

Death Penalty Jurisprudence in India: Balancing deterrence, Mercy and Human Rights

Mr. Mukul | Assistant Professor-Law
Geeta Institute of Law-Panipat

Abstract

The death penalty continues to occupy a highly debated position in Indian criminal jurisprudence. Its retention is justified by some as a deterrent against grave crimes, while critics question its compatibility with human rights and the constitutional value of dignity. The Indian Supreme Court, through its landmark judgment in *Bachan Singh v. State of Punjab* (1980), narrowed the scope of capital punishment by introducing the “rarest of rare” doctrine, ensuring that death penalty is imposed only when life imprisonment is deemed insufficient¹. This principle was further elaborated in *Machhi Singh v. State of Punjab* (1983), where the Court laid down aggravating and mitigating circumstances to guide judicial discretion².

Yet, even with these safeguards, concerns remain about arbitrariness and unequal application of the law. Empirical studies show that those from marginalized socio-economic backgrounds are disproportionately affected, raising doubts about fairness and equality before law³. The power of executive clemency under Articles 72 and 161 of the Constitution provides a humanitarian safeguard, but delays in the disposal of mercy petitions have themselves been held to violate the fundamental right to life under Article 21, as observed in *Shatrughan Chauhan v. Union of India* (2014)⁴.

India’s position also attracts international scrutiny. While global trends reveal a growing abolitionist movement, supported by instruments such as the International Covenant on Civil and Political Rights (ICCPR), India retains the death penalty for serious offences⁵. This creates a tension between the goals of deterrence, the exercise of mercy, and the obligations to uphold human rights.

Thus, death penalty jurisprudence in India demonstrates a delicate balancing act—acknowledging society’s demand for justice and deterrence on one hand, while ensuring constitutional morality, fairness, and human dignity on the other⁶. The debate ultimately reflects the evolving struggle between retributive justice and a rights-based approach to punishment in a democratic society.

Keywords :

death penalty in India, capital punishment, rarest of rare doctrine, deterrence, mercy petitions, executive clemency, Article 21, constitutional morality, human rights, retributive justice, proportionality in sentencing, judicial discretion, arbitrariness, socio-economic disparity, international human rights law, ICCPR, abolitionist movement, dignity, fairness, constitutional jurisprudence.

Introduction

The death penalty in India has remained one of the most debated aspects of criminal law, oscillating between the principles of deterrence, justice, and human rights. Its roots can be traced to colonial criminal law, where capital punishment was viewed as a necessary tool to maintain order and in still fear among offenders⁷. After independence, although the Constituent Assembly deliberated upon the morality of retaining capital punishment, The Bharatiya Nyaya Sanhita (Indian Penal Code) continued to provide for it in heinous crimes such as murder, terrorism, and waging war against the state⁸. Over time, constitutional jurisprudence, particularly under Article 21 which guarantees the right to life, demanded a more restrictive approach, leading

¹ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

² *Machhi Singh v. State of Punjab*, AIR 1983 SC 957.

³ Amnesty International, *Death Sentences and Executions 2022: Global Report* (London: Amnesty International, 2023).

⁴ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

⁵ United Nations Human Rights Committee, General Comment No. 36, Article 6: Right to Life, CCPR/C/GC/36 (2018).

⁶ Baxi, U., *The Crisis of the Indian Legal System* (Delhi: Vikas, 1982).

⁷ Radhakrishnan, V., *Death Penalty in India: A Historical and Legal Perspective* (New Delhi: Eastern Book Co., 2010).

⁸ Indian Penal Code, 1860.

the Supreme Court in *Bachan Singh v. State of Punjab* (1980) to evolve the “rarest of rare” doctrine, thereby limiting its application only to exceptional circumstances⁹. This judicial development highlights the effort to strike a balance between societal demand for deterrence and the constitutional value of human dignity. Yet, the Indian approach continues to face criticism for arbitrariness, socio-economic bias, and inconsistency, while also being at odds with the global movement towards abolition, reflected in instruments like the International Covenant on Civil and Political Rights (ICCPR)¹⁰. Thus, the Indian death penalty debate captures an evolving struggle—whether justice is better served through retributive punishment or through a rights-based approach grounded in fairness, proportionality, and human dignity¹¹.

