

## **A Critical Analysis of the Death Penalty in India: Legal and Ethical Perspectives**

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### **Abstract**

*The death penalty remains one of the most controversial aspects of criminal justice worldwide, with countries divided on its ethical, legal, and practical implications. In India, capital punishment is retained but used sparingly, with the Supreme Court advocating for its application in the “rarest of rare” cases. This paper critically examines the legal framework governing the death penalty in India, judicial precedents, international perspectives, and the ethical considerations surrounding its continued existence. It evaluates whether the death penalty serves as an effective deterrent to crime and explores alternative approaches to justice. The study concludes by discussing the necessity of legal reforms and the future of capital punishment in India.*

*Keywords: Death Penalty, Capital Punishment, Indian Penal Code, Judicial Precedents, Human Rights, Ethics*

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## **1. Introduction**

Capital punishment has been a subject of intense legal and moral debate in India. While proponents argue that it serves as a strong deterrent to heinous crimes, opponents view it as a violation of human rights and an irreversible punishment prone to judicial errors. India retains the death penalty for specific crimes, applying it in exceptional cases where alternative punishments are deemed insufficient. This paper critically examines India's approach to capital punishment, analyzing its legal framework, ethical implications, and global trends.

## **2. Legal Framework of the Death Penalty in India**

The death penalty in India is governed by several laws and legal provisions:

### **2.1 Indian Penal Code (IPC), 1860**

The IPC prescribes the death penalty for several offenses, including:

Section 302 – Murder

Section 121 – Waging war against the Government of India

Section 364A – Kidnapping for ransom leading to death

Section 376A – Rape leading to death or a persistent vegetative state of the victim

Section 396 – Dacoity with murder

## **2.2 Code of Criminal Procedure (CrPC), 1973**

Section 354(3): Courts must record special reasons for awarding the death penalty instead of life imprisonment.

Section 366: Every death sentence must be confirmed by the High Court before execution.

Section 368: The High Court can confirm, commute, or annul a death sentence.

## **2.3 Constitutional Provisions**

Article 21 (Right to Life): Though India upholds the right to life, it allows deprivation of life by a fair, just, and reasonable procedure established by law.

Article 72 C 161: Grant the President and Governors the power to pardon, commute, or remit death sentences.

### **3. Judicial Precedents and Interpretation**

#### **3.1 The “Rarest of Rare” Doctrine**

The Supreme Court of India, in *Bachan Singh v. State of Punjab* (1980), laid down the "rarest of rare" doctrine, stating that the death penalty should only be applied when life imprisonment is inadequate. This case set the foundation for future judgments, ensuring the penalty is imposed sparingly.

#### **3.2 Key Supreme Court Judgments**

**Machhi Singh v. State of Punjab (1983):** Expanded the “rarest of rare” principle, identifying factors such as the manner of commission, motive, and impact on society.

**Dhananjay Chatterjee v. State of West Bengal (1984):** Emphasized deterrence and retribution for heinous crimes like rape and murder.

**Santosh Kumar Bariyar v. State of Maharashtra (2009):** Criticized inconsistency in awarding the death penalty and highlighted the need for a more uniform approach.

**Shatrughan Chauhan v. Union of India (2014):** Recognized undue delay in execution as grounds for commutation to life imprisonment.

**Manoj s Ors. v. State of Madhya Pradesh (2022):** Stressed the need for a more scientific approach, requiring a psychological assessment of the convict before awarding the death penalty.

## **4. Ethical and Moral Considerations**

### **4.1 Arguments in Favor of the Death Penalty**

- Deterrence: The fear of capital punishment discourages heinous crimes.
- Retribution: A just response to grave offenses, balancing the scales of justice.
- Justice for Victims: Provides closure and a sense of justice to victims' families.
- Public Sentiment: Many believe that extreme crimes warrant extreme punishments.

### **4.2 Arguments Against the Death Penalty**

- ı Risk of Wrongful Conviction: Judicial errors can lead to the execution of innocent people.
- ı Violation of Human Rights: The irreversible nature of the death penalty contradicts human dignity.
- ı Lack of Deterrent Effect: Studies suggest no conclusive evidence that capital punishment reduces crime.
- ı Discriminatory Application: The poor and marginalized are more likely to receive the death penalty due to inadequate legal representation.
- ı Psychological Suffering: Prolonged periods on death row cause mental distress, amounting to cruel and inhuman treatment.

## **5. Global Trends and India's Position**

### **5.1 International Practices**

Many countries have abolished the death penalty due to human rights concerns:

Abolished Countries: UK, Canada, Australia, Germany, South Africa

Retentionist Countries: China, USA, Saudi Arabia, India

### **5.2 United Nations Human Rights Perspectives**

The UN General Assembly has repeatedly passed resolutions calling for a moratorium on executions.

International Covenant on Civil and Political Rights (ICCPR), 1966: Advocates for restricting the death penalty to the most serious crimes.

India has voted against UN resolutions advocating abolition, citing sovereignty concerns.

## **6. Alternatives to the Death Penalty**

Given the controversy surrounding capital punishment, alternatives have been suggested:

- **Life Imprisonment Without Parole:** Ensures punishment while eliminating the risk of wrongful execution.
- **Rehabilitation C Restorative Justice:** Some argue that reformation is preferable to retribution.
- **Strengthening Judicial Reforms:** Ensuring fair trials, reducing biases, and improving legal representation.

## **7. Recommendations and Future of Capital Punishment in India**

### **7.1 Need for Uniform Guidelines**

A standardized framework is necessary to eliminate arbitrariness in awarding the death penalty.

### **7.2 Safeguards Against Wrongful Convictions**

Strengthening forensic science and judicial reviews to prevent miscarriages of justice.

### **7.3 Consideration of Mitigating Factors**

Courts should evaluate socio-economic backgrounds and psychological factors before sentencing.

### **7.4 Public and Parliamentary Debate**

Conducting nationwide discussions to determine public consensus on retaining or abolishing the death penalty.

## **8. Conclusion**

The death penalty in India remains a contentious issue, balancing justice, deterrence, and human rights. While landmark judgments and legal reforms have attempted to restrict its application, concerns about judicial errors and ethical dilemmas persist. The debate on capital punishment should focus on strengthening the criminal justice system, ensuring fairness, and exploring alternatives like life imprisonment without parole. India must critically evaluate its stance in light of international trends and ethical considerations, ensuring that justice is served without compromising human rights.

## **References**

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2. The Code of Criminal Procedure, 1973
3. The Constitution of India
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**7. Reports of the Law Commission of India**

**8. United Nations Resolutions on Capital Punishment**





