



## JUDICIAL APPROACH, DUE PROCESS, AND HUMAN RIGHTS IN CAPITAL PUNISHMENT IN INDIA: CHALLENGES, LIVED EXPERIENCES, AND POLICY REFORM PERSPECTIVES

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### ABSTRACT

*The practice of capital punishment in India has been a most challenging and disputable question on the issue of a conflict of discretion in judiciary, due process and the protection of human rights. Even though the death penalty is lawful in the constitution, its usage is highly controlled by its constitutional protection, legislation and judicial principles like the so-called rarest of rare rule adopted by the Supreme Court. The judiciary has contributed to a great deal in procedural fairness, insistence on a person-centered sentencing, review of the appellate case, and the presence of mercy appeals as critical protections against capricious punishment. Nevertheless, a number of issues remain, such as discrepancies in the interpretation of the law by the courts, long queues in mercy applications, lack of legal representation and marginalized people, and the risk of procedural flaws that can give rise to a miscarriage of justice. These problems pose a grave question of fairness, human dignity and protection of basic rights in the Article 21 of the Constitution. Bachan Singh v. is a landmark judgment. Machhi Singh v. State of Punjab. Shatrughan Chauhan v. state of Punjab. Union of India, and Mithu v. State of Punjab show the human rights-oriented change in approach of judiciary toward capital punishment. This paper will look into the judicial practice and legal framework, human rights implication, due process issues of capital punishment in India whilst noting that reforms in policies are required to bring about transparency, consistency, and compliance to the principles of constitutionality and human rights.*

**Keywords:** *Capital Punishment, Judicial Approach, Due Process, Human Rights, Rarest of Rare Doctrine, Death Penalty, Judicial Safeguards, Criminal Justice System*

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## 1. INTRODUCTION

The death penalty or capital punishment is one of the most debatable and controversial issues of the criminal justice system, especially in the democratic societies that believe in rule of law and human rights. Death sentence is constitutional in India but is to be imposed in rare cases. The Indian judicial system aims at striking a balance between the requirement of justice, deterrence and the safety of the citizens and the key rights that the Constitution grants individuals, particularly the right to life and personal liberty under the Article 21. The judiciary has been in the forefront to ensure that the application of capital punishment is regulated by coming up with some doctrines that include the principle of the rarest of rare, which means that capital punishment should be used sparingly and only when necessary.



**Figure 1:** Capital Punishment in India

The legal practice of sentencing to capital punishment in India has developed considerably, and the growing consciousness of due process and human rights issues. The courts have highlighted the need to use the fair trial process, legal representation, and scrutiny of aggravating and mitigating factors before a death sentence is given to a person. Nevertheless, some issues like unequal sentencing, delays in the process, socio-economic disparities, and the psychological effects it had on death row inmates remain serious areas of concern on the issue of fairness and justice. Such concerns demonstrate that it is critical to study not only the legislation but also the life experience of those who are capital punished.



Moreover, the increased attention to human rights and the dignity of a person all over the world has contributed to the escalation of the discussion concerning the ethical and legal justification of capital penalty. In India, although the death penalty still exists in some offenses that are considered serious crimes, more emphasis is currently placed on the need to achieve transparency, accountability, and procedural fairness when carrying out death penalty. In this respect, this paper explores the judicial solution, the due process guarantees, human rights considerations, the personal experiences of death row inmates and why the policy changes are necessary. The study will help to enhance the existing knowledge of the issues related to capital punishment and investigate the possible actions that can reinforce justice, safeguard human rights, and enhance the efficiency of the criminal justice system in India.

## 2. LITERATURE REVIEW

**Ahmad (2018)** carried out a comparative research study on the use of capital punishment against mentally ill criminals in Pakistan and India in relation to the international human rights law. The research examined laws, courts of law practices and international laws like those stipulated in the International Covenant on Civil and Political Rights. The results indicated that both India and Pakistan retained the death penalty, however, there were serious questions that involved the protection of the mentally ill people especially when it comes to the assurances of fair trial, mental testing, and the protection against cruel, inhuman, or degrading treatment. The research highlighted the fact that application of capital punishment in such situations usually contradicted the international human rights principles and that there was a need to instill more legal safeguards and changes.

