CAPITAL PUNISHMENT IN INDIA: A CRITICAL ANALYSIS

ABSTRACT

Capital punishment or death penalty occupies one of the most contentious positions in Indian criminal law, where a balance has to be struck between the constitutional guarantee of the right to life and State's authority to impose the ultimate punishment. Although, its validity has been upheld by the Supreme Court of India and its application curtailed by the criteria of the "rarest of rare" doctrine, significant concerns continue to persist regarding its arbitrariness, discriminatory application, procedural shortcomings and its compatibility with the principles of human dignity and constitutional morality.

This paper aims to undertake a doctrinal and critical analysis of the institution of capital punishment in India, by examining its historical evolution, constitutional provisions under Articles 14 and 21, and judicial interpretation of capital sentencing. It focuses on "rarest of rare" doctrine, particularly with regard to its application of subjective tests, where issues of consistency and non-arbitrariness will be highlighted and also address various issues of judicial discretion, socio-economic factors, and procedural issues, which affect the application of a fair and just system of administration of capital punishment. This analysis also highlights broader concerns related to judicial decisions, Law Commission Reports, and studies, where an assessment will be made that the current system fails to address issues of consistency and non-arbitrariness, where a strong case for a change in approach to alternative sentencing mechanisms, consistent with human dignity, will be made.

Keywords**:** Capital Punishment; Death Penalty; Rarest of Rare Doctrine; Judicial Discretion; Article 21; Human Dignity; Sentencing Arbitrariness; Clemency.

I. INTRODUCTION

Capital punishment or the death penalty is the most severe and irreversible form of penalty prescribed by law. It provides for the deliberate taking of human life in response to criminal acts and is therefore the most severe form of punishment to exist and thus a uniquely contested position within any constitutional democracy[1]. In the Indian context, the retention of capital punishment poses a constitutional conundrum of profound implications. While the Constitution provides for the right to life and personal liberty in Article 21 of the Constitution of India[2], it simultaneously permits deprivation of life by the State by due process of law. The tension between these two principles lies at the centre to the debate on capital punishment.

This constitutional conundrum posed by capital punishment is further intensified by the expansive interpretation of Article 21 of the Constitution of India by the Supreme Court of India. The right to life is no longer a limited right against executive arbitrariness but a comprehensive right that includes dignity, fairness, and substantive due process. Life in constitutional terms extends beyond mere physical existence to include right to live with dignity and autonomy. Consequently, any such framework that authorizes the deprivation of life must meet highest standard of constitutional scrutiny, requiring not only procedural validity, but also, substantively fair and non-arbitrary application. In such a framework, the rationale for capital punishment is difficult to defend morally and legally.

The judiciary has sought to resolve this dilemma in the formulation of the "rarest of rare" doctrine in the case of *Bachan Singh v. State of Punjab*[3], which attempts to ensure that the death sentence is only imposed in cases where life imprisonment is not an option. While this doctrine attempts to strike a balance between the interests of society and the Constitution, it has been observed that there have been limitations in the application of this doctrine. Courts have frequently relied on indeterminate concept such as "collective conscience" and the perceived gravity of the offense, resulting in inconsistent application of the death penalty. This has resulted

[1] WILLIAM A. SCHABAS, *THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW* 1–3 (3d ed. 2002).
[2] INDIA CONST. art. 21.
[3] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

in a system whereby similar cases have been decided differently, which raises issues under Article 14 [4]of the Constitution regarding equality before law.

These concerns are further compounded by the socio-economic realities of the criminal justice system. Empirical studies indicate a disproportionate representation of marginalized and socio-economically disadvantaged groups in capital punishment cases. The fact that these groups have had inadequate representation and have not been able to raise mitigating factors, have resulted in an uneven application of justice. Additionally, the irreversible nature of death penalty has resulted in a miscarriage of justice, which cannot be remedied, even in cases of an innocent person being executed[5].

Against this backdrop, this paper attempts to critically examine the application and administration of capital punishment in India. It argues that despite the doctrinal safeguards developed by the judiciary, the administration of capital punishment remains structurally vulnerable to arbitrariness and inequality and hence becomes more incompatible with the Constitutional principles of fairness, dignity, and non-arbitrariness.

II. HISTORICAL EVOLUTION AND LEGISLATIVE FRAMEWORK

The historical process of the development of capital punishment in India is marked by an evolutionary transition from unregulated penal severity to a more codified and less arbitrary form of punishment. What is evident is the tension that has been maintained between the need to exert social control and the need to respect human dignity and fairness.

In pre-colonial India, capital punishment was regarded as a legitimate instrument of State authority. Ancient texts such as the *Manusmriti* and *Arthashastra* recognized the ruler's power to impose death sentence for serious offences as a means of maintaining social order, political stability, and deterrence[6].

