

# Victim Justice & Constitutional Morality: Reassessing the Legitimacy of Capital Punishment in India

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## Abstract

Capital punishment remains one of the most contested forms of punishment in India, situated at the intersection of criminal justice, constitutional law, and human rights. While the death penalty is often defended as a necessary response to heinous crimes and as a means of delivering justice to victims and their families, its continued legitimacy has increasingly come under scrutiny. This paper examines the tension between victim justice and constitutional morality in assessing the constitutional validity and normative desirability of capital punishment in India. Victim justice, in this context, refers to the expectation that the legal system should acknowledge and respond meaningfully to the suffering of victims through proportionate punishment, participation, and recognition. Constitutional morality, by contrast, requires that all exercises of state power conform to the foundational values of the Constitution of India, including dignity, equality, fairness, and the right to life under Article 21. The study adopts a doctrinal and analytical methodology, relying on constitutional provisions, statutory law, landmark judgments of the Supreme Court of India, reports of the Law Commission of India, and comparative international developments. It critically evaluates the theoretical justifications for capital punishment, including retribution and deterrence, and analyzes the judicial evolution of the “rarest of rare” doctrine established in *Bachan Singh v. State of Punjab*<sup>1</sup>. The paper argues that although the suffering of victims warrants substantial recognition and support, the irreversible and inconsistently imposed nature of the death penalty renders its constitutional legitimacy increasingly difficult to sustain. It concludes that a constitutional democracy committed to dignity and due process should prioritize victim-centered restorative measures and consider a gradual movement toward abolition.

**Keywords:** Capital Punishment, Death Penalty, Victim Justice, Constitutional Morality, Human Dignity, Right to Life, Rarest of Rare Doctrine, Victimology, Restorative Justice, Supreme Court of India

## 1. Introduction

### 1.1 Historical Background

Capital punishment continues to be legally valid in India, though its use is intended to be highly exceptional. Under the *Bharatiya Nyaya Sanhita, 2023*, as under the earlier Indian Penal Code, 1860, the death penalty is prescribed only for a limited category of grave offences such as certain forms of murder

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<sup>1</sup> *Bachan Singh vs State Of Punjab* 1980 (1982)3SCC24, [1983]1SCR145A  
<https://indiankanoon.org/doc/1235094/#:~:text=Bachan%20Singh%2C%20appellant%20in%20Criminal,3.>

and terrorism-related crimes. However, the Supreme Court of India has consistently held that it may be imposed only in the “rarest of rare” cases, with life imprisonment remaining the ordinary rule.

In practice, there is a significant gap between legal doctrine and actual application. Trial courts continue to award death sentences, particularly in cases involving extreme brutality, but many are later commuted or overturned on appeal. This has raised concerns regarding inconsistency and arbitrariness under Articles 14 and 21 of the Constitution of India. The growing recognition of victims’ rights has also strengthened arguments that capital punishment serves as a symbolic acknowledgment of their suffering and society’s moral condemnation.

At the same time, constitutional criticism has intensified due to concerns about wrongful convictions, inadequate legal representation, socioeconomic disparities, and the psychological impact of prolonged death row incarceration. The Law Commission of India, in its 262nd Report, recommended abolition for ordinary crimes. While many countries have moved toward abolition, India continues to retain the death penalty, creating an ongoing tension between victim justice and constitutional values of dignity, fairness, and the right to life.

### **1.2 Current Scenario**

Capital punishment remains legally valid in India under the Bharatiya Nyaya Sanhita, 2023, but it is intended to be imposed only in the “rarest of rare” cases, with life imprisonment as the general rule. Although trial courts continue to award death sentences, many are later commuted or overturned, raising concerns about inconsistency and arbitrariness under Articles 14 and 21 of the Constitution of India. The increasing recognition of victims’ rights has strengthened arguments that the death penalty serves as a symbolic acknowledgment of their suffering, but critics question whether sentencing should be influenced by public sentiment and the notion of “collective conscience.” At the same time, concerns regarding wrongful convictions, inadequate legal representation, socioeconomic disparities, and the death row phenomenon have intensified constitutional objections to capital punishment. The Law Commission of India, in its 262nd Report<sup>2</sup>, recommended abolition for ordinary crimes, reflecting growing institutional unease. While many countries have moved toward abolition, India continues to retain the death penalty but restricts its use through judicial safeguards, creating an ongoing tension between victim justice and constitutional commitments to dignity, fairness, and the right to life.