Constitutional and Legal Framework

The constitutional and legal framework governing the death penalty in India reflects a tension between the state’s authority to punish and the individual’s right to life. The *Bharatiya Nyaya Sanhita* (The Indian Penal Code, 1860,) prescribes capital punishment for offences such as murder, terrorism, and certain cases of rape, while the *bharatiya Nagarik Suraksha Sanhita* (the Code of Criminal Procedure, 1973,) requires that the death sentence be confirmed by a High Court before execution¹². The Constitution provides significant safeguards through Articles 21, 72, and 161, ensuring that no person is deprived of life except by a just, fair, and reasonable procedure, while also vesting powers of pardon and commutation in the President and Governors as a humanitarian check on judicial decisions¹³. Judicial interpretation has reinforced these protections, with the Supreme Court affirming in *Maneka Gandhi v. Union of India* (1978) that the right to life must be read expansively to include fairness and due process¹⁴. Furthermore, the Court has consistently attempted to limit arbitrariness in capital sentencing, most notably through the “rarest of rare” doctrine in *Bachan Singh v. State of Punjab* (1980)¹⁵. Internationally, India is a signatory to the International Covenant on Civil and Political Rights (ICCPR), which, while not mandating abolition, urges progressive restriction of the death penalty¹⁶. This legal architecture illustrates how India seeks to reconcile its retentionist stance with constitutional morality and global human rights commitments.

Judicial Evolution of Death Penalty Jurisprudence

The judicial journey of the death penalty in India demonstrates an evolving attempt to reconcile punishment with constitutional values. The debate began with *Jagmohan Singh v. State of U.P.* (1973), where the Supreme Court upheld the constitutionality of capital punishment, holding that the death penalty was awarded through a fair judicial process and therefore did not violate Article 21¹⁷. However, concerns of arbitrariness soon arose, leading to the landmark ruling in *Bachan Singh v. State of Punjab* (1980), which introduced the “rarest of rare” doctrine, ensuring that capital punishment would only be imposed when life imprisonment was wholly inadequate¹⁸. This principle was further refined in *Machhi Singh v. State of Punjab* (1983), where the Court laid down guidelines distinguishing aggravating and mitigating factors, attempting to bring greater consistency to sentencing¹⁹. In later years, judicial scrutiny extended to procedural safeguards and human rights concerns; for instance, in *Mithu v. State of Punjab* (1983), the Supreme Court struck down mandatory death penalty provisions for murder by a life convict, declaring them unconstitutional as they violated Article 21²⁰. More recently, in *Shatrughan Chauhan v. Union of India* (2014), the Court recognised that prolonged delays in deciding mercy petitions amount to cruel and degrading treatment, warranting commutation to life imprisonment²¹. Collectively, these judgments reflect a gradual narrowing of the death penalty’s scope,

⁹ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

¹⁰ United Nations Human Rights Committee, General Comment No. 36, Article 6: Right to Life, CCPR/C/GC/36 (2018).

¹¹ Baxi, U., *The Crisis of the Indian Legal System* (Delhi: Vikas, 1982).

¹² Indian Penal Code, 1860; Code of Criminal Procedure, 1973.

¹³ The Constitution of India, Articles 21, 72, 161.

¹⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹⁵ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

¹⁶ United Nations Human Rights Committee, General Comment No. 36, CCPR/C/GC/36 (2018).

¹⁷ *Jagmohan Singh v. State of U.P.*, (1973) 1 SCC 20.

¹⁸ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

¹⁹ *Machhi Singh v. State of Punjab*, AIR 1983 SC 957.

²⁰ *Mithu v. State of Punjab*, (1983) 2 SCC 277.

²¹ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

highlighting the judiciary's role in striking a delicate balance between deterrence, justice, and the protection of human dignity.

Death Penalty and the Question of Deterrence

The justification of the death penalty in India has often been grounded in the deterrence theory, which argues that the fear of death discourages individuals from committing heinous crimes. However, both criminological research and judicial reasoning suggest that the deterrent effect of capital punishment remains unproven. The Law Commission of India, in its 262nd Report (2015), found no empirical evidence to establish that the death penalty serves as a greater deterrent than life imprisonment²². Internationally too, comparative studies, including those by the United Nations, indicate that crime rates in abolitionist countries have not increased after the removal of capital punishment²³. Despite this, Indian courts have occasionally upheld deterrence as a valid justification, particularly in cases involving terrorism or crimes that shock the collective conscience of society, as reflected in *Dhananjay Chatterjee v. State of West Bengal* (1994), where the Court emphasized the need to deter similar offences²⁴. Critics, however, argue that deterrence is often used as a rhetorical justification rather than a proven outcome, and that structural issues such as policing, socio-economic inequality, and access to justice play a far greater role in crime prevention²⁵. The continued reliance on deterrence thus raises the fundamental question of whether capital punishment truly achieves its intended purpose or merely perpetuates retributive justice under the guise of societal protection²⁶.