The modern framework of capital punishment in India was firmly established during British colonial rule. The Indian Penal Code, 1860,[7] framed under the influence of Thomas Babington

[4] INDIA CONST. art. 14.
[5] NAT'L L. UNIV. DELHI, *DEATH PENALTY INDIA REPORT* 60–80 (Project 39A, 2016).
[6] *Kautilya, Arthashastra bk. IV,chs.8-11,in R.P.Kangle, The Kautilya Arthasastra (University of Bombay 1963).*
[7] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

Macaulay, introduced a codified framework of criminal laws and provided for capital punishment in cases such as Murder (Section 302), Waging war against the State (Section 121). The British criminal justice system relied heavily on deterrence, with capital punishment serving as a primary instrument of control. Following independence, India retained this framework, but the adoption of the Constitution in 1950 subjected the death penalty to constitutional scrutiny under Articles 14 and 21, which is now replaced by Bhartiya Nyaya Sanhita,2023[8].

A significant legislative development occurred with the introduction of the Code of Criminal Procedure, 1973[9], under Section 354(3), which introduced a critical departure from the British framework of capital punishment. Significantly, a requirement for recording "special reasons" for imposing a death sentence was introduced, effectively reversing the previous approach, whereby life imprisonment was provided as a norm and capital punishment was prescribed as an exception. The legislative intent underlying this development was to restrict the imposition of capital punishment and to align criminal justice with a more humane and liberal approach to punishment.

Although efforts have been made to limit the applicability of the death penalty, the Indian Parliament has managed to extend it to cases such as those involving terrorism and aggravated sexual assault. This demonstrates the struggle that exists in reconciling the constitutional principles of restraint and individualization of sentences against legislative impulses to provide tougher punishments as demanded by society.

III. Constitutional framework and Judicial Interpretation

The constitutional validity of the death penalty in India has generally been evaluated with reference to the provisions of Articles 14 and 21 of the Constitution of India, which are the core provisions of the constitutional guarantee of non-arbitrariness of the State. Article 21 of the Constitution of India states: "No person shall be deprived of life and personal liberty except according to procedure established by law." [10]While Article 14 of the Constitution of India states: "Equality and non-discrimination before the law are guaranteed by the Constitution of India and the State shall not deny to any person equality before the law or the equal protection of the laws

[8] Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
[9] Code of Criminal Procedure, 1973, § 354(3), No. 2, Acts of Parliament, 1974 (India).
[10] INDIA CONST. art. 21.

within the territory of India[11].” This interplay of provisions establishing deprivation of life must not only be legally sanctioned but also fair, reasonable and non-arbitrary.

The Supreme Court of India first evaluated the constitutional validity of the death penalty in *Jagmohan Singh v. State of Uttar Pradesh* (1973).[12] In this case, the Supreme Court of India upheld the validity of the death penalty and held, “Article 21 of the Constitution of India contemplates the deprivation of life according to the procedure established by law and the death penalty is a part of the procedure established by law.” The Court further held, “There is no infirmity in the contention of the petitioner that the death penalty is arbitrary due to the absence of guidelines and the discretion of the Court being arbitrary.” However, the said decision of the Supreme Court of India was based on a narrow understanding of Article 21 of the Constitution of India, which at the time of the decision did not encompass the principles of fairness and reasonableness.

A major shift was, however, recorded in the landmark case of *Maneka Gandhi v. Union of India* (1978)[13] wherein the Court expanded the ambit of Article 21 by holding that the procedure that is established by law must be “just, fair, and reasonable,” and not arbitrary or oppressive. The implications of this holding are far-reaching, as the Court, in effect, incorporated the concept of substantive due process into the Indian constitutional fabric. The question of the death penalty, in the backdrop of the expanded concept of Article 21, raised fundamental issues as to whether the deprivation of life, being irreversible, could be said to be “just, fair, and reasonable”.

It was against the backdrop of the expanded concept of Article 21 that the question was readdressed in the landmark case of *Bachan Singh v. State of Punjab* (1980). In this landmark case, the Constitution Bench of the Supreme Court upheld the constitutional validity of the death penalty while, at the same time, significantly qualifying its application. [14]The Court propounded the doctrine of the “rarest of rare” cases, holding that the death penalty must be awarded only in those cases wherein the option of life imprisonment is clearly excluded. In the Bachan Singh case, the Court propounded important principles in the determination of death sentences. The

[11] INDIA CONST. art. 14.
[12] *Jagmohan Singh v. State of Uttar Pradesh*, (1973) 1 SCC 20 (India).
[13] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).
[14] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

Court was of the view that life imprisonment is the rule and death sentence, the exception. The Court also emphasized the need to consider, while determining the question of punishment, not only the gravity of the offense but also the circumstances and background of the offenders, such as their age, socio-economic conditions, and the possibility of reformation.

