legal practices.

#### **E. Scope of the study**

This study examines whether the death penalty in India serves the purpose of justice or primarily reflects retributive sentiment. It analyses the legal framework governing capital punishment, judicial trends in its application, and the influence of public opinion on sentencing.

While the central focus remains on the Indian legal system, the study incorporates selective and limited references to foreign legal approaches and international debates on capital punishment. These references are used only to provide contextual understanding and comparative insight, rather than to conduct a detailed cross-jurisdictional analysis.

#### **F. Limitations of the study**

The study is primarily confined to the Indian legal system, and any comparative references to foreign jurisdictions or international human rights standards are limited and not exhaustive. As a result, the findings may not fully capture global perspectives on capital punishment.

Although the research includes a comparative dimension, its primary emphasis on India restricts the generalizability of conclusions to other legal systems.

The study relies partly on primary data, which may be limited in terms of sample size and representativeness. This may affect the extent to which the findings accurately reflect broader societal views.

Further, while public opinion is considered, the research does not comprehensively account for regional, cultural, or demographic variations across India, which may influence perspectives on such a complex and sensitive issue.

### **G. Research gap**

Although there is ample research available on the legal, ethical, and sociological aspects of the death penalty in India, not much is known regarding the social and psychological components leading to retaliatory attitude, particularly in high-profile cases. Most research is directed toward deterrence theories and judicial inconsistencies but neglects empirical evidence regarding how public sentiment, media influence, and political agendas generate support for the death penalty. Additionally, very little research addresses how victims' relatives perceive justice that does not include retaliation. In order to understand fully if the death penalty induces justice or merely reflects society's retaliation, these areas of deficiency need to be addressed.

### **H. Literature review**

#### **1. Anup Surendranath in his article "The Death Penalty in India: Down a Slippery Slope"**

The author critically analyses the ways in which India's capital punishment has developed into an arbitrary and discriminatory sentencing scheme.<sup>4</sup> He uses empirical research from NLU Delhi's Centre on the Death Penalty to show how socioeconomic status, inadequate legal counsel, caste, and religious affiliation have a big impact on death row sentencing. The article then using a uniform legal criterion, the author notes a troubling trend in which the death penalty is more commonly applied in situations that arouse significant public opinion. His work emphasizes how the "rarest of rare" theory established in *Bachan Singh v. State of Punjab* is being used subjectively and inconsistently. He comes to the conclusion that the death penalty in India serves more as a means of retaliation than as a means of enforcing the law.

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<sup>4</sup> Anup Surendranath, *The Death Penalty in India: Down a Slippery Slope*, 50(2) *Economic & Political Weekly* 65-72 (2015)

## **2. Dr. Anupama Roy in Gendered Citizenship: Historical and Conceptual Explorations**

Author's views help us comprehend how profoundly ingrained social and gendered hierarchies' impact legal outcomes, including the death penalty, even though the book primarily focusses on citizenship and gender.<sup>5</sup> She contends that rather than enforcing unbiased legal norms, the criminal justice system frequently reacts more to public sentiment and anger, particularly in cases involving violence against women. The argument that the death sentence is frequently a performance of justice rather than an act of it is supported by her examination of examples such as the Nirbhaya rape case. The argument that the death penalty in India is motivated more by retaliatory sentiment than by measured justice is subtly supported by Dr. Roy's conceptual investigation.

## **3. Bikram Jeet Batra, 'Capital Punishment in India: An Analysis of Supreme Court Judgments from 1950 to 2006' (Centre for the Study of Law and Governance, Jawaharlal Nehru University 2007)**

Batra demonstrates the enormous inconsistencies in death sentence sentencing by analyzing more than 700 Supreme Court rulings.<sup>6</sup> He notes that although the "rarest of rare" standard exists, courts have frequently not applied it consistently. According to his quantitative and qualitative studies, the death penalty is more a reflection of the sociopolitical context in which a case is decided than it is of a legal concept. Batra suggests institutional changes like mandatory judicial training on capital punishment and the creation of a permanent sentencing commission.