### **1.3 Key Issues and Challenges**

The continued retention of capital punishment in India raises significant legal, constitutional, and moral challenges. Although constitutionally permissible in limited circumstances, its application has generated concerns regarding arbitrariness, inconsistent sentencing, wrongful convictions, and the tension between retributive demands and constitutional guarantees. These issues question whether the death penalty remains a legitimate exercise of state power.

#### **A. Arbitrariness in Sentencing**

One of the most significant criticisms of the death penalty is the difficulty of applying the “rarest of rare” doctrine with consistency. While *Bachan Singh v. State of Punjab* sought to restrict capital punishment to exceptional cases, the standard leaves substantial room for judicial discretion. Different courts may assess aggravating and mitigating factors differently, leading to divergent outcomes in factually similar cases. Such inconsistency raises serious concerns under Article 14 of the Constitution of India, which prohibits arbitrary state action.

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<sup>2</sup> Law Commission of India, 262nd Report: The Death Penalty (2015) <https://indiankanoon.org/doc/35654105/>

## **B. Risk of Wrongful Convictions**

The irreversible nature of the death penalty makes the possibility of judicial error particularly troubling. Criminal trials may be affected by unreliable evidence, coerced confessions, inadequate investigation, or ineffective legal representation. While appellate review provides important safeguards, no system is immune from error. In cases involving capital punishment, a mistaken conviction cannot be remedied after execution, making the risk of wrongful conviction one of the strongest arguments against retention.

## **C. Socioeconomic Inequality and Access to Justice**

Research and judicial observations suggest that individuals sentenced to death often come from economically and socially marginalized backgrounds. Limited access to experienced counsel, mental health assessments, and mitigation evidence may significantly affect sentencing outcomes. This raises broader questions about whether capital punishment is imposed disproportionately on those least able to defend themselves effectively.

## **D. Death Row Phenomenon**

Condemned prisoners may spend years awaiting the final resolution of appeals and mercy petitions. Prolonged uncertainty, solitary confinement, and psychological distress have been recognized as forms of severe suffering. In *Shatrughan Chauhan v. Union of India*<sup>3</sup>, the Supreme Court held that undue delay and other supervening circumstances may justify commutation. The decision underscored that constitutional protections continue even after a death sentence is imposed.

## **E. Tension Between Victim Justice and Constitutional Limits**

Victims and their families understandably seek recognition, accountability, and proportionate punishment. In particularly heinous cases, capital punishment is often viewed as the strongest expression of societal condemnation. However, constitutional morality requires that punishment be guided by dignity, fairness, and restraint rather than solely by retributive sentiment. The challenge lies in acknowledging the legitimate interests of victims without allowing emotional responses to override constitutional principles.

## **F. International Human Rights Pressure**

A growing number of countries have abolished capital punishment, reflecting an international trend toward recognizing the death penalty as incompatible with human dignity. India's continued retention places it in a shrinking group of states that preserve the sanction, prompting renewed scrutiny of whether domestic law should evolve in line with global human rights standards.

These issues and challenges reveal that the debate over capital punishment extends far beyond the severity of particular crimes. It raises foundational questions about equality, fairness, human dignity, and the constitutional limits of punishment. The following sections examine the factors that sustain the death penalty and the legal responses developed to address these concerns.

### **1.4 Factors Influencing the Situation**

The continued existence of capital punishment in India is shaped by a combination of legal doctrine, public sentiment, political considerations, institutional practices, and the evolving role of victims within the criminal justice system. These factors help explain why the death penalty remains part of Indian law despite increasing constitutional scrutiny and the global movement toward abolition.

The continued retention of capital punishment in India is influenced by several interconnected factors. Public demand for retribution in response to heinous crimes often creates pressure for the harshest punishment, with the death penalty viewed as a symbol of moral condemnation and justice for victims.

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<sup>3</sup> *Shatrughan Chauhan & Anr vs Union Of India & Ors* on 21 January, 2014 - <https://indiankanoon.org/doc/59968841/>

The growing emphasis on victim-centered justice has strengthened arguments that severe punishment acknowledges the suffering of victims and their families. Judicial reliance on the “collective conscience” doctrine, particularly in *Machhi Singh v. State of Punjab*<sup>4</sup>, has further supported the view that certain crimes warrant death to satisfy society’s sense of justice.

Political and legislative responses to serious crimes continue to support the retention of capital punishment, as governments often preserve it to address concerns relating to law and order and national security. Retribution and deterrence remain the principal philosophical justifications for the death penalty. At the same time, institutional conservatism has encouraged both the judiciary and legislature to pursue gradual reform rather than immediate abolition. International human rights developments and global abolitionist trends increasingly influence Indian legal discourse, placing pressure on the State to reconsider the compatibility of capital punishment with human dignity. Together, these factors explain the continued retention of the death penalty in India despite growing constitutional and moral concerns.

