

***Law Audience Journal, Volume 5 & Issue 6, 5<sup>th</sup> Feb 2025,  
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.954, Published  
at <https://www.lawaudience.com/volume-5-issue-6-2/>, Pages: 238 to  
257,***

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### **Cite this article as:**

SAUMYA & DR. CHANDER PRAKASH, "Capital Punishment as A Deterrent in India" Vol.5 & Issue 6, Law Audience Journal (e-ISSN: 2581-6705), Pages 238 to 257 (5<sup>th</sup> Feb 2025), available at <https://www.lawaudience.com/capital-punishment-as-a-deterrent-in-india/>.

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## **Publisher Details:**

*Law Audience Journal (e-ISSN: 2581-6705),*

*Sole Proprietorship of Mr. Varun Kumar, Kharar, District.  
S.A.S, Nagar, Mohali, 140301,*

Phone No(s): +91-8351033361 (WhatsApp),

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## **ABSTRACT**

*“Capital punishment is in India for "rarest of rare" cases, as per the rule as set down in Bachan Singh case. This study looks into this question of whether the death penalty, indeed, does deter such heinous crimes or instead acts as a retributive punishment. Based on analysis of the Nirbhaya Case and crime data from the National Crime Records Bureau, the study analyses if the evidence for the deterrence claim is indeed mixed. The death penalty's deterrent effect is uncertain, and high-profile executions have not led to steadily lower levels of violent crimes, according to findings. The study also traces how India's judicial journey towards the cautious use of the death penalty tried striking a balance between deterrence and concern for human rights. When compared with countries that have abolished capital punishment, we suggest that alternative measures, including socio-economic reform, improved policing, and non-fatal sentencing are more likely to deter crime. Finally, the study concludes with a call for reforming India's criminal justice system to allow capital punishment to play no role in it and to opt for preventive and rehabilitative means with reference to evolving human rights standards, and in the spirit of promoting a fair and humane approach to the prevention of crime”.*

**KEYWORDS: Capital Punishment, Death Penalty, Deterrence, Rarest of Rare, Indian Criminal Justice, Human Rights, Rehabilitation, Nirbhaya Case.**

### **1.1 INTRODUCTION:**

One of the most litigated aspects of criminal laws in any country is capital punishment, or the 'death penalty', as it is also called. The debate on capital punishment is polarized to the extent that both sides of the argument justify and justify not using it, and the only aspect of it that is used to justify its existence is that it is a deterrent. Capital punishment is allowed in India for the infamous 'rarest of rare' cases based on the guiding principle laid down in “***Bachan Singh***



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*v. Singh States of Punjab*<sup>1</sup>, This principle is supposed to limit the application of the death penalty to the worst of crimes but shows how the judiciary seeks to find a balance between justice and humanity. However, in reality, there is a different story to tell, and the interpretation of what is 'rarest of rare' has changed in practice, and there exists a question of consistency in application. The Indian Penal Code (IPC) was replaced by Bharatiya Nyaya Sanhita, which maintains and continues to sanction death. Though numerous scholars and legal experts condemn the morality and effectiveness of capital punishment, proponents contend that it serves as a strong incentive for potential wrongdoers not to commit serious crimes. Finally, this article aims to study whether capital punishment is a deterrent in India by studying through case laws, statutory provisions, and the effects of its enforcement.

The Indian Penal Code, of 1860, defined the term 'death penalty' and has long documented the country's historical experience with capital punishment, which has existed for at least 4,000 years. After India gained independence, the practice of capital punishment continued, with the judiciary recognizing the state's power to impose the death penalty, subject to due process. Over the decades, however, the constitutional validity of capital punishment has been frequently challenged.<sup>2</sup>

Significantly, in *Jagmohan Singh vs. State of U.P.*<sup>3</sup>, the Supreme Court upheld the constitutionality of the death penalty but emphasized that sentencing should be conducted with care and equanimity. Later, in *Bachan Singh vs. State of Punjab*<sup>4</sup>, the Supreme Court reiterated the need for careful consideration of aggravating and mitigating factors before

<sup>1</sup> [1980] 2 SCC 684.

<sup>2</sup> Austin Sarat and Christian Boulanger, *The Cultural Lives of Capital Punishment: Comparative Perspectives* 90 (Stanford University Press, Stanford, 1st edn., 2005).

