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CAPITAL PUNISHMENT IN INDIA: HISTORICAL LAW, CONSTITUTIONAL SAFEGUARDS AND SENTENCING JURISPRUDENCE

~ Divya Singh & Deo Pratap Singh

1. INTRODUCTION

“State should not punish with vengeance.”

-Emperor Ashoka

Capital punishment refers to the state-sanctioned execution of an individual as a court-imposed legal penalty for committing an extremely serious offense. The word **“capital”** comes from the Latin word **“caput”** which means **“head”**—because in ancient times, people were literally beheaded as punishment.¹ The death penalty is defined by Merriam Webster Dictionary as “death as a punishment given by a court of law for very serious crimes.” It is considered the most severe form of criminal penalty and is often reserved for crimes classified as heinous offences. Critics characterize capital punishment as inhuman, irreversible and inconsistent with reformatory justice whereas proponents regard it as an essential response to the gravest offences. “Blackstone ratio” is invoked which refers to a principle articulated by the English jurist William Blackstone in the 18th century that goes on to say that “It is better that ten guilty persons escape than that one innocent suffer.”²

Capital punishment in India represents one of the most complex and contested areas of criminal justice, situated at the critical intersection of constitutional law, penological theory and human rights obligations. Thus, more than two-thirds of the countries of the world have abolished death

¹ Rau's IAS Compass, 'Capital Punishment in India' (Rau's IAS Compass) <https://compass.rauias.com/current-affairs/capital-punishment-india/> accessed 10 July 2026.

² *Australian Law Dictionary* (1st edn, Oxford 2017) sv 'Blackstone ratio'.

penalty³ while some have retained it as policy decision. International human rights organizations such as Amnesty International and Human Rights Watch have consistently criticized the use of capital punishment as incompatible with human dignity. In India, the death penalty is legal and is applied in cases where the judiciary determines the crime is exceptionally heinous to fall under the "rarest of rare" doctrine,⁴ justifying the ultimate punishment. The Indian Constitution guarantees under Article 21 that "no person shall be deprived of his life or personal liberty except according to procedure established by law." This language creates a paradox central to capital punishment jurisprudence in India: the death penalty is permitted, yet only through procedures established by law that must respect constitutional principles of dignity, fairness and careful consideration by the courts. The debate surrounding capital punishment has traditionally been explained through competing theories of punishment like:

- **Retribution:** The idea that through the imposition of punishments or sanctions, the offender is punished in proportion to the severity of the crime committed.⁵ This approach is based on the "just deserts" idea that the offender should suffer to a degree similar to that experienced by the victim.⁶
- **Deterrence:** Deter means to abstain from carrying out any wrongdoing or discouraging evil minds from engaging in criminal behavior. The main goal of this theory is to deter criminals from committing a crime and not to repeat the same offense twice. This theory was founded by Jeremy Bentham and is rooted in utilitarianism, particularly the principles of hedonism⁷ suggesting that the fear of punishment would create an unpleasant consequence for potential offenders therefore discouraging them from committing crimes.

³ Amnesty International USA, 'Death Penalty' <https://www.amnestyusa.org/our-work/issues/death-penalty> accessed 10 July 2026.

⁴ *Bachan Singh v State of Punjab* (1980) 2 SCC 684; AIR 1980 SC 898.

⁵ Donald HJH, 'Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice' (2017) 16(1) *Seattle Journal for Social Justice* 31.

⁶ David A Starkweather, 'The Retributive Theory of "Just Deserts" and Victim Participation in Plea Bargaining' (1992) 67 *Indiana Law Journal* 853.

⁷ Philosophyball Wiki, 'Utilitarianism' <https://philosophyball.miraheze.org/wiki/Utilitarianism> accessed 11 July 2026.

- **Reformative:** It gives criminal offences a more nuanced understanding in the sense that it recognizes that offenders harm not only the victims, but communities and themselves too.⁸ It emphasizes rehabilitation and the restoration of individual dignity.