### 1.5 Government and Policy Responses

India has not abolished capital punishment, but it has developed several legislative, judicial, and executive safeguards to restrict its use and minimize arbitrariness. These measures reflect an effort to balance the demands of victim justice with constitutional values such as fairness, due process, and human dignity. The statutory basis for the death penalty is found in the *Bharatiya Nyaya Sanhita, 2023*, while procedural safeguards are provided under the *Bharatiya Nagarik Suraksha Sanhita, 2023*. Following the principle earlier contained in Section 354(3) of the Code of Criminal Procedure, life imprisonment remains the normal rule, and courts must record special reasons before imposing the death sentence.

The most significant restrictions have come through judicial decisions. In *Bachan Singh v. State of Punjab*, the Supreme Court of India upheld the constitutional validity of capital punishment but limited it to the “rarest of rare” cases. Subsequent decisions such as *Machhi Singh v. State of Punjab*, *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*<sup>5</sup>, and *Shatrughan Chauhan v. Union of India* refined the standards relating to sentencing, mitigation, and the rights of death row prisoners. The Law Commission of India has also played an important role. While its 35th Report<sup>6</sup> supported retention, the 262nd Report (2015) recommended abolition of the death penalty for all ordinary crimes, retaining it only for terrorism-related offences and waging war against the State. The Commission emphasized that deterrence and retribution do not sufficiently justify such an irreversible punishment.

Additional safeguards are provided through executive clemency under Articles 72 and 161 of the Constitution of India, which empower the President of India and State Governors to grant pardons or commute sentences. At the same time, expanding victim compensation and support mechanisms demonstrate that justice for victims can be achieved through restorative and compensatory measures rather than the death penalty alone. Overall, India’s policy reflects cautious retention rather than abolition. Although capital punishment remains legally valid, legislative safeguards, judicial scrutiny, Law Commission recommendations, and clemency procedures indicate a gradual movement toward restricting and humanizing its application.

## 2. Objective of the Study

The present study seeks to critically examine the continuing legitimacy of capital punishment in India

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<sup>4</sup> *Machhi Singh And Others vs State Of Punjab* 1983 AIR 957 - <https://indiankanoon.org/doc/545301/>

<sup>5</sup> *Santosh Kumar Satishbhushan Bariyar vs State Of Maharashtra* 2009 <https://indiankanoon.org/doc/1312651/>

<sup>6</sup> Law Commission of India, 35th Report on Capital Punishment (1967) <https://indiankanoon.org/doc/44786366/>

through the intersecting frameworks of victim justice and constitutional morality. Although the death penalty is often defended as a necessary response to particularly heinous offences and as a means of acknowledging the suffering of victims and their families, its retention raises profound constitutional and ethical questions concerning human dignity, equality, fairness, and the right to life. This research aims to determine whether these competing considerations can be reconciled within the constitutional structure of India.

**The specific objectives of this study are:**

1. To examine the concept of victim justice and analyze how the Indian criminal justice system recognizes the rights, interests, and expectations of victims and their families.
2. To explore the doctrine of constitutional morality and its relevance to the interpretation of Articles 14 and 21 of the Constitution of India.
3. To evaluate the principal justifications for capital punishment, including retribution, deterrence, and societal denunciation, and assess their continuing validity.
4. To analyze the judicial development and practical application of the “rarest of rare” doctrine, particularly through landmark decisions of the Supreme Court of India.
5. To identify constitutional and practical challenges associated with the death penalty, including arbitrariness, wrongful convictions, socioeconomic disparities, and the death row phenomenon.
6. To compare India’s position with international trends and selected jurisdictions that have abolished or significantly restricted capital punishment.
7. To assess whether meaningful justice for victims can be achieved through alternatives such as victim compensation, restorative justice, and strengthened support mechanisms.
8. To offer recommendations on whether India should retain, further restrict, or move toward abolishing capital punishment in light of constitutional morality and evolving standards of justice.

Through these objectives, the study aims to provide a balanced and critical evaluation of whether the death penalty remains a constitutionally defensible and normatively justified punishment in contemporary India.

### **3. Literature Review**

The question of whether capital punishment should continue to exist in India has generated extensive debate among legal scholars, judges, policy bodies, and human rights advocates. Existing literature addresses the death penalty from multiple perspectives, including theories of punishment, constitutional law, victimology, criminology, and comparative human rights analysis. Although these bodies of scholarship are individually well developed, relatively few studies integrate the competing claims of victim justice and constitutional morality into a single analytical framework. This review examines the principal strands of literature and identifies the gap that the present study seeks to fill.