Yet, despite its normative force, the Bachan Singh guidelines provided considerable scope for judicial interpretation. The lack of clear guidelines for assessing "what is rarest of rare" led to the continuation of the element of judicial discretion. The lack of clear guidelines for assessing "what is rarest of rare" is one of the major weaknesses that have been pointed out in the death penalty jurisprudence.

This focus on individualized sentencing was further underscored in *Mithu v. State of Punjab*[15] where the Supreme Court struck down Section 303 of the Indian Penal Code, which prescribed the death penalty for some offenders. The Supreme Court held that mandatory imposition of the death sentence without taking into account mitigating circumstances is violative of Articles 14 and 21. The Supreme Court further underscored its commitment to individualized sentencing, emphasizing that the denial of judicial discretion in sentencing amounts to arbitrariness, which is violative of constitutional principles of fairness and equality. These decisions collectively underscore the point that while the death penalty is not per se violative of constitutional rights, its imposition is subject to substantive and procedural limitations. The requirement of fairness under Article 21 and the requirement of non-arbitrariness under Article 14 impose significant constraints on the imposition of capital punishment.

Nevertheless, notwithstanding this doctrinal framework, there remain significant concerns regarding its practical application. Indeed, the sweeping and amorphous nature of the "rarest of rare" standard, coupled with its continued reliance on judicial subjectivity, underscores an inconsistency in its practical application. Accordingly, the constitutional requirement of fairness and equality is not always satisfied. While the Supreme Court has endeavored to ensure that capital punishment aligns with constitutional principles, its practical application continues to underscore structural inconsistencies that challenge its legitimacy.

[15] *Mithu v. State of Punjab*, (1983) 2 SCC 277 (India).

IV. The "RAREST AND RARE" AND ITS LIMITATIONS

The "rarest of rare" doctrine, as propounded in Bachan Singh v. State of Punjab, was intended to act as a constitutional safeguard, ensuring that the imposition of capital punishment remains an extraordinary judicial intervention and not a regular act of legal penalty. However, the problem here does not reside in its conceptualization, but its actual implementation within the broader framework of capital sentencing.

One of the biggest problems associated with the "rarest of rare" doctrine has been its qualitative approach, rather than a quantitative one. Although the weighing of aggravating and mitigating factors plays a vital role in capital sentencing, its lack of a structured approach has ensured that different weightage has been given to similar factors in different cases, leading to a judicial process more based on judicial perceptions than legal principles.

The attempt to standardize judicial discretion in *Machhi Singh v. State of Punjab*[16] has failed to address this problem, whereby although the Court has laid down certain criteria such as the nature of the offense and the status of the victim, these are still subjective and lack a degree of prioritization, leading to a selective approach to these criteria and allowing judicial discretion to vary even when facts are similar

However, another problem lies in the continued reliance on moralistic pronouncements, such as the "collective conscience of society." Such pronouncements, while effective, are juridically vague and are likely to introduce extraneous considerations into the sentencing process. Moreover, the imposition of punishment shifts from constitutional considerations to the "society" at large, which is necessarily subjective and dynamic, incapable of forming the basis of an irreversible sentence.

The judicial acceptance of these problems further underlines the structural flaws in the capital sentencing regime. In the case of *Santosh Kumar Bariyar v. State of Maharashtra*,[17]the court admitted the lack of consistency in the application of the sentencing doctrine, which lacked

[16] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).
[17] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498 (India).

methodological clarity. Further, in the case of *Sangeet v. State of Haryana*[18], it was noted, "there is no cohesive approach which can be said to guide the evaluation of the relevant factors, which are largely dependent upon the inclination of the judges."

Therefore, the limitation of the doctrine is not merely conceptual but structural. While the doctrine aims to restrict the scope of the death penalty, the reality is that the doctrine continues to allow for variability in the imposition of the death penalty. This, in turn, raises the deeper constitutional question: Can a doctrine which allows for such variability in the imposition of the death penalty adequately address the requirements of equality, fairness, and non-arbitrariness under Articles 14 and 21?

V. JUDICIAL DESCRETION AND SENTENCING ARBITARINESS

The use of judicial discretion is highly prevalent in capital sentencing in India. Nonetheless, the lack of any established structure for sentencing has led to inconsistencies, with similar cases being sentenced differently. This balance is usually achieved by relying on aggravating and mitigating factors that depend on judicial perceptions, raising concerns regarding equality and fairness.