2. HISTORICAL BACKGROUND

The death sentence has existed since antiquity, beginning as early as 1750 B.C. Both the Greeks and the Romans [twelfth tablets (Death Penalty when generates death legally, 2006)]⁹ used the death penalty to punish a wide range of crimes. In 1700 B.C., Babylonian King, Hammurabi developed a code of laws with the principle, *lex talionis* (which literally means the law of retaliation), which was called the Hammurabi's Code.¹⁰ Retribution, an eye for an eye, and a life for a life, according to this code, is justice.¹¹ The Hittite Code and the Draconian Code of Athens also mention the death sentence.¹² Great thinkers like Plato, John Locke and Thomas Hobbes supported this form of punishment for serious crimes. Great criminologist Cessare Beccaria convinced many people that the death penalty should be abolished because it is inhumane, useless and technically speaking, a public assassination. Michigan was the first state to eliminate the death penalty in 1846, followed by Portugal and Venezuela in 1867.

2.1 International scenario

The United Nations has repeatedly adopted resolutions calling for a moratorium on the use of the death penalty with a view to its eventual abolition (UDHR, 1948).¹³ The United Nations also backed the abolition of the death penalty during the 1948 drafting of the Universal Declaration of Human Rights¹⁴ where Article 3 provides for right to life and Article 5 prohibits "cruel, inhuman or degrading treatment or punishment, which some legal scholars interpret as encompassing capital

⁸ Centre for Justice & Reconciliation at Prison Fellowship International, What is restorative justice, Restorative Justice Briefing Paper—1, 2005.

⁹ Michigan State University and Department of Information Centre. (2006). Death Penalty When Generates Death Legally. Michigan State University Press. <http://www.deathpenaltyinfo.org> accessed 11 July 2026.

¹⁰ Okotie Eseoghene, 'Legal Evaluation of the Effectiveness of Capital Punishment as Form of Criminal Sanction' (2026) 12(3) International Journal of Law 10 <https://doi.org/10.66856/ijl.2026.12.3.12219>

¹¹ A Krishna Kumari, 'Capital Punishment: The Never-Ending Debate' (20 October 2023) <http://www.richard.clark32btinternet.co.uk/thoughts.html> accessed 12 July 2026.

¹² Death Penalty Information Center, 'Early History of the Death Penalty' <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty> accessed 12 July 2026.

¹³ United Nations, *Universal Declaration of Human Rights* <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 12 July 2026.

¹⁴ Ngamjai Wangsacha and Bellen Camdir, 'An Overview of Capital Punishment in India' (2023) 3(2) Indian Journal of Integrated Research in Law.

punishment Article 7 of the International Covenant on Civil and Political Rights, 1966 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Second Optional Protocol to the ICCPR¹⁵, adopted in 1989, explicitly aims to abolish the death penalty, underscoring its significance in enhancing human dignity and advancing human rights.¹⁶ The UNECOSOC,¹⁷ says that :-

- The member countries that had not abolished capital punishment may impose it only on most heinous crimes.
- Death Punishment should not be awarded to pregnant women or insane.
- Minor below 16 year of age should not be awarded with capital punishment
- According to Article 14 of ICCPR capital punishment only awarded after fair procedure.
- There shall not be retrospective effect of capital punishment.
- One must get the right to appeal in upper courts.
- Capital Punishment shall not be executed in appeal or pardon.¹⁸

In the European Union, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment.¹⁹

2.2 Ancient Indian Texts: Manusmriti & Arthashastra

Even in ancient India, punishment was considered necessary to keep society in order.

- i. **Manusmriti** (a Hindu legal text) believed that strong punishments—even death—were allowed for crimes that harmed the peace of society. It focused on the idea that fear of punishment keeps people disciplined.

¹⁵ *Optional Protocol to the International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

¹⁶ A Nath and SSG Prasad, 'Validating the Commutation of Death Sentence Using Human "Capabilities"' (2024) 2 *Discover Global Society* 100 <https://doi.org/10.1007/s44282-024-00116-x>

¹⁷ United Nations Economic and Social Council, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ESC Res 1984/50 (25 May 1984) UN Doc E/RES/1984/50.

¹⁸ Akanksha Madaan, 'Capital Punishment on Rarest of Rare Case: Is It Just and Fair?' *Manupatra* <https://www.manupatra.com> accessed 14 July 2026.