## **4. Usha Ramanathan in Death Penalty and the Indian Criminal Justice System (Chapter in Crime and Punishment in India**

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<sup>5</sup> Anupama Roy, *Gendered Citizenship: Historical and Conceptual Explorations* 132-155 (Orient BlackSwan, 2010)

<sup>6</sup> Batra BJ, *'Capital Punishment in India: An Analysis of Supreme Court Judgments from 1950 to 2006'* (Centre for the Study of Law and Governance, Jawaharlal Nehru University 2007)

The author offers a thorough philosophical and legal analysis of India's death penalty. She contends that judicial subjectivity, arbitrariness, and contradictions abound in Indian death penalty law.<sup>7</sup> She argues that capital sentencing is inconsistent and frequently impacted by non-essential things, like public anger, political interests, and media attention, by examining Supreme Court rulings and the "rarest of rare" threshold. The author raises doubts about the death penalty's actual deterrent value, citing its symbolic value in appeasing popular demands for retribution. Her finding is in line with the increasing international agreement that the death penalty is incompatible with the principles of a contemporary constitutional democracy.

#### **5. Justice P.N. Bhagwati in Right to Life and Liberty under the Constitution: Death Penalty and Human Rights**

The capital punishment is strongly resisted by Justice Bhagwati, who is celebrated for his liberal approach to constitutional rights, as a violation of Article 21's right to life.<sup>8</sup> According to him, in a civilized society where there prevails the rule of law, the death penalty cannot find any place. His argument rests on the psychological damage inflicted by long periods of death row incarceration along with the arbitrary application of the "rarest of rare" principle. He believes that the retributive nature of the death penalty is incompatible with the Indian Constitution's ideals of justice and human dignity. His views shaped the dissenting views on the death penalty in the courts.

#### **6. Chaudhary, R. & Gupta, S., "Capital Punishment in India: A Public Perception" (2022)**

To ascertain the general opinion of the public on the death sentence, the authors surveyed 402 citizens nationwide. In their survey, they found that there was moderate

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<sup>7</sup> Usha Ramanathan, *Death Penalty and the Indian Criminal Justice System*, in *Crime and Punishment in India: The Politics of Justice* 141-163 (Nandini Sundar ed., Oxford Univ. Press, 2020)

<sup>8</sup> P.N. Bhagwati, *Right to Life and Liberty under the Constitution: Death Penalty and Human Rights*, in *Liberty and Justice: An Anthology of Public Interest Litigation* 215-228 (S.K. Agarwala ed., Universal Law Publishing Co. 2004)

support for the death penalty, with the reason being the belief that it prevents crime.<sup>9</sup> Interestingly, a considerable percentage of the respondents believed that life imprisonment could be a worse punishment than death. The research also focused on how public indignation and sensational media reporting of ghastly crime scenarios often shape opinions on executions. The authors came to the conclusion that rather than empirical proof of deterrence, retributive sentiment plays a major role in shaping popular support for the death sentence in India.

#### **7. Neetika Vishwanath et al., “Judicial Perspectives on Death Penalty in India” (2022)**

Based on interviews with 60 former Supreme Court judges, this article highlights systemic failures in the administration of the death penalty.<sup>10</sup> Judges did admit to problems like torture during investigations, abuse of evidence, and insufficient legal representation for the accused. In spite of all these weaknesses, most judges confessed to continuing to approve death sentences in some cases, where there was evident dissonance between their perception of systemic injustices and their practice as judges. The authors concluded that judicial discretion in cases where the death penalty is applied is extremely subjective, with arbitrary decisions that detract from the fairness of the system.