#### **3.1 Scholarship on Capital Punishment in India**

A substantial body of Indian legal scholarship examines the constitutional and normative foundations of the death penalty. Early discussions focused on the constitutional validity of capital punishment following *Jagmohan Singh v. State of Uttar Pradesh*<sup>7</sup> and *Bachan Singh v. State of Punjab*. These works analyzed whether judicial discretion in sentencing could be reconciled with Articles 14 and 21 of the Constitution of India. The prevailing scholarly concern was whether procedural safeguards were sufficient to prevent arbitrary deprivation of life.

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<sup>7</sup> *Jagmohan Singh vs The State Of U. P* 1973 AIR 947 - <https://indiankanoon.org/doc/1837051/>

Subsequent literature has become more critical of the practical operation of the “rarest of rare” doctrine. Scholars have documented inconsistent sentencing patterns, inadequate consideration of mitigating circumstances, and the influence of subjective notions such as “collective conscience.” These studies argue that despite doctrinal safeguards, capital sentencing remain unpredictable and susceptible to bias, thereby undermining constitutional guarantees of equality and fairness.

### **3.2 Law Commission Reports and Policy Literature**

The Law Commission of India has produced some of the most influential policy analyses on the death penalty. The 35th Report (1967) supported retention, emphasizing deterrence and the perceived need for severe punishment in the Indian context. In contrast, the 262nd Report (2015) recommended abolition for all ordinary crimes, retaining the sanction only for terrorism-related offences and waging war against the State. The Report concluded that capital punishment had failed to establish a unique deterrent effect and that its arbitrary and irreversible nature posed serious constitutional concerns.

Policy literature from human rights organizations and academic institutions has reinforced these conclusions by highlighting the socioeconomic marginalization of death row prisoners, deficiencies in legal representation, and the psychological consequences of prolonged incarceration under sentence of death.

### **3.3 Victimology and Victim Justice**

The field of Victimology has shifted attention from the offender-centered model of criminal law to the needs and rights of victims. Scholars in this area emphasize participation, compensation, psychological support, and recognition of harm. Within Indian scholarship, victim justice is often discussed in the context of compensation schemes and procedural rights rather than as a direct justification for capital punishment. Some commentators argue that the death penalty may provide symbolic acknowledgment of the gravity of the wrong suffered by victims. Others contend that equating justice with execution oversimplifies the complex emotional and social needs of victims’ families, many of whom seek truth, accountability, and support rather than retribution alone. This literature suggests that victim-centered justice can be pursued through mechanisms that do not require the irreversible deprivation of life.

### **3.4 Constitutional Morality and Human Dignity**

The concept of constitutional morality has received increasing scholarly attention following decisions such as *Navtej Singh Johar v. Union of India*<sup>8</sup> and *Indian Young Lawyers Association v. State of Kerala*<sup>9</sup>. Scholars describe constitutional morality as a commitment to substantive values embedded in the Constitution, including dignity, liberty, equality, and protection of minorities against majoritarian pressures.

When applied to capital punishment, this literature raises the question whether the State may impose an irreversible punishment that extinguishes life despite the constitutional commitment to dignity and fair procedure. Although many scholars discuss dignity and Article 21 in relation to the death penalty, fewer explicitly connect these constitutional principles with the emerging discourse on victim justice.

### **3.5 Comparative and International Literature**

International scholarship overwhelmingly reflects an abolitionist trend. Comparative studies of jurisdictions such as South Africa, Canada, and the United Kingdom demonstrate how constitutional courts and legislatures have rejected capital punishment as incompatible with human dignity and modern

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<sup>8</sup> *Navtej Singh Johar vs Union Of India* - <https://indiankanoon.org/doc/168671544/>

<sup>9</sup> *Indian Young Lawyers Association vs The State Of Kerala* - <https://indiankanoon.org/doc/163639357/>

human rights norms. In *S v Makwanyane*<sup>10</sup>, the South African Constitutional Court held that the death penalty violated the rights to life and dignity, providing one of the most influential constitutional critiques of capital punishment.

The United Nations and various international human rights bodies have similarly advocated progressive abolition, emphasizing the irreversible nature of executions and the risk of miscarriages of justice.

### 3.6 Research Gap

Despite the richness of the existing literature, most studies approach capital punishment from one of three perspectives: deterrence and retribution, constitutional rights, or victim rights. There is comparatively little scholarship that systematically examines whether the claims of victim justice can be reconciled with constitutional morality in the Indian context. Existing works often assume that support for victims necessarily strengthens the case for capital punishment, without adequately considering whether victims' interests can be addressed through restorative and compensatory alternatives.