<sup>3</sup> (1973) 2 SCC 486.

<sup>4</sup> (1980) 2 SCC 684.

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imposing the death penalty, especially under the 'rarest of rare' doctrine. This guideline was intended to limit the use of the death penalty to only the most heinous cases, illustrating the judiciary's commitment to balancing justice with humanity. One of the main theories of criminal law and criminal deterrence is that punishment is severe enough to prevent people from committing crimes because they fear consequences. In a deterrence-based approach, serious penalties are sent to would-be offenders as a way of deterring them from being inclined to commit such a crime in the first place. When articulating our position in favour of hanging, the Indian judiciary has often backed up awards such as the death penalty on the grounds of deterrence. The rationale for capital punishment in cases of heinous crimes like terrorism, murder, and rape has largely been deterrence. For e.g., Nirbhaya Case (*Mukesh vs. State for NCT of Delhi*<sup>5</sup>), the Supreme Court reiterated that the death penalty should act as a strong deterrent to prevent heinous crimes against women and must be resorted to do justice. Despite this, critics point out that many times offenders do not consciously weigh the consequences of their actions, and therefore the deterrence argument does not play as large of a role as when one of these crimes occurs.<sup>6</sup>

Within the socio-legal implications and the interpretations that such perspectives have attracted the attention of the judiciary, this study aims to explore the effectiveness of capital punishment as a deterrent in India. In this article, the death penalty will be analysed through the lens of deterrence theory, examining case laws and crime data to decide if it achieves the hoped result. This study will examine judicial opinions on capital punishment as a deterrent, focusing on landmark cases such as *Macchi Singh vs. State of Punjab*<sup>7</sup>, where the Supreme Court widened the scope of 'rarest of rare' doctrine in upholding the death penalty on the count of preservation

<sup>5</sup> [2017] 6 SCC 1.

<sup>6</sup> Gopalkrishna Gandhi, *Abolishing the Death Penalty* 112 (Aleph Book Company, Delhi, 1st edn., 2016).

<sup>7</sup> [1983] 3 SCC 470.

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of society. A secondary aim is to examine counterarguments to earlier claims that capital punishment deters crime, and to analyze the statistics on recidivism and the psychological motivations of criminals. Besides, this paper will explore human rights arguments against capital punishment providing arguments based on ethical considerations premised on *Triveniben vs. State of Gujarat*<sup>8</sup>.

## **1.2 UNDERSTANDING CAPITAL PUNISHMENT IN INDIA:**

India's legal system has long endured a saga of capital punishment, supposedly shaped by the ancient rule book, colonial influence, and modern judicial interpretations. A long-time practice, it has always raised ethical, legal, and societal questions about its use as a deterrent. So harsh is India's use of the death penalty that it retains capital punishment for only the "rarest of rare" cases, yet that still occurs. Disputes about the death penalty typically center on a supposed divergence between public opinion in favour of draconian punishment for especially heinous crimes and human rights advocates who favour abolishing it. Through landmark judgments that have come out of the Supreme Court, there has been an attempt to demarcate the parameters of the application of the death penalty and thereby provide a rounded understanding of capital punishment in India. Analyzing the historical journey of the death penalty, the present legal framework surrounding it and its different offenses proves to show the equilibrium between the dispensation of justice and the protection of human rights played by the judiciary.

### **1.2.1 HISTORICAL EVOLUTION:**

Capital punishment, in India, is as old as the ancient legal texts, Manusmriti and Arthashastra, which gave the death penalty for certain grave offenses. In these early references, we see the idea that extreme punishments were needed to preserve social order and check crime. The penal system was formalized under British colonial rule, reaching its final point in 1860, when the "Indian Penal Code" (IPC) was created, which established the death penalty for several crimes,

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<sup>8</sup> [1989] Supp 1 SCC 678.