Mercy, Clemency, and Humanitarian Safeguards

The framework of mercy and clemency in India represents a crucial humanitarian safeguard against the harshness of capital punishment. The Constitution empowers the President under Article 72 and the Governors under Article 161 to grant pardons, reprieves, commutations, or remissions in cases involving death sentences, thereby acting as a final check against judicial fallibility²⁷. The Supreme Court has consistently emphasized that these powers are not acts of grace but constitutional duties, meant to uphold fairness and justice²⁸. In *Kehar Singh v. Union of India* (1989), the Court clarified that the executive's power to grant mercy is independent of judicial verdicts, allowing considerations of humanity and public welfare beyond strict legal reasoning²⁹. However, prolonged delays in deciding mercy petitions have attracted judicial criticism, as seen in *Shatrughan Chauhan v. Union of India* (2014), where such delays were held to violate the right to life and dignity under Article 21, thereby warranting commutation of sentences³⁰. The Court has also considered factors like mental illness, solitary confinement, and the convict's socio-economic background while assessing mercy claims, reflecting a growing recognition of human rights concerns³¹. Thus, clemency jurisprudence in India highlights the evolving effort to balance the severity of capital punishment with compassion, fairness, and the constitutional value of human dignity.

Human Rights Concerns and Criticism

The death penalty in India has faced sustained criticism from human rights advocates who argue that it undermines the fundamental principles of equality, dignity, and fairness enshrined in the Constitution. Studies reveal that capital punishment disproportionately impacts individuals from marginalised and economically weaker sections, reflecting systemic bias in access to legal resources and representation³². The Supreme Court itself has acknowledged the risk of arbitrariness in sentencing, noting that similar crimes often attract different punishments depending on the subjective discretion of judges, thereby threatening the principle of equality

²² Law Commission of India, Report No. 262: The Death Penalty (2015).

²³ United Nations, Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (2015).

²⁴ *Dhananjay Chatterjee v. State of West Bengal*, (1994) 2 SCC 220.

²⁵ Hood, R., & Hoyle, C., *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2015).

²⁶ Baxi, U., *Human Rights in a Posthuman World: Critical Essays* (Oxford: Oxford University Press, 2007).

²⁷ The Constitution of India, Articles 72 and 161.

²⁸ *Epuru Sudhakar v. Government of A.P.*, (2006) 8 SCC 161.

²⁹ *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

³⁰ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

³¹ Amnesty International, *Mercy, Clemency and the Death Penalty in India* (2020).

³² Amnesty International, *Death Sentences and Executions 2022: Global Report* (London: Amnesty International, 2023).

before law³³. International human rights bodies, including the United Nations Human Rights Committee, have consistently urged India to move towards abolition, stressing that the death penalty violates the inherent dignity of individuals and often amounts to cruel, inhuman, and degrading treatment³⁴. India's continued retention of capital punishment also places it at odds with the global trend, where more than two-thirds of countries have abolished it either in law or in practice³⁵. Furthermore, prolonged solitary confinement, execution delays, and lack of transparency in the mercy process have been criticised as indirect violations of Article 21 of the Indian Constitution, which guarantees life and personal liberty³⁶. These concerns highlight the growing tension between India's retentionist stance and its constitutional and international obligations to protect human rights.

Conclusion

The jurisprudence of the death penalty in India reflects an uneasy balance between the goals of deterrence, justice, and the constitutional commitment to human dignity. While the judiciary has significantly narrowed its application through the "rarest of rare" doctrine in *Bachan Singh v. State of Punjab* (1980), concerns of arbitrariness, socio-economic bias, and disproportionate sentencing continue to cast doubt on its fairness³⁷. The constitutional provisions of clemency under Articles 72 and 161, along with judicial interventions in cases like *Shatrughan Chauhan v. Union of India* (2014), highlight an evolving recognition of humanitarian safeguards³⁸. Yet, the persistence of procedural delays, inconsistent sentencing standards, and international criticism suggest that India's death penalty regime remains at odds with both constitutional morality and global human rights trends³⁹. With the Law Commission of India in its 262nd Report (2015) recommending abolition for ordinary crimes, the debate now lies at a crucial juncture—whether to continue a punishment with limited evidence of deterrence, or to embrace a rights-based approach that prioritises life imprisonment and rehabilitation⁴⁰. Ultimately, the future of capital punishment in India will depend on whether the state and judiciary can reconcile the competing demands of justice and human rights, thereby aligning criminal law with the evolving ideals of fairness, dignity, and constitutional democracy⁴¹.

³³ *Mithu v. State of Punjab*, (1983) 2 SCC 277.

³⁴ United Nations Human Rights Committee, General Comment No. 36, CCPR/C/GC/36 (2018).

³⁵ Hood, R., & Hoyle, C., *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2015).

³⁶ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

³⁷ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

³⁸ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

³⁹ United Nations Human Rights Committee, General Comment No. 36, CCPR/C/GC/36 (2018).

⁴⁰ Law Commission of India, Report No. 262: *The Death Penalty* (2015).

⁴¹ Baxi, U., *Human Rights in a Posthuman World: Critical Essays* (Oxford: Oxford University Press, 2007).