The present study seeks to bridge this gap by placing victim justice and constitutional morality in direct analytical conversation. It argues that recognizing victims' suffering is essential, but that constitutional morality imposes substantive limits on the State's power to take life. By integrating victimology, constitutional theory, and death penalty jurisprudence, this research offers a more nuanced framework for assessing the legitimacy of capital punishment in India.

## 4. Conceptual Framework

The conceptual framework of this study is built upon two competing yet potentially reconcilable normative paradigms: **victim justice** and **constitutional morality**. Victim justice emphasizes the recognition of harm suffered by victims and their families and seeks meaningful accountability for grave offences. Constitutional morality, by contrast, requires that all state action—including punishment—conform to the foundational values of the Constitution of India, particularly dignity, equality, fairness, and the right to life. The legitimacy of capital punishment in India depends upon whether these two paradigms can coexist within a constitutional democracy.

This framework is further informed by theories of punishment, judicial doctrine, and comparative constitutional developments. Retributive and deterrent theories provide the principal justifications for capital punishment, while reformatory and restorative approaches question whether execution is necessary to achieve justice. The jurisprudence of the Supreme Court of India, especially the “rarest of rare” doctrine, serves as the doctrinal mechanism through which these theoretical tensions are operationalized. Comparative and international developments provide an external benchmark against which India's retention of the death penalty may be assessed.

**Accordingly, the conceptual framework proceeds through six interrelated components:**

1. Victim Justice and the evolution of victim-centered criminal jurisprudence.
2. Constitutional Morality and the constitutional limits on punitive power.
3. Theories of Punishment and the normative justifications for capital punishment.
4. Judicial Doctrine and Case Studies in Indian death penalty jurisprudence.
5. International and Comparative Perspectives.
6. Integrative Analysis of whether capital punishment remains constitutionally legitimate.

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<sup>10</sup> Symposium: A New Role for a New Court: *S v Makwanyane* - <https://blog-iacl-aidc.org/2019-posts/2019/12/17/a-new-role-for-a-new-court-s-v-makwanyane-4khz4>

Together, these components provide the analytical structure through which this study reassesses whether the death penalty can continue to be justified in India while honoring both the demands of victims and the constitutional commitment to human dignity and restrained state power.

#### **4.1 Victim Justice and the Evolution of Victim-Centered Criminal Jurisprudence**

For much of legal history, victims played only a limited role in criminal proceedings, and their emotional, psychological, and financial suffering received little attention. Over time, however, criminal justice systems increasingly recognized that victims are central stakeholders whose interests deserve meaningful acknowledgment and protection.

The modern concept of victim justice emerged from Victimology and extends beyond punishment to include recognition of suffering, participation in legal proceedings, compensation, psychological support, and assurance that offenders are held accountable. In India, this development is reflected in compensation schemes and procedural protections under the Bharatiya Nagarik Suraksha Sanhita, 2023, as well as growing judicial emphasis on victims' rights.

In cases involving particularly brutal offences, capital punishment is often viewed as a means of delivering justice to victims and their families by expressing society's strongest moral condemnation. However, equating victim justice solely with execution oversimplifies the diverse needs of victims. Many seek truth, participation, timely trials, compensation, and long-term support rather than any specific sentence, and the lengthy appellate process in death penalty cases may prolong their suffering.

Accordingly, victim justice should be regarded as an important but not decisive factor in the death penalty debate. Justice for victims can be achieved through effective investigation, compensation, counseling, and restorative measures without necessarily resorting to the irreversible deprivation of life. The central challenge is to recognize victims' suffering while ensuring that punishment remains consistent with constitutional values of dignity, fairness, and restraint.

#### **4.2 Theories of Punishment and the Normative Justifications for Capital Punishment**

The legitimacy of capital punishment must be assessed through theories of punishment, including retribution, deterrence, incapacitation, rehabilitation, and restoration, which justify the State's response to crime.

##### **A. Retributive Theory**

Retribution is the traditional justification for capital punishment. It is based on the idea that punishment should be proportionate to the gravity of the offence and that offenders deserve consequences commensurate with the harm they have caused. In the context of victim justice, retribution has particular appeal because it acknowledges the seriousness of the victim's loss. Supporters argue that in exceptionally brutal crimes, execution is the only punishment proportionate to the offence. Critics, however, maintain that proportionality does not necessarily require the taking of life and that retributive impulses must be constrained by constitutional values.