¹⁹ *Charter of Fundamental Rights of the European Union* [2012] OJ C326/391, www.europarl.europa.eu/charter/pdf/text_en.pdf accessed 14 July 2026.

- ii. **Arthashastra**, written by Chanakya (Kautilya) also supported the death penalty in some cases. It was more practical—it said rulers should use punishment to protect the kingdom and keep law and order.

Thus, death penalty existed in ancient India, but it was supposed to be rare and for serious threats.

2.3 British Colonial Influence and Constituent Assembly Position

When the British ruled India, they introduced the Indian Penal Code (IPC) in 1860 (*now, Bharatiya Nyaya Sanhita (BNS), 2023*). This law made the death penalty a punishment for many crimes, such as:

- Murder (*Sec 302 IPC, now Sec. 101 BNS*)
- Waging war against the government (*Sec 121 IPC, now 147 BNS*)
- Dacoity with murder (*Sec 396 IPC, now 310 BNS*)²⁰

In 1931, Shri Gaya Prasad Singh tabled a Bill²¹ to abolish the death penalty for crimes under the Indian Penal Code. However, his motion was ultimately defeated after the Home Minister of the time, Sir James Crerar stated that the British government did not consider it wise to abolish capital punishment. Freedom fighters like Bhagat Singh, Rajguru and Sukhdev were hanged under these laws.

Bills promising to end the death penalty within provincial governments were being tabled by early 1947, while law journals were returning to the topic, printing articles supportive of abolition.²² In 1946, Shriman Narayan Agarwal proposed the full abolition of capital punishment.²³ K.T. Shah, a key figure in the drafting of the constitution, would present a note on the fundamental rights of citizens and minorities to the Assembly, forcefully arguing for abolition.²⁴ From 1947 to 1949, the Constituent Assembly discussed and debated over a wide range of topics related to the Constitution

²⁰ Lawgical Shots, 'Death Penalty: Capital Punishment in BNS (Bharatiya Nyaya Sanhita)' <https://lawgicalshots.com/death-penalty-capital-punishment-in-bns-bharatiya-nyaya-sanhita/> accessed 15 July 2026.

²¹ Bill introduced on 27th January, 1931, and on the 17th February, 1931.

²² 'The Death Penalty' (1949) 18 *Aryan Path* 16.

See also Mahesh Prasad Tandon, 'Abolish Capital Punishment' (1947) 45 *Allahabad Law Journal* 12.

²³ Shriman Narayan Agarwal, *Gandhian Constitution for Free India* (Kitabistan 1946) 131.

²⁴ KT Shah, 'A Note on Fundamental Rights' in B Shiva Rao (ed), *The Framing of India's Constitution: Select Documents*, vol II (NM Tripathi 1967) 54.

which included the topic of the continuation or repeal of the death sentence. Several members argued for abolition on humanitarian and constitutional grounds. In the end, the Constituent Assembly chose not to remove the provision of the death penalty in spite of these considerations. This decision was based on a dual belief system. First, they felt that reformation alone would not be effective enough, making the death penalty necessary as a deterrent. Second, they believed that abolishing capital punishment would only be possible once society had reached a certain level of progress, which was not yet the case at that time.²⁵ As a result, the Constitution of India, which came into effect on January 26, 1950, did not include any specific provision for the abolition of the death penalty.²⁶

Although leaders such as Mahatma Gandhi, Jawaharlal Nehru and B.R. Ambedkar expressed concerns regarding capital punishment, its complete abolition did not find acceptance within the constitutional framework adopted at independence.

2.4 Post-Independence

India became independent in 1947 and some leaders and legal experts did question whether death penalty should be retained or not. The Constitution of India gave a lot of importance to “Right to Life” (Article 21, Constitution of India²⁷)—so some people thought the death penalty was against that right. At the same time, others believed that India wasn’t ready to completely remove it because of the serious crimes happening in society. Project 39A reports (National Law University, Delhi) have shown that a large percentage of death row prisoners are economically marginalized, Scheduled Castes (SCs), Scheduled Tribes (STs) and religious minorities. They are often denied access to effective legal defense and are thus more susceptible to wrongful conviction and harsher punishment.²⁸ Several reports of the Law Commission of India were published in the matter of capital punishment. In its 35th report (1967), the Law Commission of India recommended the

²⁵ Amruta Patil, 'Constituent Assembly Debate on Abolition of Death Penalty – Indian Polity Notes' *CollegeDunia* (7 June 2024) <https://prepp.in/news/e-492-constituent-assembly-debate-on-abolition-of-death-penalty-indian-polity-notes> accessed 16 July 2026.