**Bhattacharya, Ghosh, and Purkayastha (2022)** reviewed the Indian Transgender Persons (Protection of Rights) Act, and determined how well it fulfilled substantive access to rights among transgender people. The study was based mainly on gender rights, but it helped to expand the human rights discourse by examining the connection between the law and marginalized and vulnerable groups. The authors discovered that even with the legal developments, there were still many gaps in the application and enforcement of legal protections to limit the actual implementation of rights. The research revealed institutional obstacles, discrimination, and



difficulties in receiving justice, showing how the legal provisions lacked relations with practical results. This discussion has helped to affirm the value of enhancing law processes in order to guarantee significant realization of human rights, with applicability in the investigation of how vulnerable people in the criminal justice system, including those that have been subject to capital punishment, are treated.

**Chintam and Mysore (2022)** examined capital punishment in India in connection to the constitutional right to life established in the Article 21 of the Indian Constitution. The paper has focused on judicial interpretations, such as landmark decisions setting the doctrine of the rarest of rare, and determined whether the death penalty was consistent with constitutional and human rights values. The authors discovered that even though the judiciary had come up with procedural rules to restrict the exploratory use of the death penalty, imbalanced sentencing practices and judicial discretion still evoked issues over fairness and equality. The research determined that the continued application of capital punishment was highly challenged by the law and ethics and highlighted the importance of judicial consistency, strengthening of procedure and reflecting on alternative forms of sentencing in accordance with the current human rights standards.

**Fredman (2018)** studied the process and application of the comparative human rights law by evaluating how various jurisdictions comprehended and enforced the basic human rights principles. The paper has considered major rights such as the right to life, equality, dignity and access to justice and highlighted the importance of courts in the interpretation of these rights under both constitutional and international laws. The author emphasized that comparative human rights analysis allowed courts to make reference to international jurisprudence to reinforce local legal protection and enhance coherence in the protection of basic rights. The paper also highlighted that international human rights norm had also penetrated the national jurisprudence, fostering revision and liberal judicial interpretation. This work helped to realize that comparative legal methodology can be useful in strengthening human rights, especially in such controversial topics as capital punishment.

### 3. LEGAL FRAMEWORK GOVERNING CAPITAL PUNISHMENT IN INDIA

In India, the death penalty is governed by constitutional, statutory and judicial protections to provide even-handed and fair treatment. The courts impose restrictions on its use by rigid principles, petitions of appeal and mercy to avoid unfair punishment and safeguard human rights.

#### 3.1 Constitutional Provisions

The right to life as well as legitimate capital punishment is safeguarded by the Indian Constitution. Article 21 implies that nobody is supposed to be stripped of life or liberty without court proceedings. The death penalty is legal, but there must be fairness, justice, and reason in the way the death penalty is administered. Article 21 as has been enlarged by the Supreme Court has placed more focus on the due process and has not allowed the cases of the death sentence to be unjustly imposed. Article 14 ensures that all are equal before the law and on equal footing before the laws and that the capital punishment is impartial, just and founded on a uniform legal basis.



**Figure 2:** Constitutional Provisions

Article 22 provides a right to be informed of the reasons why one is arrested, has the right to consult and hire a lawyer along with being safeguarded against unlawful arresting. Capital punishment cases are associated with some precautions necessary in order to guarantee the accused with the right to legal representation and fair trial. Articles 72 and 161 permit the President and Governor to pardon, reprieve, respite or commute death sentences by mercy petition. Such provisions enable the authority of the executive to review cases on possible judicial mistakes,



delays, or humanitarian justifications, re-instating the constitutional obligation of justice, fairness and human rights.

