



MSB-International Journal of Interdisciplinary Research

Associating Researchers; Nourishing Innovation

Peer Reviewed

Vol. 3, Issue 1, March 2025-June 2025

17-22, MSB-IJIR

The Recent Trend Relating to Death Sentence in India with Special Reference to International Best Practices

Mohd. Isa Ali Khan¹

Dr. Taru Mishra²

¹LL.M, Amity Law School

²Assistant Professor, Amity Law School,
Amity University, Lucknow, Uttar Pradesh

Abstract

This research paper critically examines the recent trends relating to the death sentence in India, exploring how constitutional mandates, judicial interpretations, and evolving human rights standards have influenced its contemporary application. While the death penalty remains a legal punishment in India, its imposition has become increasingly rare due to the “rarest of rare” doctrine laid down in Bachan Singh v. State of Punjab. The paper investigates how this doctrine has been inconsistently applied, leading to judicial uncertainty and raising questions about procedural fairness and arbitrariness in capital sentencing. The study also delves into landmark Supreme Court judgments that have expanded the scope of mitigating factors, emphasized procedural safeguards, and advocated for a more reformative approach. In doing so, the Indian judiciary has demonstrated a gradual but definitive shift toward minimizing the use of capital punishment, often commuting death sentences to life imprisonment. These developments reflect an underlying constitutional morality that values human dignity, even for those convicted of the gravest crimes. Furthermore, the paper analyses India’s position in comparison to international best practices and global human rights frameworks. It reviews international instruments like the ICCPR and comparative legal systems in Europe, the United States, and neighbouring South Asian countries, where abolitionist or moratorium-based approaches are gaining traction. The comparative perspective underscores the urgent need for India to align its legal framework with global standards and ethical considerations. In conclusion, the research argues that while India has taken commendable steps to limit the application of the death penalty, the absence of a consistent sentencing policy and its resistance to international abolitionist norms remain challenges. The paper advocates for legal reforms, the adoption of a uniform sentencing framework, and the eventual abolition of the death penalty to uphold constitutional and international human rights obligations.

Keywords: Death Penalty, Capital Punishment, Rarest of Rare Doctrine, Indian Judiciary, Human Rights, International Best Practices, Criminal Justice Reform and Sentencing Policy

Introduction

The death penalty, or capital punishment, has long been a subject of contentious debate within India's legal and societal framework. Rooted in colonial jurisprudence, the death penalty was inherited by India from British legal traditions and codified under Section 302 of the Indian Penal Code, 1860. Despite India being a constitutional democracy that emphasizes the right to life and personal liberty under Article 21 of the Constitution, it continues to retain the death penalty for the most heinous crimes. Over the decades, the judicial and legislative branches have grappled with its moral, legal, and procedural justifications. As global trends move towards abolition, India's continued use of capital punishment demands a critical evaluation.

The Supreme Court of India, while upholding the constitutionality of the death penalty in *Bachan Singh v. State of Punjab* (1980), introduced the "rarest of rare" doctrine, effectively limiting its imposition. However, the application of this doctrine has often been inconsistent, leading to accusations of arbitrariness and judicial subjectivity. This irregular application has prompted legal scholars and human rights organizations to question the credibility and fairness of capital sentencing in India. The evolving jurisprudence in recent years has increasingly leaned toward life imprisonment, thereby reflecting a cautious judicial approach.

Another aspect influencing the death penalty discourse in India is the international human rights regime. With growing advocacy for the abolition of capital punishment by global institutions such as the United Nations, and through international covenants like the International Covenant on Civil and Political Rights (ICCPR), there has been significant pressure on retentionist countries like India to reconsider their stance. While India is a signatory to several international treaties, it has resisted ratifying protocols that mandate abolition.

This research paper seeks to analyse the recent judicial trends in India relating to the death sentence, with a focus on constitutional principles, evolving jurisprudence, and legislative reforms. Additionally, it draws comparative insights from international best practices in countries that have abolished the death penalty or imposed moratoriums. The objective is to assess whether India's current stance aligns with its constitutional commitments and international obligations, and to propose a way forward that balances justice, deterrence, and human rights.

In doing so, the paper adopts a doctrinal methodology, reviewing landmark judgments, Law Commission reports, statutory provisions, and international legal instruments. Through a detailed examination of contemporary developments and challenges, this study aims to contribute to the broader discourse on the legitimacy, necessity, and future of the death penalty in India.