²⁶ Shivam Dubey and Pooja Agarwal, 'Capital Punishment in India: The Unending Conundrum' (2014) 6 *International Journal of Law and Legal Jurisprudence Studies* 1242.

²⁷ Constitution of India, art 21 ('No person shall be deprived of his life or personal liberty except according to procedure established by law').

²⁸ Shreya Halder, 'Death Penalty in India: A Criminological and Legal Perspective' (2025) 2(6) *The Indian Journal for Research in Law and Management* 1.

retention of the death sentence in India.²⁹ In its 262nd Report (2015)³⁰ has recommended the abolition of death penalty in all but two instances—crimes of terrorism and waging war against the State. So, the death penalty was retained but courts were told to use it very carefully and only in rare cases.³¹

2.5 The Abolition Debate in Parliament

In 2019, The Death Penalty (Abolition) Bill, was introduced in Lok Sabha. The Bill proposed the abolition of the Death Penalty completely and its replacement with Life Imprisonment.³² The principal arguments against the death penalty include the protection of the right to life under Article 21 of the Constitution, the possibility of wrongful convictions, inadequate legal representation, socioeconomic disparities and the psychological impact of prolonged death-row incarceration. However, the Bill did not receive parliamentary approval, reflecting the continued legislative preference for retaining the death penalty for offences such as terrorism, particularly brutal murders, and certain crimes against women and children. This demonstrated that, despite the ongoing debate, neither Parliament nor a significant section of society was prepared to abolish capital punishment. Arguments supporting the death penalty are primarily based on the theories of retribution and deterrence. Furthermore, the increasing recognition of victims' rights has reinforced the view that capital punishment represents society's condemnation of exceptionally grave crimes and acknowledges the suffering of victims and their families.

3. CONSTITUTIONAL VALIDITY

While historical developments explain the evolution of capital punishment in India, its contemporary legitimacy depends primarily upon constitutional principles and judicial interpretation. Consequently, the debate has shifted from whether the death penalty should exist to the circumstances in which it may constitutionally be imposed.

²⁹ Law Commission of India, *Thirty-Fifth Report: Capital Punishment* (1967) https://lawcommissionofindia.nic.in/report_fourth/ accessed 13 July 2026.

Law Commission of India, *One Hundred Eighty-Seventh Report on the Mode of Execution of Death Sentence and Incidental Matters* (2003) <https://lawcommissionofindia.nic.in/reports/187th%20report.pdf> accessed 13 July 2026.

³⁰ Justice Ajit Prakash Shah (Chairperson), Law Commission of India, *Report No 262: The Death Penalty* (2015) <https://lawcommissionofindia.nic.in/reports/report262.pdf> accessed 16 July 2026.

³¹ Law Commission of India, 'India Penal Code – Reports' https://lawcommissionofindia.nic.in/report_fourth/ accessed 13 July 2026.

³² *The Death Penalty (Abolition) Bill, 2019*, Bill No 168 of 2019 (introduced in the Lok Sabha by Shrimati Kanimozhi Karunanidhi MP, 26 July 2019).

Under the 1898 Code of Criminal Procedure, a death sentence was the standard and courts needed 'special reasons' to avoid imposing it. The true departure from death sentence as a norm to an exemption came after the introduction of Code of Criminal Procedure re-enacted in 1973.³³ The CrPC 1973 introduced Section 354(3), the section mandated that judge must provide 'special reasons' for inflicting or imposing the death sentence.³⁴ Also, the CrPC 1973 introduced the Section 235(2), which allowed the post-conviction hearing on sentencing which drastically changed the jurisprudence allowing a careful evaluation and analysis of circumstances revolving around the jurisprudence of death sentence. Article 14 of the Indian Constitution prohibits discrimination and guarantees equality before the law. The argument put up by opponents of the death penalty is that it can be applied arbitrarily and discriminatorily, going against the equality principle. However, Article 21 which protects the right to life and individual liberty says that no person shall be deprived of his life or personal liberty except in accordance with procedure established by law. Therefore, the death penalty draws its strength from this provision of the Constitution and is viewed as a fair mechanism to hamper the right to life by lawful procedure.³⁵