The Law Commission of India, in its 262nd Report, has specifically acknowledged the fact that the administration of the death penalty is characterized by a sense of inconsistency and unpredictability. This is because the lack of a system of structured guidelines enables discretion to operate in a manner which is arbitrary in nature. Such arbitrariness is in violation of the principles of justice and fairness as contemplated by Article 21 of the Constitution and the principle of equality as contemplated by Article 14 of the Constitution of India.[19]

VI. SOCIO-ECONOMIC AND STRUCTURAL INTEGRITY

The use of capital punishment in India exhibits considerable socio-economic disparities. Empirical studies have indicated that a disproportionately large number of death row inmates come from economically deprived sections of society, thus questioning the legitimacy of capital punishment in India.

[18] *Sangeet v. State of Haryana*, (2013) 2 SCC 452 (India).
[19] Law Commission of India, Report No. 262, *The Death Penalty* (2015).

This issue is further worsened by lack of legal aid and inherent inequalities in the criminal justice system. Due to lack of proper legal representation, crucial mitigating factors regarding the offender's social background, psychological state, personal circumstances or possibility of reform often remain unexplored or insufficiently presented before the court. In Bachan Singh v. State of Punjab, the court directed an individualized assessment of the accused for deciding whether the death penalty should be awarded. Failure to take such considerations into account calls into question the fairness of such judgments under Articles 14 and 21 of the Indian Constitution.

VII. CLEMENCY AND THE DEATH ROW PHENOMENON

The constitutional framework has incorporated clemency as an essential check against the mechanical application of court rulings. Articles 72 and 161 bestow upon the President and Governors, respectively, the authority to grant pardons, reprieves, respite, and commutations.[20]However the clemency process has often been affected by significant delays in deciding mercy petitions. In *Shatrughan Chauhan v. Union of India*, the Supreme Court held that inordinate delay, along with factors such as mental illness and solitary confinement, may justify the commutation of a death sentence.[21] In addition, the "Death row phenomenon" and lack of transparency in the clemency process lead to legitimate questions about justice and safeguards against the arbitrary taking of life.

VIII. THE DEBATE: RETENTION Versus ABOLITION

The debate on capital punishment revolves around conflicting views regarding why it should be abolished or retained. Advocates for capital punishment rely on arguments such as deterrence, justice, and the need for the preservation of public trust in the criminal justice process in cases that involve serious and security-related offences.

In contrast, abolitionists believe that the death penalty violates the inherent dignity of man and constitutional principles. They stress the finality of the act, the possibility of erroneous convictions, and the unjustified imposition of the penalty on disadvantaged individuals.

[20] INDIA CONST. art72, INDIA CONST. art161.
[21] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 (India).

Additionally, evidence from research does not support the deterrent value of capital punishment[22].

At the international level, it is discernible that there is an emerging trend towards the abolition of capital punishment. Many countries have either abolished the death penalty in law or in practice, indicating an emerging international consensus on the incompatibility of the practice with human dignity.

IX. CONCLUSION

The system of capital punishment in India is embedded in a complex and intrinsically contradictory constitutional scenario. While the death penalty remains legally valid and permissible, the actual practice of the death penalty raises the same set of concerns about arbitrariness and inequality. However, the 'rarest of rare' principle, which was intended to restrict the scope of the death penalty and introduce a greater level of consistency and objectivity into the process of deciding which offenses warranted the death penalty and which did not, has simply failed to achieve the desired result. Moreover, the expansive scope of Article 21 of the Constitution of India, which now encompasses the concepts of dignity, equality, and non-arbitrariness, calls for a critical re-examination of the validity of the death penalty. Therefore, the alternative of life imprisonment without remission appears to be a more constitutionally viable and consistent approach than the death penalty. However, the real issue here is not so much the validity of the death penalty but rather the normative validity of the death penalty as a tool of justice and the ability of the State to justify the taking of life in the name of upholding the values of the Constitution of India.

[22] National Law University Delhi, *Death Penalty India Report* (Project 39A, 2016).

X. REFERENCES

1. Anup Surendranath et al., *Death Penalty in India: A Study of Supreme Court Sentencing Trends* (Project 39A, Nat'l L. Univ. Delhi 2016).
2. Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India).
3. Bharatiya Nyaya Sanhita, No. 45 of 2023 (India).
4. Code of Criminal Procedure, No. 2 of 1974 (India).
5. INDIA CONST.
6. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
7. Law Comm'n of India, Report No. 262, *The Death Penalty* (2015).
8. Moniga A., *A Critical Analysis of Death Penalty Under Article 21 of Indian Constitution*, 13 Int'l J. Creative Rsch. Thoughts (2025).
9. Nat'l L. Univ. Delhi, *Death Penalty India Report* (Project 39A 2016).
10. Purnima Sharma, *Capital Punishment in India: A Critical Analysis of Judicial Discretion* (Himachal Pradesh Nat'l L. Univ. 2025).
11. WILLIAM A. SCHABAS, *THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW* (3d ed. 2002)