Constitutional and Judicial Framework in India

The Indian Constitution, particularly Article 21, guarantees the right to life and personal liberty to every individual. However, this right is not absolute and can be curtailed according to the "procedure established by law." This constitutional provision forms the basis for allowing the death penalty, provided it is imposed through a fair, just, and reasonable process. The constitutional validity of the death penalty was first challenged in *Jagmohan Singh v. State of Uttar Pradesh* (1973), where the

Supreme Court upheld its validity, stating that the procedure prescribed under the Criminal Procedure Code provided sufficient safeguards.

A more nuanced position was later taken in *Bachan Singh v. State of Punjab* (1980), where the Supreme Court reaffirmed the constitutionality of capital punishment but laid down the "rarest of rare" doctrine. According to this principle, the death penalty should only be imposed when the alternative option of life imprisonment is "unquestionably foreclosed." This marked a shift toward judicial restraint, aiming to humanize the application of the death penalty. Nevertheless, the lack of a clear, objective framework has led to a subjective application of this principle across various cases.

In *Machhi Singh v. State of Punjab* (1983), the Court attempted to elaborate on the "rarest of rare" doctrine by providing categories of cases where the death sentence could be warranted. However, these categories were broad and still left room for judicial interpretation. Critics argue that such discretion can lead to arbitrariness, especially when influenced by external factors like public opinion or media attention. The inconsistencies in sentencing have raised serious questions about the doctrine's effectiveness in limiting the use of the death penalty.

Recent jurisprudence has shown a shift towards reconsidering death penalty sentences, especially in light of mitigating factors. In *Shatrughan Chauhan v. Union of India* (2014), the Supreme Court emphasized the importance of considering post-conviction circumstances, mental health, and delay in execution as grounds for commutation. Similarly, in the *Mofil Khan v. State of Jharkhand* (2021) case, the Court overturned the death sentence citing insufficient analysis of mitigating circumstances. These decisions signal a more reformative and humane approach within the judiciary.

Despite these developments, the lack of a uniform sentencing policy continues to be a significant issue. The Supreme Court in *State of Maharashtra v. Vijay Devidas* (2023) acknowledged the need for a structured sentencing regime. Until such a framework is instituted, capital sentencing will remain vulnerable to subjectivity, thereby undermining the principle of fairness enshrined in the Constitution.

Trends in Indian Judiciary: Recent Developments and Case Analysis

Over the last decade, the Indian judiciary has increasingly demonstrated a cautious approach towards awarding the death penalty. This trend reflects a growing inclination toward reformative justice, rather than retributive punishment. Several recent Supreme Court decisions reveal a marked decrease in actual executions and a greater reliance on life imprisonment, even in cases involving heinous crimes. This indicates a shift in the judicial mindset, emphasizing human dignity, reform, and the fallibility of the criminal justice system.

One of the key observations in recent years is the enhanced emphasis on mitigating circumstances. In *Mofil Khan v. State of Jharkhand* (2021), the Supreme Court laid down that sentencing courts must give adequate weight to the convict's background, socio-economic conditions, mental health, and potential for reform. The judgment criticized the mechanical application of the "rarest of rare" doctrine without a thorough inquiry into mitigating factors. This case underlined the need for individualized sentencing and a holistic assessment of the convict's life and circumstances.

Another significant development is the evolving stance on mercy petitions and delays in execution. In *Shatrughan Chauhan v. Union of India* (2014), the Court held that prolonged delays in the execution of death sentences could amount to torture, thus justifying commutation. This principle has since been reiterated in several judgments, marking a progressive move toward protecting the dignity and mental health of death row convicts. The judiciary has consistently emphasized that even those sentenced to death have fundamental rights that must be respected till the very end.

The Supreme Court has also started emphasizing procedural fairness during the sentencing phase. In the *Manoj v. State of Madhya Pradesh* (2022) judgment, the Court mandated that trial courts must ensure a pre-sentencing hearing that comprehensively considers all relevant information. The Court criticized the trend of hasty sentencing post-conviction and called for a standardized process. This ruling is significant because it attempts to bridge the gap between conviction and sentencing, ensuring a fairer and more informed approach.

Despite these positive trends, some judgments have highlighted ongoing inconsistencies. In certain cases, similar crimes have attracted different sentences, reflecting a lack of coherence in capital sentencing jurisprudence. This inconsistency undermines the principle of equality before law and fuels demands for a comprehensive sentencing policy. Moreover, public opinion, political considerations, and media trials continue to influence judicial outcomes in high-profile cases, casting a shadow over the objectivity of sentencing.