### **3.2 Statutory Provisions**

The Indian penal code (IPC) of 1860 requires capital punishment against certain criminal offenses. Section 302 of the IPC sentences murder to life-or-death imprisonment based on crime committed. Capital punishment can be applied to sections 121 waging war against the Indian government, 132 abetments of mutiny, 364A kidnapping to ransom or leaving the victim vegetative, and 376A of some types of aggravated rape that results in death or leaves the victim vegetative. These are the provisions that reveal that the legislature planned to deal with the most severe of all actions that threaten the life, safety, and national security with the most severe punishment. Capital punishment due to terrorism, extensive drug trafficking and other terrorism acts that threaten national sovereignty and integrity is also allowed by the Unlawful Activities (Prevention) Act (UAPA), Narcotic Drugs and Psychotropic Substances Act (NDPS) and other anti-terrorism laws.

The Code of Criminal Procedure (CrPC) of 1973 guarantees justice and due process in the cases of death punishment. Section 354(3) of the CrPC has a mandatory rule to document the specific reasons why the death penalty is imposed rather than life imprisonment with the focus on the concept that capital punishment ought to be uncommon. In Section 366, the CrPC states that the High Court must ratify all Sessions Court death sentences prior to their execution, which further provides review and safeguard against wrongful conviction by the court. The CrPC gives the accused a chance to request the court of higher ranks including the Supreme Court which guarantees a variety of legal tiers. These legislations attempt to make capital punishment more delicate, in accordance with the provisions of procedures and justice principles.

### **5.3 Judicial Safeguards**

Indian judicial system has put in place a number of measures to make sure that the death penalty is dispensed in a just manner, with care and within the constitutional provisions. The aim of these safeguards is to ensure that there is no arbitrary sentencing and that the basic rights of the accused are not violated. The major judicial protection measures incorporate:



- **Rarest of Rare Doctrine:** Cases decided in *Bachan Singh v. State of Punjab* (1980). This principle, which applies to exceptional cases in which life imprisonment is insufficient to curb the imposition of the death penalty, was established in *State of Punjab* (1980) to ensure that capital punishment is not applied arbitrarily and in excess.
- **Aggravating and Mitigating Circumstances:** To be fair and sentence a person personally, courts have to consider not only aggravating factors (i.e. brutality of the crime, threat to society, or terrorism) but also mitigating factors (i.e. age, mental condition, lack of criminal history, and socio-economic background).
- **Mandatory Appellate Review:** Sessions Courts imposing death penalty must have their decision reviewed by the High Court and the accused can further appeal to the Supreme Court where layers of judicial examination will occur and the chances of wrongful execution is minimized.
- **Review and Curative Petitions:** Supreme Court permits the review and curative petitions, even after the final judgment but gives the extra chance to provide the justice by correcting the mistakes of the judiciary.
- **Mercy Petitions under Articles 72 and 161:** the President and Governors can pardon or order a death sentence to be commuted. This has been further ruled by the Supreme Court that excessive delay in the execution of mercy petitions can be considered a basis of commutation into life imprisonment.

All these judicial protections are taken to make sure capital punishment in India is given with utter caution, impartiality and adherence to the constitutional and human rights values.

**Table 1:** Summary of Legal Framework Governing Capital Punishment in India

Legal Category	Key Provision	Safeguard Provided
Constitutional Provisions	Articles 21, 14, 22, 72, 161	Protect right to life, ensure equality, fair trial, legal representation, and allow mercy petitions
Statutory Laws	IPC Sections 302, 121, 364A, 376A	Provide death penalty for serious crimes like murder, terrorism, and aggravated rape
Procedural Safeguards	CrPC Sections 354(3), 366	Require special reasons for death penalty and mandatory High Court confirmation
Judicial Doctrine	Rarest of Rare Principle	Limits death penalty to exceptional cases to prevent arbitrary sentencing
Judicial Review	Appeals, Review, Curative, Mercy Petitions	Provide multiple levels of review to ensure fairness and prevent miscarriage of justice

#### 4. JUDICIAL APPROACH AND LANDMARK JUDGMENTS

The Indian courts have been important in controlling the use of death penalty by providing legal principles, procedural protections and human rights issues. The Supreme Court has made a series of landmark decisions that have guaranteed that death penalty is only enforced in extraordinary situations due to the principles of fairness and justice as mandated by the constitution and due process.