#### **8. Project 39A, “Death Penalty in India Annual Statistics” (2023)**

539 inmates were on death row by the end of 2022, the greatest number in 20 years, according to this data, which also showed a dramatic increase in death sentences handed out by trial courts.<sup>11</sup> There is a culture of excessive punishment at the trial level, as evidenced by the data showing that relatively few of these sentences were upheld by appeal courts. The authors came to the conclusion that this pattern highlights how trial

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<sup>9</sup> Chaudhary, R., & Gupta, S. (2022). Capital Punishment in India: A Public Perception. *Indian Journal of Industrial Psychology*, 8(4)

<sup>10</sup> Vishwanath, N., et al. (2022). *Judicial Perspectives on Death Penalty in India*. Project 39A, National Law University, Delhi

<sup>11</sup> Project 39A (2023). *Death Penalty in India: Annual Statistics 2022*. National Law University, Delhi – Project 39A

court decisions are influenced by emotional factors and public pressure, and it also reflects a long-standing arbitrariness in capital sentencing.

**9. People’s Union for Democratic Rights (PUDR), “Review of Death Penalty Provisions in the Bhartiya Nyaya Sanhita, 2023” (2023)**

The expansion of the death penalty under the Bhartiya Nyaya Sanhita (BNS), which raised the number of offenses that qualify for execution from 11 to 15 and added new categories of offenses for which death is available as an alternative punishment alongside life imprisonment, was critically evaluated in this research.<sup>12</sup> The writers contended that public indignation and punitive populism, not logical legislative discussion, were the driving forces behind these reforms. According to the paper, such actions further exacerbate already-existing problems in the criminal justice system and distance India from international abolitionist tendencies.

**10. Oxford Death Penalty Research Unit, “Exploring Punitive Populism and Performative Justice in India” (2025)**

This article examined how India's death sentence system has been increasingly influenced by political factors and public opinion.<sup>13</sup> The authors contended that rather than addressing systemic problems, laws such as the BNS (2023) are a type of “performative justice,” intended to symbolically calm public ire. They came to the conclusion that this tendency weakens moral judgment in capital sentences and solidifies retributive sentiments.

**11. Hegde, V., Bhatti, R. & Dalvi, K., “The Death Penalty: A Socio-Legal Analysis of Its Efficacy and Ethics in India” (2023)**

The constitutional and morality of the death sentence in India were called into doubt by this socio-legal examination. The writers pointed to the disproportionate effect on

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<sup>12</sup> People’s Union for Democratic Rights (PUDR) (2023). Review of Death Penalty Provisions in the Bhartiya Nyaya Sanhita, 2023

<sup>13</sup> Oxford Death Penalty Research Unit (2025). Exploring Punitive Populism and Performative Justice in India. Oxford Law Blogs – Centre for Criminology, University of Oxford

marginalized groups as well as the lack of evidence regarding its deterrent effect.<sup>14</sup> They argued that the death penalty is incompatible with a modern democratic society and infringes on the fundamental right of protection of dignity. In conclusion, the writers argued that restorative justice and life in prison were more humanitarian options.

#### IV. BACKGROUND AND HISTORICAL CONTEXT

One of the most hotly contested topics in criminal jurisprudence around the world is the death sentence, sometimes referred to as the capital punishment. As a penalty for a crime, usually the most serious ones like murder, terrorism, or treason, it refers to the state-approved death of a person. The question of whether the death penalty in India actually advances justice or only appeases society's desire for vengeance is at the center of the discussion. Retributive attitude stems from the drive for vengeance or the desire to administer punishment commensurate with the harm inflicted, whereas justice as a legal and moral notion seeks to maintain fairness, deterrence, and rehabilitation. Therefore, the main question is whether the death penalty is motivated primarily by public wrath and retaliation or if it is consistent with the concepts of justice. India's judicial system has a long history of implementing the death sentence.