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including murder and treason. On gaining independence, India inherited the legal framework of British rule; however, capital punishment in India acquired new dimensions as the country embarked upon a democratic path.<sup>9</sup>

### **1.2.2 CURRENT LEGAL FRAMEWORK:**

The law governing capital punishment in India is framed to prevent its indiscriminate use on the basis of extreme constitutional restraint. Even though the now obsolete Indian Penal Code (IPC) has been replaced by the Bharatiya Nyaya Sanhita (BNS), provisions for death penalty to grave offenses have been retained. What is the doctrine of 'rarest of rare' as laid down in *Bachan Singh*. This guiding principle, which is best exemplified by the exercise of power of state Punjab—guides courts to issue sentences of capital punishment only after weighing of the aggravating and the mitigating factors. The Bharatiya Nagarik Suraksha Sanhita, too, frames the procedure of carrying out the death penalty from appealing, mercy petition to higher courts as mandatory. Cases such as *Shatrughan Chauhan vs. Union of India*<sup>10</sup>, and *Roger Mathew vs. Union of India*,<sup>11</sup> have emphasized humane considerations, particularly concerning delays, mental illness, and other factors that may warrant commutation of the death sentence.

Additionally, they have the further safety guard of 'power to remit' as per Articles 72 and 161 of Indian Constitution, also the President and Governor can remit a death sentence to a lesser punishment. A legal framework governing the death penalty exists under strict circumstances, with the judiciary working hard to decrease its severity by the constitutional protections and encourage progressive standards in law.

<sup>9</sup> Humayun Rasheed Khan, *Crime, Punishment and Due Sentence: Judicial Approach to Guilt in Criminal Justice* 137 (Lexis Nexis, Delhi, 1st edn., 2024).

<sup>10</sup> AIR 2014 SC (CRIMINAL) 641.

<sup>11</sup> [2014] 3 SCC 1.

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### **1.2.3 CATEGORIES OF OFFENSES LEADING TO CAPITAL PUNISHMENT:**

The BNS and other relevant legislation prescribe that some offenses should be punished by death, such as offenses involving extreme depravity or other offenses of exceptional social danger. For example, it has laid down the death penalty for the offense of murder, particularly when the crime involves a brutal act or premeditated design, by the principles outlined in *Macchi Singh vs. State of Punjab*<sup>12</sup>. "The mere possibility that state crimes, for example, crimes of terrorism under the "Unlawful Activities (Prevention) Act" or treasonous acts, can destabilize the country means that these also come with the death penalty. Like other cases of rape or sexual assault, in cases where the victim is a minor, the death penalty has in recent times been created as punishment, as can be seen in the 2018 amendments under the "Protection of Children from Sexual Offences (POCSO) Act.". These are statutes that indicate a conviction that some acts are so offensive to the overall weave of society, as it were, so inimical to the structure of society, that they justly deserve to be punished with the severest punishment. Nevertheless, it is worth noticing that judicial discretion itself has a major part in the applicability of the death penalty even within these categories, for the courts very carefully examine how serious each case is. As such, Indian law grants permission to practice capital punishment for certain offenses, but the last resort of punishment is prevented from proceeding without suitable preconditions under the sun of legal scrutiny or constitutional oversight.<sup>13</sup>

### **1.3 DETERRENCE THEORY IN CRIMINAL JUSTICE:**

Deterrence theory is one of the basic doctrines around which criminal justice theory is based, which purports that the threat of punishment will keep people from committing the crime. The function of deterrence is premised on the premise that, under the rule of reason, men stop a

<sup>12</sup> [1983] 3 SCC 470.

<sup>13</sup> Ahmed Sharma, *Is Capital Punishment a Double-Edged Sword?* 72 (GRIN Verlag, Munich, 1st edn., 2012).

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crime because they fear the accompanying punishment. While deterrence is widely used as justification for capital punishment in India, the proponents argue that the death penalty acts as the ultimate deterrent and instils fear in potential offenders. Nonetheless, critics argue that the death penalty is a poor deterrent because supposedly insane and vicious offenders don't ponder execution.<sup>14</sup>

### **1.3.1 CONCEPT OF DETERRENCE AND ITS RELEVANCE:**

Deterrence in the context of criminal law is a method by which the law deters crime by setting an example for the punished in the hope that the risk of punishment outweighs the temptation to commit a crime. Within this framework, capital punishment is viewed as the most severe deterrent, as it represents the ultimate form of punishment: the deprivation of life. Cases of terrorism, aggravated murder, and crimes of sexual assault are among others in which, for severe crimes, the relevance of deterrence in India, especially relating to capital punishment, is argued. Furthermore, those in favour of the death penalty contend that this form of punishment is necessary to send a strong message to society that certain crimes will never be permitted or allowed.