- **Bachan Singh v. State of Punjab (1980):** This landmark ruling held the constitutional soundness of the death penalty yet presented the doctrine of the rarest of the rare. According to the Supreme Court decision, capital punishment is to be applied in unique situations when life imprisonment fails. The Court highlighted that the judges should look at aggravating and mitigating factors before imposing a death penalty, which will lower arbitrary and excessive sentencing.

- **Machhi Singh v. State of Punjab (1983):** In this instance, the Supreme Court also elucidated the theory of rarest of rare by giving particular requirements of applying it. According to the Court, the brutality of the crime, motive, manner of commission, magnitude and the effect on society and the like had to be put into account. This ruling has given better guidelines that courts should follow to achieve uniformity and equal treatment in sentencing death penalty.
- **Shatrughan Chauhan v. Union of India (2014):** This decision was devoted to the rights of death row prisoners and took into account the fact that delays in the consideration of mercy requests may lead to severe psychological trauma. Such delays will lead to a violation of the essential rights, which are provided by Article 21, and can be the basis of a conversion of the death sentence into life imprisonment, said the Supreme Court. This ruling enhancing procedural protection and the value of human dignity.
- **Mithu v. State of Punjab (1983):** The Supreme Court, in this case, invalidated Section 303 of the Indian Penal Code that placed a mandatory death penalty to particular crimes. The Court held that the practice of imposing a death sentence sentence is unacceptable under Articles 14 and 21 since it fails to give a discretion to the judiciary to look at the circumstances of the individual. This decision advocated the concept that sentencing should be just, rational and personal.

These historic rulings indicate the changing manner in which the judiciary has treated capital punishment making it more unbiased, reasonable, just in due process, and preservation of human rights, with the death penalty administered in the most extraordinary situations.

## 5. DUE PROCESS AND PROCEDURAL CHALLENGES

In spite of constitutional protection, other statutory safeguards and judicial guidelines, there are a number of due process and procedural issues that still impact on equitable application of capital punishment in India. The issues these challenges present about consistency, fairness, and safeguard of basic rights in the criminal justice system are serious.

### ***Judicial Discretion and Inconsistency***

Even though the doctrine of the rare of rare offers a guideline on the application of the death penalty, its application can be different with various courts and judges. Anonymous cases might be sentenced differently because of subjective judicial discretion, disparity in assessing aggravating and mitigating factors, and disparate legal interpretation. This lack of consistency brings about ambiguity in sentencing and casts doubt on justice and even-handedness of the law.

### ***Delay in Mercy Petitions***

A significant procedural issue is the fact that it can take long before a piece of mercy petition submitted before the President or Governor is disposed off. Death row prisoners would have to spend several years in prison awaiting a decision, which causes serious mental stress, anxiety, and psychological trauma. The Supreme Court has been appreciating that such delays can be in violation of the fundamental right to life and dignity as in Article 21 and can be accepted to be the grounds of commuting the death sentence to life imprisonment.

### ***Quality of Legal Representation***

Competent legal representation should also be made accessible to provide fair trials on capital punishment cases. Nevertheless, the death row inmates are mostly economically and socially poor individuals who might lack good legal support. Poor legal representation, lack of qualified attorneys, and deficiency in legal assistance may adversely impact the verdict of trials, appeals, and mercy pleas, making it more likely that there will be a wrongful sentence.

### ***Procedural Errors and Miscarriage of Justice***

Wrongful convictions can be caused by flaws in investigations, misjudged gathering of proofs, pressured confessions, and flaws in procedure at the time of trial. Capital punishment is irreversible, which means that such mistakes are a great risk to justice. Courts have subsequently found some aspects of the investigation process or trial to be flawed, thus the need to adhere to procedures, the judicial review and protection to ensure that the process does not result in miscarriage of justice.