During British colonial authority, the Indian Penal Code (IPC) of 1860 established the basis for the death penalty by allowing it for a number of offenses. The list of capital offenses has been drastically trimmed over time as a result of the judiciary's more cautious stance. In the seminal case of *Bachan Singh v. State of Punjab* (1980), the Supreme Court maintained the death penalty's legitimacy while limiting its application to the "rarest of rare" circumstances. The purpose of this philosophy was to guarantee that the death penalty would only be used in extreme situations where life in prison or other forms of punishment was insufficient. However, this principle's application has

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<sup>14</sup> Hegde, V., Bhatti, R., & Dalvi, K. (2023). The Death Penalty: A Socio-Legal Analysis of Its Efficacy and Ethics in India. *International Journal of Legal Research and Review (IJLLR)*, 11(2)

frequently been criticized for being arbitrary and inconsistent, raising questions about its objectivity.

International viewpoints significantly complicate the death penalty discussion in India. The death penalty has been abolished in several nations because to concerns about human rights, the potential for erroneous convictions, and its dubious deterrence value. However, it is still in use in India, especially for offenses that shock the public's collective conscience. popular debate over whether the death penalty is a tool for enforcing justice or just a way to quell popular ire has been rekindled by high-profile instances, such as the execution of the defendants in the 2012 Delhi gang rape case.

The purpose of this study is to investigate the fundamental reasons and arguments in favor of the death penalty's continued use in India. It seeks to assess whether the death penalty preserves the principles of justice or feeds retaliatory emotion in a contemporary democratic society by looking at its historical development, legal structure, and actual use.

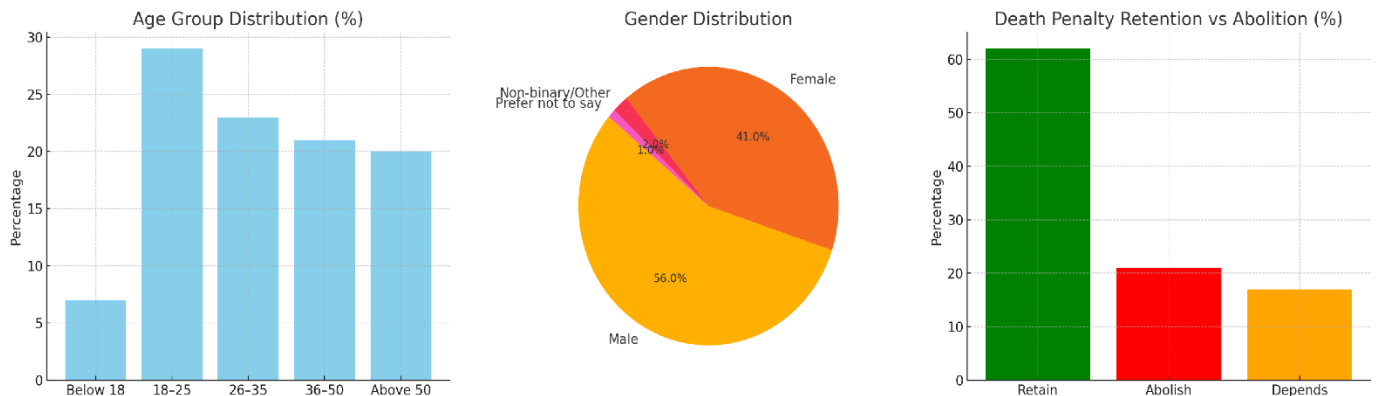
## V. CONCEPTUALIZATION

1. **Death penalty:** The death penalty refers to the legal process by which a person is sentenced by a court of law to death as a punishment for a crime. It is the sentence or judgment that mandates the execution of the convicted individual.
2. **Capital Punishment:** Capital punishment is the actual implementation or execution of the death penalty. It is the act of carrying out the sentence of death imposed by a competent court, typically through methods such as hanging, lethal injection, electrocution, or firing squad, depending on the law of the land.
3. **Retributive sentiment:** It refers to the belief within the legal system (often reflected in judgments, laws, or public opinion) that punishment is morally justified because the offender deserves to suffer in proportion to the gravity of their crime.
4. **Rarest of rare:** It is a legal principle used to limit the use of the death penalty. It means that capital punishment should only be given in exceptional cases where

the crime is so heinous, brutal, and shocking that no other punishment (like life imprisonment) would be just.