The first major case was *Jagmohan Singh vs. State of U.P. (1973)*³⁶. In this case, the petitioners said that the death sentence was unfair and went against Article 14 (Right to Equality)³⁷ and Article 21 (Right to Life).³⁸ However, the Supreme Court ruled that the death penalty was allowed under the Constitution. The Court said that judges must be given the freedom to choose between life imprisonment and the death penalty based on the facts of each case.

In *Ediga Anamma vs. State of Andhra Pradesh (1974)*³⁹ and *Rajendra Prasad vs. State of U.P. (1979)*⁴⁰—the Court said that death penalty should be given only when absolutely necessary and

³³ Law Commission of India, *Report No 262: The Death Penalty* (2015) <https://lawcommissionofindia.nic.in/reports/report262.pdf> accessed 17 July 2026.

³⁴ When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

³⁵ Ankit Singh, 'Capital Punishment in India: History, Debate and Its Future' *Legal Service India* <https://www.legalserviceindia.com/legal/article-12549-capital-punishment-in-india-history-debate-and-its-future.html> accessed 18 July 2026

³⁶ *Jagmohan Singh v State of Uttar Pradesh* AIR 1973 SC 947

³⁷ Constitution of India, art 14 ('The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India').

³⁸ Constitution of India, art 21 ('No person shall be deprived of his life or personal liberty except according to procedure established by law').

³⁹ *Ediga Anamma v State of Andhra Pradesh* 1974 AIR 799; 1974 SCR (3) 329

⁴⁰ *Rajendra Prasad v State of Uttar Pradesh* 1979 AIR 916; 1979 SCR (3) 78

the criminal shows no chance of being reformed. The Court shifted greater emphasis towards reformatory considerations while recognizing that sentencing should be individualized. In **Rajendra Prasad vs. State of U.P.**, Justice Krishna Iyer was of the view that the death penalty is indeed violative of Article 14, 19 and 21, contrary to what was held in the case of Jagmohan Singh. He laid down two prerequisites for the imposition of the last resort sanction: (1) a special reason should be recorded for administering this form of punishment (2) it must be imposed only in extraordinary circumstances.⁴¹ Furthermore, the Court held that the 'special reasons' required to impose the capital punishment must not relate to the crime but focus must be on the criminal.⁴²

Later, in **Bachan Singh vs. State of Punjab (1980)**⁴³, the Supreme Court said that Death penalty is constitutional but it should be used only in the '**Rarest of Rare**' cases and that the purpose of punishment should not only be to punish the criminal but also to reform them. The court used the framework of individualised punishment and laid down that Judges must look at:

- The severity of the crime
- The possibility of reform
- The circumstances of the criminal

This legal principle restricts capital punishment to 'rarest of rare' cases, defined by extreme severity and public shock value. The determination involves a "balance sheet test,"⁴⁴ a judicial process that compares all aggravating factors (regarding the crime) against mitigating factors (regarding the criminal) to ensure that the death penalty is the only appropriate sanction. Although, the court didn't give an exact definition. Instead, it gave some guidelines. Judges have to look at two sides:

1. Aggravating Circumstances⁴⁵: - A court may impose death penalty under his discretion only-

- If the murder has been committed after pre planning and involve brutality,

⁴¹ Tatheer Fatima, 'Constitutionality of Death Penalty' *Indian National Bar Association* <https://www.indianbarassociation.org/constitutionality-of-deathpenalty/> accessed 18 July 2026.

⁴² Law Commission of India, *Report No 262: The Death Penalty* (2015) <https://lawcommissionofindia.nic.in/reports/report262.pdf> accessed 18 July 2026.

⁴³ *Bachan Singh v State of Punjab* AIR 1980 SC 898.

⁴⁴ Law Commission of India, *Report No 262: The Death Penalty* (2015) ch 7, citing *Vasant Sampat Dupare v State of Maharashtra* (2015) 1 SCC 253.