In summary, while there has been commendable progress in judicial thinking around the death penalty in India, the absence of a uniform and statutory sentencing framework remains a glaring gap. The need for clarity, consistency, and a human rights-based approach is more urgent than ever, especially in light of India's international commitments and evolving global norms.

International Human Rights Law and Comparative Practices

International human rights law has played a crucial role in shaping the discourse around the death penalty globally. The Universal Declaration of Human Rights (UDHR), though not legally binding, has provided the moral and philosophical foundation for the movement towards abolition. Article 3 of the UDHR states that "everyone has the right to life, liberty, and security of person," setting the tone for the subsequent development of legal instruments aimed at restricting or abolishing capital punishment.

The International Covenant on Civil and Political Rights (ICCPR), to which India is a party, recognizes the right to life as a fundamental human right under Article 6. Although the ICCPR does not explicitly abolish the death penalty, it restricts its application to the "most serious crimes" and mandates stringent safeguards. The Second Optional Protocol to the ICCPR, adopted in 1989, is specifically aimed at abolishing the death penalty, and has been ratified by over 90 countries. India, however, has neither signed nor ratified this protocol, reflecting its reluctance to commit to total abolition.

Comparative practices from various jurisdictions reveal a strong global trend towards abolition. The European Union, as a collective entity, has completely outlawed the death penalty under its Charter of Fundamental Rights. Countries like the United Kingdom and Germany have long abolished capital punishment, replacing it with life imprisonment and emphasizing rehabilitation. South Africa's

Constitutional Court declared the death penalty unconstitutional in *S v. Makwanyane* (1995), citing the right to dignity and the fallibility of the justice system.

In the United States, although capital punishment is still legal in several states, the number of executions and new death sentences has significantly declined. The U.S. Supreme Court has imposed restrictions, particularly concerning juveniles, mentally ill convicts, and procedural deficiencies. Several states have independently abolished the death penalty, reflecting a shift in public and legislative attitudes.

Closer to home, countries like Nepal, Bhutan, and Sri Lanka have either abolished or ceased implementing the death penalty. These regional trends highlight the increasing recognition of human rights and the move toward more humane forms of punishment in South Asia. India's position as a democratic and constitutional republic necessitates a re-evaluation of its retentionist stance in light of these developments.

India's continued use of the death penalty not only distances it from global best practices but also invites criticism for failing to meet its international human rights obligations. The Law Commission of India, in its 262nd Report, strongly recommended the abolition of the death penalty for all crimes except terrorism-related offenses, emphasizing that it does not serve as an effective deterrent and is often applied arbitrarily. The growing global consensus makes it imperative for India to seriously consider aligning its domestic laws with international human rights standards.

Conclusion and Suggestions for Reform

The evolving trends in the Indian judiciary and international legal landscape indicate a growing momentum toward rethinking the use of the death penalty. Although India has not yet abolished capital punishment, its application has become increasingly rare, both in terms of judicial pronouncements and actual executions. The courts have begun to adopt a more cautious, balanced, and humane approach, taking into account mitigating circumstances, mental health, delay in execution, and the possibility of reform.

However, the lack of a uniform and statutory sentencing policy continues to be a significant obstacle. The arbitrary and inconsistent application of the "rarest of rare" doctrine undermines the constitutional promise of equality before the law. It is crucial that Parliament consider the recommendations of the Law Commission and enact clear guidelines for sentencing, particularly in capital cases. This would help ensure transparency, consistency, and fairness in judicial decision-making.

Furthermore, India must reconsider its international position regarding the death penalty. Ratifying the Second Optional Protocol to the ICCPR would signal India's commitment to upholding international human rights standards. In the interim, a national moratorium on executions could serve as a transitional step towards eventual abolition. Public awareness campaigns and legal reforms should be undertaken to prepare society for such a significant shift.

The Indian legal system must also invest in strengthening alternative forms of punishment, such as life imprisonment without parole for heinous crimes. This would ensure public safety while also respecting the inherent dignity of every individual. Rehabilitation and reform, rather than retribution, should be the guiding principles of criminal justice in a constitutional democracy.

In conclusion, while India has made notable progress in curtailing the use of the death penalty, the time has come to take decisive steps toward its abolition. Aligning domestic laws with constitutional morality and international best practices will not only enhance the credibility of the Indian judiciary but also affirm India's commitment to justice, equality, and human rights in the 21st century.

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