5. **Public outcry:** Public outcry refers to a strong and widespread reaction of anger, protest, or disapproval by the general public, especially in response to an event, decision, or injustice.
6. **Contentious issue:** A contentious issue is a topic or subject that causes a lot of disagreement, debate, or conflict among people, groups, or even nations.
7. **Deterrence theory:** It means that individuals can be discouraged from committing crimes by the fear of punishment.
8. **Bolstering:** means strengthening, supporting, or reinforcing something.
9. **Jurisprudence:** Jurisprudence is the study that deals with the fundamental principles and various concepts of law.

## VI. FINDINGS



The first graph shows the age group distribution of the respondents. A significant 29% of participants were aged 18-25, reflecting a strong representation of youth voices in the survey. This was followed by 23% in the 26-35 age group and 21% in the 36-50 bracket, while 20% were above 50 years old. Only 7% were below 18. This spread indicates that the findings capture perspectives across generational lines, with the largest input coming from young adults who are often more aware of evolving human rights discourses.

The second graph depicts gender distribution. Male respondents constituted 56% of the sample, while females made up 41%. Only 2% identified as non-binary or other genders, and 1% preferred not to disclose their gender. This relatively balanced gender split ensures that both male and female viewpoints are significantly reflected in the overall analysis, though the low percentage of non-binary participants suggests that further outreach might be required for greater inclusivity.

The third graph addresses the core question of whether the death penalty should be retained in India. The majority (62%) supported its retention, while 21% favored complete abolition. Another 17% believed that the decision should depend on the facts of each case. This demonstrates that while most respondents continue to view the death penalty as a necessary form of punishment, there is a growing section of the population questioning its relevance or advocating for case-by-case discretion.

## **VII. CRITICAL ANALYSIS**

In order to ensure a comprehensive picture of public opinion toward the death sentence, the study collected responses from a wide range of demographics. The 18–25 age group accounted for a sizable share of responders (29%) with the other age groups contributing about equally. With 41% of respondents being female and 56% being male, the gender distribution was equal, guaranteeing that no one group dominated the data. The broad range of educational and professional backgrounds deepened the analysis and strengthened the conclusions across socioeconomic groups.

62% of respondents were in favor of retaining the death penalty, 21% were in favor of abolishing it, and 17% thought it should be used in certain situations. This indicates that while the majority is in favor of retention, a sizable minority is against its continued usage, which suggests that there is a growing debate about its legitimacy. Remarkably, those under 25 years old had the most support for abolition, indicating a generational shift motivated by mistrust in systemic justice and human rights concerns. Support for retention was highest among older age groups, especially those over 50, indicating that they associate the death penalty with justice and deterrent.

The application of the death penalty's justice became a crucial issue. Many questioned whether the "rarest of rare" notion was regularly implemented, and nearly 49% of respondents thought it was unevenly applied across socioeconomic classes. These opinions show a lack of confidence in the judiciary's capacity to apply the death penalty fairly. Most respondents said that socioeconomic, political, or personal prejudices frequently influence sentence decisions, even though some acknowledged advancements in higher courts.

Major themes in the comments also included political influence and the media. 64% of respondents thought politicians use the death penalty discussion to seem tough on crime, and 58% thought the media had a major impact on judicial decisions. All age groups of respondents acknowledged that public indignation, heightened by sensationalist media, can compel judges to impose the death penalty even in cases when it is not legally warranted. In addition to undermining the idea of impartial justice, this gives the death penalty debate a more populist undertone.

According to the survey, the majority of people still support the death penalty, but this support is primarily motivated by retaliation rather than faith in its ability to deter or rehabilitate. Younger and better educated respondents are leaning toward abolitionist views because of worries about uneven implementation, institutional prejudice, and outside influences. The death penalty runs the risk of remaining a tool of communal retribution rather than actual justice if reforms are not made to guarantee greater openness and impartiality.