⁴⁵ S Mahapatro, 'Rarest of Rare Doctrine and Concept of Social Engineering' (2013) 1(5) *Journal of International Academic Research for Multidisciplinary* 277.

- Murder involve exceptional immorality,
- Murder is of member of armed force of union or of police or of any public servant,
- committed which such member was on duty,
- Any consequence done by public servant in discharge of lawful discharge duty under Section 43 of Cr.PC, 1973.

2. Mitigating Circumstances⁴⁶: - Court shall take following circumstances-

- Offence committed under mental or emotional disturbance,
- Young age accused shall not be penalized with capital punishment,
- Probability that accused would not commit crime against society,
- Through facts and circumstances, it was believed that the accused was morally justified,
- Act was done under duress,
- The accused suffers from mental illness or intellectual disability.

Further, the Supreme Court in *Machhi Singh vs. State of Punjab*⁴⁷ laid down the broad outlines of the circumstances when death sentence should be imposed. Justice Thakkar speaking for the Court held that five categories of cases may be regarded as rarest of rare cases deserving extreme penalty. They are:

- Manner of Commission of murder – When the murder is committed in an extremely brutal manner so as to arouse intense and extreme indignation in the community, for instance, when the house of the victim is set a flame to roast him alive, when the body is cut to pieces or the victim is subjected to inhuman torture.
- Motive – When the murder is committed for a motive which evinces depravity and meanness eg. a hired assassin, a cold blooded murder to inherit property, or gain control over property of a ward, or a murder committed for betrayal of the motherland.
- Anti-social or socially abhorrent nature of the crime – where a scheduled caste or minority community person is murdered in circumstances which arouse: social wrath; or bride burning for dowry, or for remarriage.

⁴⁶ Ibid.

⁴⁷ *Machhi Singh v State of Punjab* A.I.R. 1983, S.C 957.

- Magnitude of the Crime – Crimes of enormous proportion, like multiple murders of a family or persons of a particular caste, community or locality.
- Personality of victim of murder.⁴⁸

The case of *Shatrughan Chauhan v. Union of India*⁴⁹ addressed the constitutional rights of death row prisoners after sentencing. The Court held that undue delay in deciding mercy petitions, mental illness, and other supervening circumstances could justify commutation of death sentences. The decision underscored that condemned prisoners continue to enjoy the protections of Articles 14 and 21 and that the administration of capital punishment must remain humane and constitutionally accountable.

At last, in the case of *Manoj v. State of Madhya Pradesh*,⁵⁰ the Court mandated that the state has a duty to submit information relating to the accused's socio-economic background, mental health and psychological condition as well as evidence of the probability that the accused can be reformed, before imposing the death penalty. Yet Manoj failed to acknowledge structural challenges in implementing this duty in trial courts across the country. These challenges include the scarcity of experts to collect such information, public bias against people charged with capital crimes, poor quality legal aid and trial courts' lackadaisical approach to sentencing.⁵¹

4. EXECUTION PROCESS OF DEATH PENALTY

Once a court imposes the death penalty, Indian law provides multiple layers of judicial and executive scrutiny before the sentence can be executed. These safeguards seek to minimize the possibility of wrongful execution while ensuring compliance with constitutional guarantees under Articles 21.

⁴⁸ *Death Sentence: A Critical Analysis* (PhD thesis, Shodhganga, The Northcap University, 2022) http://shodhganga.inflibnet.ac.in/bitstream/10603/12841/10/10_chapter%204.pdf accessed 19 July 2026

⁴⁹ *Shatrughan Chauhan v. Union of India* (1988) 2 SCC 602

⁵⁰ *Manoj v. State of Madhya Pradesh* (2022) 5 SCC 1

⁵¹ Project 39A, National Law University Delhi, *Death Penalty in India: Annual Statistics Report 2023* (2024) <https://www.project39a.com/publications> accessed 18 July 2026.

4.1 Trial Court Conviction

- A Sessions Court convicts the accused for a crime punishable by death (ex. murder, rape).
- The death penalty may be imposed by the court only when the circumstances of the case satisfy the criteria of the “rarest of rare” doctrine.