## 6. CONCLUSION

In India, capital punishment is a legally imposed, albeit highly controlled mode of punishment, which is guided by provisions of the constitutions, statutes and judicial considerations that are geared towards promotion of fairness, due process and safeguarding of human rights. The judicial system has been instrumental in limiting arbitrary application of death penalty by issuing landmark cases and setting of principles like the doctrine of the rarest of rare, personalized sentencing and multi-layered judiciary and executive review. Nevertheless, despite all these measures, there are still some issues that present serious challenges such as discrepancies in judicial discretion, slowness in petitions of mercy, ineffective legal representation, and a possibility of errors in the procedure which lead one to question the fairness, justice and protection of the right to life in Article 21. These concerns demonstrate the importance of further judicial attention, procedural adjustments, and policy modification to achieve transparency, consistency, and accountability during capital sentencing. It is important to protect the integrity of the criminal justice system through strengthening legal assistance, a timely review process, and human rights protection. At the end of it all, the rights-based and balanced approach should be applied so that the justice is restored and the constitutional principles of the dignity, fairness, and the rule of law are maintained.

## REFERENCES

1. Ahmad, A. (2018). *Rethinking capital punishment for mentally ill: A comparative study in the context of Pakistan, India, and international human rights law*. Unpublished Masters Study, Central European University. Retrieved May, 12, 2023.
2. Bhattacharya, S., Ghosh, D., & Purkayastha, B. (2022). 'Transgender Persons (Protection of Rights) Act' of India: An analysis of substantive access to rights of a transgender community. *Journal of Human Rights Practice*, 14(2), 676-697.
3. Chintam, R. R., & Mysore, S. A. (2022). *Capital Punishment vis-a-vis Right to Life: A Critical Study*. Issue 1 Indian JL & Legal Rsch., 4, 1.
4. Fredman, S. (2018). *Comparative human rights law*. Oxford University Press.
5. Hsu, J. C. S. (2021). *Right to life and capital punishment in transnational judicial dialogue*. *Asian Journal of Comparative Law*, 16(2), 311-337.

6. *Irfan, S. (2021). A quest for “justice” in capital punishment: A socio-legal study of the Nirbhaya gangrape case. IAFOR Journal of Cultural Studies, 6(SI), 91-104.*
7. *Jain, A. D. (2025). Criminal Justice and Human Rights: A Discussion of Custodial Violence, Pretrial Detention and Capital punishment. Journal of Legal Research and Polity, 2(2), 15-30.*
8. *Khan, K., & Mishra, A. (2025). Evaluating the Relevance of Capital Punishment: A Critical Analysis of Judicial Pronouncements in India. LawFoyer Int'l J. Doctrinal Legal Rsch., 3, 418.*
9. *Lundy, L., & Martínez Sainz, G. (2018). The role of law and legal knowledge for a transformative human rights education: Addressing violations of children’s rights in formal education. Human Rights Education Review, 1(2), 04-24.*
10. *Mahajan, D. (2024). Comparative Analysis of Death Penalty Practices Socio-Political Influences in India and Indonesia. This paper has appeared in Juris Gentium Law Review, 10.*
11. *Mapp, S. C. (2020). Human rights and social justice in a global perspective: An introduction to international social work. Oxford University Press.*
12. *Mishra, V. L., & Malviya, K. M. (2025). Concept of Punishment and Its Justification in Indian Perspective: An Overview. European Economics Letters, 15(3).*
13. *Nath, A., & Prasad, S. S. G. (2024). Validating the commutation of death sentence using human ‘capabilities’. Discover Global Society, 2(1), 100.*
14. *Sinha, M. (2025). Death Penalty and Human Rights: A Legal and Ethical Dimensions regarding Capital Punishment. LawFoyer Int'l J. Doctrinal Legal Rsch., 3, 817.*
15. *Smit, D. V. Z., & Appleton, C. (2019). Life imprisonment: A global human rights analysis. Harvard University Press.*



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