## VIII. THE CONSTITUTIONAL FRAMEWORK AND JUDICIAL EVOLUTION

The death sentence is not expressly forbidden by the Indian Constitution. The right to life is guaranteed under Article 21, yet it permits the deprivation of life by "procedure established by law." *A.K. Gopalan v. State of Madras (1950)*<sup>15</sup> gave this phrase a limited

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<sup>15</sup> *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27

interpretation at first, but the seminal ruling in *Maneka Gandhi v. Union of India* (1978)<sup>16</sup> broadened it to encompass fairness, rationality, and due process. Although a high bar for the death penalty should ideally be imposed by this extension, its actual implementation is still uneven.

The Supreme Court maintained the death penalty's legitimacy in *Bachan Singh v. State of Punjab* (1980)<sup>17</sup>, but it limited its use to the "rarest of rare cases." This theory was designed to avoid the arbitrary application of the death penalty and guarantee proportionality in sentencing. But a review of later case law shows that the doctrine is inherently ambiguous. Judicial subjectivity frequently affects the definition of the "rarest of rare," which leads to inconsistent and unequal punishment decisions. The issue still exists notwithstanding the Court's endeavor to provide guiding elements in *Machhi Singh v. State of Punjab* (1983).<sup>18</sup>

## IX. INCONSISTENCY AND JUDICIAL DISCRETION

Although sentencing involves some degree of judicial discretion, the effects of the death penalty are final. Many Indians, especially legal professionals, feel that the concept is not implemented consistently, according to the data and poll results. This concern has been widely acknowledged in legal scholarship and is supported by empirical studies highlighting inconsistencies in sentencing. Depending on the bench, the accused's socioeconomic background, and the prevailing public opinion at the time, cases with comparable facts have produced varying results.

For example, in *Shankar Kisanrao Khade v. State of Maharashtra* (2013)<sup>19</sup>, Justice K.S. Radhakrishnan of the Supreme Court emphasized the need for a more structured and principled framework in cases involving the death penalty. Justice Madan B. Lokur's noteworthy concurring opinion further reinforced these concerns. In a similar vein, the

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<sup>16</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

<sup>17</sup> *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684

<sup>18</sup> *Machhi Singh v. State of Punjab* (1983) 3 SCC 470

<sup>19</sup> *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546

Court recognized in *Sangeet v. State of Haryana* (2012)<sup>20</sup> that the application of the “rarest of rare” doctrine had become judge-centric rather than principle-centric. This concern has also been acknowledged in recent judicial developments. In *Suo Motu Writ Petition (Criminal) No. 1 of 2022*, the Supreme Court of India took suo motu cognizance of the inconsistent application of the death penalty and referred the matter to a Constitution Bench. The Bench has examined the need for a more uniform and principled sentencing framework in capital cases and has emphasized the importance of comprehensive mitigation analysis and procedural safeguards. This development represents a significant institutional recognition of the arbitrariness that continues to affect death penalty sentencing in India.

These discrepancies erode public trust in the criminal justice system and cast doubt on whether the death penalty actually advances justice or is just a reflection of judicial subjectivity.

## X. SOCIO-ECONOMIC BIASES

Empirical evidence, including studies by Project 39A, demonstrates that the death penalty disproportionately affects economically and socially marginalized groups, making it one of the most concerning features of its application. Numerous studies have demonstrated that the majority of death row inmates come from economically poor homes, including those conducted by Project 39A at National Law University in Delhi. They are susceptible to investigation errors and frequently do not have access to knowledgeable legal counsel.

This observation is consistent with the survey’s findings that over half of participants think the death penalty is applied unfairly to people from different socioeconomic backgrounds. An impoverished defendant who cannot afford knowledgeable legal representation is more likely to be found guilty and get harsher punishments. This

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<sup>20</sup> *Sangeet v. State of Haryana* (2012) 13 SCC 1

systemic imbalance exposes the structural weaknesses in the death penalty framework and undercuts the fundamental obligation of equality before the law under Article 14.