4.2 Automatic Appeal to the High Court

- High Court certifies the case to be fit for appeal under Art. 132 or Art. 134A.
- Mandatory appeal to Supreme Court under Art. 134.
- As per Section 407, BNSS (Sec. 366 CrPC), every death sentence must be confirmed by the High Court.
- Even if the convict doesn’t appeal, the sentence won’t be final until the High Court agrees.

4.3 Appeal to the Supreme Court

- “If the High Court confirms the death sentence, the convict can file a special leave petition (SLP) under Article 136 of the Constitution.
- Supreme Court can:
 1. Uphold the death penalty
 2. Reduce it to life imprisonment
 3. Acquit the person

4.4 Review and Curative Petitions

After the SC confirms the sentence, the convict can still:

a. File a Review Petition: Heard by the same judges who passed the verdict (in open court, if it's a death penalty case – *Mohd. Arif v. The Registrar, Supreme Court of India*).

b. File a Curative Petition

- This is the last legal remedy before mercy petitions.
- Reviewed by the senior-most judges of the Supreme Court.

4.5 Mercy Petition to the President/Governor

Under “Article 72 (President)”⁵² or “Article 161 (Governor)”⁵³:

- The convict can request mercy, asking for commutation (death → life imprisonment).
- These petitions are sent via the Ministry of Home Affairs.

Section 473(2) under the Bharatiya Nagarik Suraksha Sanhita (BNSS) introduces new guidelines on:

- **Timelines for Appeals:** Limits the time for filing an appeal to ensure timely disposal of death penalty cases.
- **Mandatory Psychological Evaluation:** Requires a full psychological assessment of the convict before execution.
- **Regulation of Clemency Procedures:** Introduces a structured timeline for the President and Governors to decide on mercy petitions.

4.6 Execution Warrant

If all petitions are rejected:

- The trial court issues a “black warrant” (formal order to hang the convict).
- The jail is notified, and a date/time for execution is set.

4.7 Final Execution

- As per Section 393, BNSS (Sec. 354(5) CrPC), the execution is by hanging.
- Conducted inside a central jail in the presence of the jailor, magistrate and doctor.”

⁵² Constitution of India, art 72 (“Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases- (1)The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence --(a)in all cases where the punishment or sentence is by a Court Martial; (b)in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; (c)in all cases where the sentence is a sentence of death.”)

⁵³ Constitution of India, art 161 (“It grants the Governor of a state the power to grant pardons, reprieves, respites, or to suspend, remit, or commute the sentence of any person convicted of an offense against a state law. This power is similar to the President's power under Article 72 but is limited to offenses that fall under the state's executive power and does not extend to federal or military offenses. The exercise of this power is subject to judicial review in certain situations.”)

5. CONCLUSION

“Our penal code provides for capital punishment for wide range of offence. But sadly, the death penalty has never reduced these crimes in the country.”⁵⁴

-Justice V.R. Krishna Iyer

Capital punishment remains one of the most contested features of India's criminal justice system reflecting the continuing tension between the constitutional guarantee of the right to life and the State's obligation to respond to the gravest offences. Its journey from ancient Indian jurisprudence through colonial legislation to contemporary constitutional adjudication illustrates that the debate is shaped not only by legal doctrine but also by evolving notions of justice, human dignity and societal security. While the Constitution permits the deprivation of life through a procedure established by law, judicial interpretation has progressively narrowed the scope of capital punishment by developing substantive and procedural safeguards, most notably the "rarest of rare" doctrine and individualized sentencing principles.

At the same time, international developments reveal a growing inclination towards abolition whereas India has adopted a cautious retentionist approach, seeking to reconcile constitutional values with concerns relating to deterrence, public order and victims' rights. Nevertheless, persistent issues such as arbitrariness in sentencing, socio-economic disparities, inadequate legal representation and the irreversible nature of the punishment continue to invite critical scrutiny. Consequently, the legitimacy of capital punishment in India ultimately depends not merely on its constitutional validity but on the fairness, consistency and humanity with which the law is interpreted and administered in an evolving constitutional democracy.

⁵⁴ 'Theories of Punishment and Deterrence' http://www.cansocietyscapethenoose.com/16_THE%20THEORIES%20OF%20PUNISHMENT%20AND%20DETERRANCE.pdf accessed 19 July 2026.