##### **B. Deterrent Theory**

The deterrent theory justifies punishment on the ground that it discourages future criminal conduct. Advocates claim that the finality of execution deters potential offenders more effectively than other punishments. However, empirical evidence remains inconclusive as to whether the death penalty provides a greater deterrent effect than life imprisonment.

##### **C. Incapacitation**

Incapacitation seeks to protect society by preventing dangerous offenders from committing further crimes. While execution permanently eliminates this risk, life imprisonment without release can achieve the same

objective without foreclosing the possibility of correcting judicial errors.

#### **D. Reformatory Theory**

The reformatory theory emphasizes the capacity of offenders to change and rehabilitate. This approach is closely aligned with the constitutional value of human dignity. Capital punishment is inconsistent with this theory because it extinguishes any possibility of moral transformation.

#### **E. Restorative Justice**

Restorative justice focuses on repairing harm by addressing the needs of victims, ensuring offender accountability, and promoting healing. It demonstrates that justice for victims can be achieved through acknowledgment, compensation, and support rather than through execution alone.

#### **F. Constitutional Assessment**

When viewed through the lens of constitutional morality, retribution and deterrence provide limited justification for capital punishment, whereas reformatory and restorative approaches align more closely with the values of dignity, fairness, and restraint embodied in the Constitution of India. If the Constitution prioritizes human dignity and the avoidance of irreversible injustice, the normative foundations for retaining the death penalty become increasingly difficult to sustain.

### **4.3 Judicial Doctrine and Case Studies in Indian Death Penalty Jurisprudence**

The constitutional legitimacy of capital punishment in India has been shaped primarily by the Supreme Court of India. Through landmark decisions, the Court has sought to reconcile the death penalty with constitutional guarantees of equality, fairness, and the right to life. At the same time, its jurisprudence continues to reveal concerns regarding inconsistency, subjectivity, and the risk of arbitrary application.

#### **A. Jagmohan Singh v. State of Uttar Pradesh**

In this early constitutional challenge, the Supreme Court upheld the validity of the death penalty, reasoning that sentencing discretion exercised within the judicial process satisfied the requirements of Article 21. The Court emphasized that trial procedures and appellate review provided sufficient safeguards against arbitrary deprivation of life. Although decided before the modern expansion of substantive due process, the case established the initial constitutional foundation for retaining capital punishment.

#### **B. Bachan Singh v. State of Punjab**

Bachan Singh is the cornerstone of Indian death penalty jurisprudence. By a narrow majority, the Supreme Court upheld the constitutional validity of capital punishment but held that it may be imposed only in the “rarest of rare” cases when the alternative option of life imprisonment is unquestionably foreclosed. The Court required judges to balance aggravating and mitigating circumstances and to consider the individual circumstances of both the crime and the offender.

This decision sought to transform capital punishment from a routinely available sanction into an extraordinary measure of last resort. At the same time, the doctrine’s inherently open-ended language left substantial room for judicial discretion, which later generated concerns regarding inconsistency and subjectivity.

#### **C. Machhi Singh v. State of Punjab**

Machhi Singh elaborated the Bachan Singh doctrine by identifying categories of cases in which the death penalty might be appropriate, including offences involving exceptional brutality or circumstances that shock the collective conscience of society. While the decision attempted to provide practical guidance, its reliance on concepts such as “collective conscience” introduced additional subjectivity into sentencing. The judgment remains influential, but it has also attracted criticism because societal outrage may vary over time and may not provide a sufficiently objective constitutional standard.

#### **D. Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra**

In Bariyar, the Supreme Court undertook a searching re-examination of death penalty jurisprudence and acknowledged that previous decisions had not always adhered faithfully to Bachan Singh. The Court stressed the importance of individualized sentencing and meaningful consideration of mitigating factors, including the offender's social background and prospects of reform.

This judgment is significant because it openly recognized doctrinal inconsistency and reinforced the principle that death should remain a truly exceptional punishment.

#### **E. Shatrughan Chauhan v. Union of India**

Shatrughan Chauhan 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.

#### **F. Broader Judicial Trends**

Collectively, these cases reveal a gradual movement toward heightened constitutional scrutiny of capital punishment. The Supreme Court has retained the death penalty in principle while progressively narrowing its application and strengthening procedural safeguards. Nevertheless, the Court's own acknowledgment of inconsistent sentencing raises a fundamental question: if the legal system cannot ensure non-arbitrary and equitable application, can the death penalty truly satisfy constitutional requirements.