## **XI. RETRIBUTIVE SENTIMENT AND PUBLIC PRESSURE**

It is impossible to ignore how public opinion shapes the conversation around the death penalty. Public indignation put tremendous pressure on the judiciary and the executive branch to apply the death penalty in a number of well-known instances, including the Nirbhaya case (2012). The bigger question is whether sentences should be based on constitutional morality or be impacted by public sentiment, even though the crime in that case was undoubtedly horrible.

According to survey results, 58% of respondents think that media coverage affects judicial decision-making, and 64% of respondents think that politicians utilize the death sentence issue to project a tough-on-crime posture. These opinions, which are backed by anecdotal data, imply that political and populist factors, rather than just legal ones, may occasionally influence the death penalty. Such a tendency runs the risk of turning the legal system from an unbiased adjudicatory body into a platform shaped by popular sentiment and retaliation.

## **XII. DETERRENCE: MYTH OR REALITY?**

Deterrence has historically been the main defense offered for the death penalty. The death penalty and lower crime rates, however, have not been clearly linked by empirical study conducted worldwide, including in India. Although deterrence presumes that criminals think things through before committing crimes, many crimes that carry the death penalty, like murders, are spontaneous or motivated by strong emotions.

The death penalty's efficacy is called into doubt if it fails to significantly discourage crime. Is its purpose limited to appeasing society's collective conscience? If so, it serves more as a tool for retaliation than as a deterrent. The rehabilitative principles that

contemporary criminal jurisprudence is emphasizing more and more run counter to this retributive orientation.

### **XIII. THE MORAL AND HUMAN RIGHTS PERSPECTIVE**

The death sentence is problematic from a human rights perspective since it cannot be reversed. Wrongful convictions have been reported, demonstrating that the Indian criminal justice system is not impervious to mistakes. The ultimate injustice that the state will never be able to correct is the execution of an innocent person. More than 140 nations have either outlawed the death penalty in law or practice, indicating a growing global push towards abolition.

India has a moral duty to gradually strive towards abolition as a signatory to the International Covenant on Civil and Political Rights (ICCPR). In cases like *Mithu v. State of Punjab*, where the Court declared the mandatory imposition of the death penalty under Section 303 of the IPC to be unconstitutional, the Supreme Court has directly addressed the concepts of human dignity and the right to life in relation to the death penalty. The ruling stressed that limiting judicial discretion in sentencing violates Article 21's guarantee of fair procedure. This position was further strengthened in *Shatrughan Chauhan v. Union of India* (2014) 3 SCC 1, where the Court held that inordinate delay in deciding mercy petitions and prolonged death row incarceration can violate Article 21, recognizing the psychological suffering of prisoners as a significant human rights concern and a ground for commutation of the death sentence.

Additionally, the 262nd Law Commission of India Report on the Death Penalty offers a thorough and reliable examination of the death penalty in India, concluding that it should be abolished for all crimes other than those connected to terrorism.

### **XIV. THE WAY FORWARD**

If the death sentence is to remain in place, significant changes must be made to the Indian judicial system. First, in order to lessen judicial subjectivity in sentence, the "rarest of rare" theory needs to be codified with more precise and objective criteria.

Second, in order to provide competent and successful legal counsel for all accused individuals, regardless of their socioeconomic status, more robust procedural safeguards must be put in place. Third, when deciding cases involving the death penalty, the executive and judiciary must be shielded from political pressure and media influence.

At the same time, there is a strong argument in favour of India abolishing the death sentence. A harsh but compassionate substitute that guarantees society protection without using irreparable punishment is life in jail without the possibility of parole. Such a change would be in line with the rising international movement to abolish the death penalty and be more compatible with the constitutional commitment to dignity.

## **XV. CONCLUSION**

The death sentence is still one of the most divisive topics in India's criminal justice system, according to an examination of survey results and more general legal viewpoints. Although the majority of respondents (62%) favor its continuation, an increasing number of them—especially those who are younger and better educated—are doubting its efficacy, morality, and justice. Confidence in the death penalty as a fair and just punishment is weakened by worries about the uneven application of the “rarest of rare” theory, socioeconomic prejudices against underprivileged groups, and the excessive influence of the media and public opinion.

Even while the death penalty is sometimes seen as providing victims with justice or closure, a large portion of the support seems to come from retaliatory sentiment rather than evidence of its effectiveness as a deterrence. India now has to decide if upholding the death penalty is consistent with its constitutional ideals of dignity and life. The path to eventual abolition may be paved by bolstering protections and investigating alternatives like life imprisonment.

## **XVI. RECOMMENDATIONS AND SUGGESTIONS**

Codification of the “Rarest of Rare” Doctrine: Parliament should create a clear statutory framework to reduce judicial subjectivity and ensure uniformity in capital sentencing.

Strengthen Legal Aid: Ensure that all accused, particularly those from marginalized socio-economic groups, have access to competent defense counsel.

Promote Alternatives: Expand the use of life imprisonment without parole as a viable alternative to capital punishment.

Reduce Media Influence: Impose stricter guidelines on media coverage of ongoing trials to prevent sensationalism and external pressure on courts.

Public Awareness: Conduct awareness campaigns about the limitations of the death penalty, including its questionable deterrent effect and potential for wrongful convictions.

## **XVII. REFERENCE / BIBLIOGRAPHY**

### **A. Cases**

1. A.K. Gopalan v State of Madras AIR 1950 SC 27
2. Bachan Singh v State of Punjab (1980) 2 SCC 684
3. Machhi Singh v State of Punjab (1983) 3 SCC 470
4. Maneka Gandhi v Union of India AIR 1978 SC 597
5. Mithu v State of Punjab AIR 1983 SC 473
6. Sangeet v State of Haryana (2012) 13 SCC 1
7. Shankar Kisanrao Khade v State of Maharashtra (2013) 5 SCC 546

### **B. Books**

1. Roy A, Gendered Citizenship: Historical and Conceptual Explorations (Orient BlackSwan 2010)

2. Ramanathan U, 'Death Penalty and the Indian Criminal Justice System' in Sundar N (ed), *Crime and Punishment in India: The Politics of Justice* (Oxford University Press 2020)
3. Bhagwati PN, 'Right to Life and Liberty under the Constitution: Death Penalty and Human Rights' in Agarwala SK (ed), *Liberty and Justice: An Anthology of Public Interest Litigation* (Universal Law Publishing 2004)

### **C. Journal Articles**

1. Surendranath A, 'The Death Penalty in India: Down a Slippery Slope' (2015) 50(2) *Economic & Political Weekly* 65
2. Chaudhary R and Gupta S, 'Capital Punishment in India: A Public Perception' (2022) 8(4) *Indian Journal of Industrial Psychology*
3. Hegde V, Bhatti R and Dalvi K, 'The Death Penalty: A Socio-Legal Analysis of Its Efficacy and Ethics in India' (2023) 11(2) *International Journal of Legal Research and Review*

### **D. Reports and Institutional Publications**

1. Project 39A, *Death Penalty in India: Annual Statistics 2022* (NLU Delhi 2023)
2. Vishwanath N and others, *Judicial Perspectives on Death Penalty in India* (Project 39A, NLU Delhi 2022)
3. People's Union for Democratic Rights (PUDR), *Review of Death Penalty Provisions in the Bhartiya Nyaya Sanhita, 2023* (2023)
4. Law Commission of India, *262nd Report on the Death Penalty* (2015)
5. Oxford Death Penalty Research Unit, *Exploring Punitive Populism and Performative Justice in India* (University of Oxford 2025)