#### **G. Implications for the Present Study**

The judicial doctrine demonstrates both the resilience and fragility of capital punishment in India. On the one hand, the Supreme Court has sought to preserve the sanction as an exceptional response to extraordinary crimes. On the other, its evolving jurisprudence reflects increasing awareness of arbitrariness, human dignity, and the risk of irreversible error. These tensions provide powerful evidence that the constitutional legitimacy of the death penalty remains unsettled and demands continued reassessment through the lens of constitutional morality and victim justice.

### **4.4 International Scenario**

The global trajectory of criminal justice has moved steadily toward the abolition or substantial restriction of capital punishment. An increasing number of countries have concluded that the death penalty is incompatible with contemporary understandings of human dignity, due process, and the right to life. Comparative constitutional experience is especially valuable to this study because it demonstrates that the interests of victims and public safety can be addressed without resorting to irreversible punishment.

#### **A. Global Abolition Trend**

According to the United Nations and major human rights organizations, a majority of countries have either abolished the death penalty in law or ceased using it in practice. Repeated UN General Assembly resolutions have called for a global moratorium on executions with a view toward eventual abolition. These developments reflect an emerging international consensus that the death penalty poses unacceptable risks of arbitrariness and irreversible error and that life imprisonment and restorative measures can provide meaningful alternatives.

#### **B. United Kingdom**

The United Kingdom abolished the death penalty for murder through the Murder (Abolition of Death Pen-

alty) Act 1965<sup>11</sup> and later eliminated it for all offences. The abolition process was influenced by concerns about miscarriages of justice and changing moral attitudes toward state-imposed executions. Despite abolition, the United Kingdom continues to maintain a robust criminal justice system and comprehensive victim support services, demonstrating that justice for victims does not depend on capital punishment.

### **C. Canada**

Canada abolished the death penalty for ordinary criminal offences in 1976. Parliamentary debates emphasized the possibility of wrongful convictions and the absence of conclusive evidence that executions provide greater deterrence than long-term imprisonment. Canadian criminal justice policy has increasingly focused on victim services, compensation, and trauma-informed support, illustrating a model in which victim justice is pursued without the death penalty.

### **D. South Africa**

South Africa offers one of the most influential constitutional critiques of capital punishment. In *S v Makwanyane*, the Constitutional Court held that the death penalty violated the rights to life and dignity under the post-apartheid Constitution. The Court reasoned that constitutional values must prevail over retributive impulses and public opinion, establishing a powerful precedent for dignity-based constitutional review.

### **E. United States**

The United States retains the death penalty in several jurisdictions, making it an important comparative example for India. American experience has revealed extensive litigation concerning racial disparities, ineffective assistance of counsel, wrongful convictions, and the administration of lethal injection. The persistence of these concerns illustrates the structural difficulties inherent in administering capital punishment even within highly developed legal systems.

### **F. International Human Rights Framework**

International human rights law increasingly favors abolition. Instruments such as the United Nations Human Rights Committee have emphasized strict limitations on the use of capital punishment and encouraged states to move toward abolition. Although India remains legally entitled to retain the death penalty, these norms exert persuasive influence on constitutional interpretation and policy debates.

### **G. Lessons for India**

Comparative experience demonstrates three important lessons. First, abolition does not undermine the effectiveness of criminal justice systems. Second, victims' interests can be addressed through compensation, counseling, and meaningful participation rather than execution. Third, constitutional democracies increasingly treat human dignity and the possibility of error as decisive considerations against irreversible punishment.

India's retention of capital punishment therefore places it at a critical crossroads. While its constitutional jurisprudence has significantly restricted the death penalty, comparative developments suggest that the logic of dignity-based constitutionalism points toward continued narrowing and, potentially, eventual abolition. This international perspective strengthens the central argument of this study that justice for victims and fidelity to constitutional morality need not be mutually exclusive.

## **4.5 Integrative Analysis: Can Capital Punishment Remain Constitutionally Legitimate?**

The debate over capital punishment in India is not simply a conflict between supporting victims and prote-

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<sup>11</sup> Murder (Abolition of Death Penalty) Act 1965 - <https://www.legislation.gov.uk/ukpga/1965/71>

cting offenders; it raises a deeper constitutional question about the purposes of punishment and the limits of state power. Victim justice and constitutional morality are both essential but distinct principles. Victim justice emphasizes recognition of suffering, accountability, compensation, participation, and psychological support, while constitutional morality requires that all punishment conform to the values of dignity, equality, fairness, and the right to life.

In particularly heinous cases, victims and their families may regard the death penalty as a proportionate response and a symbolic acknowledgment of their suffering. However, justice for victims can also be achieved through effective investigation, fair trials, compensation, counseling, and restorative measures, without resorting to execution.

Constitutional morality imposes a decisive constraint on the State's power to punish. The death penalty is irreversible, vulnerable to judicial error, and susceptible to inconsistent application under the "rarest of rare" doctrine. Retribution and deterrence remain the principal arguments for retention, but neither proves that execution is indispensable. Reformative and restorative approaches align more closely with constitutional values. Accordingly, this study concludes that justice for victims is indispensable, but it does not necessarily require the death penalty.

## 5. Solutions and Recommendations

The debate over capital punishment in India is not a choice between supporting victims and protecting offenders. A constitutionally sound criminal justice system must do both by recognizing the suffering of victims and their families while ensuring that the State exercises its punitive power within the limits of dignity, fairness, and the right to life.

India should adopt a phased approach in which the death penalty is confined to the narrowest category of offences and the "rarest of rare" doctrine is applied with greater rigor. In the long term, the legislature should consider the recommendations of the Law Commission of India in its 262nd Report, which advocated abolition for ordinary crimes. At the same time, victim compensation and support mechanisms should be strengthened through adequate funding, psychological counseling, legal assistance, and trauma-informed services so that victims receive meaningful and practical forms of justice.

Capital sentencing procedures should be standardized through structured guidelines requiring careful consideration of aggravating and mitigating circumstances. Courts should examine the offender's background, mental health, socioeconomic conditions, and prospects of reform. To ensure fair adjudication, the State must provide high-quality legal representation, including trained defense counsel, investigators, and mental health experts. Comprehensive mitigation investigations should be mandatory before any death sentence is imposed, ensuring that sentencing reflects a complete understanding of the individual rather than the offence alone.

Further reforms should include transparent and timely mercy petition procedures under Articles 72 and 161 of the Constitution of India, promotion of restorative justice practices, improved data collection on death sentencing, and specialized judicial training in sentencing principles, victimology, and constitutional rights. Broader public dialogue on justice and constitutional values is also essential to distinguish between understandable demands for accountability and the deeper constitutional question of whether the State should retain the power to execute.

Together, these measures seek to create a criminal justice system that responds compassionately and effectively to victims while remaining faithful to the constitutional principles that define the legitimate boundaries of punishment.

## 6. Future Prospects

The future of capital punishment in India is likely to be shaped by evolving constitutional jurisprudence, changing societal views of justice, and the growing recognition that meaningful justice for victims does not necessarily depend on the death penalty. Although immediate abolition appears unlikely, several developments suggest that the practical scope of capital punishment may continue to narrow.

The expanding influence of constitutional morality, with its emphasis on dignity, equality, and substantive due process, provides a strong basis for re-evaluating the death penalty. At the same time, improvements in victim-centered justice—such as better compensation, counseling, and procedural participation—may reduce the perceived need for execution as a symbolic response to serious crime. The Supreme Court of India has already shown increasing restraint by emphasizing mitigation, individualized sentencing, and the rights of death row prisoners, and this trend is likely to continue.

Future legislative reconsideration, particularly in light of the Law Commission of India's 262nd Report, may lead to further statutory restrictions. In addition, global abolitionist trends, international human rights norms, advances in forensic science, and growing awareness of wrongful convictions are likely to intensify scrutiny of irreversible punishment.

The most realistic prospect is a gradual constitutional transition in which the death penalty becomes increasingly rare and potentially unnecessary. If India succeeds in strengthening victim support while upholding dignity and fairness, the justification for retaining capital punishment may weaken substantially over time.

## 7. Conclusion

Capital punishment remains one of the most debated issues in Indian constitutional and criminal law because it reflects the tension between two important values: the need to recognize the suffering of victims and the constitutional obligation to ensure that punishment respects dignity, equality, fairness, and the right to life. This study has examined that tension through the concepts of victim justice and constitutional morality.

The analysis shows that victim justice is an essential part of a humane legal system. Victims and their families are entitled to recognition, participation, compensation, and institutional support. However, justice for victims does not necessarily require the death penalty, as many seek truth, acknowledgment, psychological healing, and material assistance rather than execution alone.

At the same time, Articles 14 and 21 of the Constitution of India impose substantive limits on the State's power to punish. The irreversible nature of the death penalty, the possibility of judicial error, and inconsistent application under the "rarest of rare" doctrine established in *Bachan Singh v. State of Punjab* raise serious constitutional concerns. Comparative experience and modern theories of punishment further weaken the case for retention. Accordingly, this study concludes that India should move toward stronger victim-centered remedies and a more humane and constitutionally faithful approach to punishment.