### **1.3.2 TYPES OF DETERRENCE: GENERAL VS. SPECIFIC:**

In the context of criminal justice, deterrence is typically divided into two categories: general and specific deterrence. General deterrence is the attempt to deter the public at large—through punishment of some individuals for example—against engaging in criminal acts. In cases of egregious crimes, it is often thought warranted to impose the death penalty on general deterrence grounds, as it is assumed that knowledge that they could be executed would prevent others from indulging in similar offenses.

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<sup>14</sup> Fyodor Dostoyevsky, *Crime & Punishment* 143 (David McDuff trans., Penguin Classics, London, 2<sup>nd</sup> edn., 2003).

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### **1.3.3      PSYCHOLOGICAL AND SOCIOLOGICAL PERSPECTIVES:**

Psychologically, deterrence theory assumes that people are rational actors who look at the costs and the benefits of their acts. Nevertheless, the offenders are least likely to always act rationally, especially where there is a serious crime that will mostly be punished with capital punishment. For example, crime involving extreme violence can be the effect of impulses that are beyond the control of the perpetrator psychologically or pressures borne of socio-economic circumstances that overwhelm the logical thought process of the consequences. Furthermore, the deterrent effect of capital punishment is not deterred for socio-economically marginalized communities in India, and offenders therein lack awareness of the legal repercussions of their actions. The more actively society defines crime, the more active it sees itself as in the eradication of crime, the greater is the deterrent value of the death penalty so far as the attitudes of members of the society looking upon it as citizens and not as criminals are concerned. The death penalty as a uniform deterrent may not be effective as a deterrent in a society like India, what with socioeconomic inequalities and educational disparities.

### **1.4 EVALUATING CAPITAL PUNISHMENT AS A DETERRENT IN INDIA:**

The study of capital punishment as a deterrent in India depends upon critical analysis of many data factors, reports, case studies, and comparisons and analyses. Critics of the death penalty contend that it is rarely used because if it were proven to be an effective deterrent against homicide, the state would punish and execute more criminals to stop the killing. The imposition of capital punishment in India is held to awe potential offenders, but empirically, its effectiveness as a deterrent is mixed. <sup>15</sup>

<sup>15</sup> Dr. Chandrika Prasad Sharma, "Death Sentence: Repeal or Retention Riddle", available at: <https://ebc-india.com/lawyer/articles/842.htm> (last visited on October 12, 2024).

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#### **1.4.1 STATISTICAL ANALYSIS OF CRIME RATES VS. EXECUTION RATES:**

Using data from India, this paper statistically explores crime rates about rates of executions to understand the deterrent impact of the capital penalty. However, data on the implementation of capital punishment in India shows that executions are rare, having implemented only a handful of death sentences since independence. Data released by the National Crime Records Bureau (NCRB) show that increasing the number of heinous crimes, such as murders and rapes, has not followed a definite downward trend in the face of the death penalty. For example, in the infamous Nirbhaya gang rape case, the execution of four convicts in 2020 did not bring down the number of rapes by even a fraction in the years following the high-profile execution. This indicates that the death penalty could inhibit such serious behavior only in a minor way since such acts of lawlessness generally would not be undertaken with the consequences taken into account by the perpetrator. Additionally, the very rarity of executions also questions deterrence, when potential offenders may not view the actual chances of being given the death penalty and of actually carrying it out as especially great. Accordingly, though the Bharatiya Nyaya Sanhita has maintained the death penalty, statistics do not show that the death penalty has an effective prevention of serious crimes and a demand for alternative preventive measures.

#### **1.4.2 STUDIES AND REPORTS ON DETERRENCE EFFECTIVENESS:**

Numerous studies and reports have tackled whether capital punishment is effective as a deterrent and often found it a deterrent not previously considered. The Law Commission of India, in its '262nd Report on the Death Penalty' (2015), reported that there is no credible evidence to show that the death penalty acts as a deterrent to any greater extent than a jail sentence for life. Academic consensus as expressed in this report goes further and suggests that the death penalty might deter nothing apart from a retributive function that plays to public



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feeling but does not significantly roll back crime rates. Research from studies all over the globe has reached the same conclusions as the United Nations, including research from the United Nations, that capital punishment has no proven deterrent effect compared to other forms of punishment. For such a severe crime in the Indian context, these findings indicate that focusing on executing offenders as a possible solution may well take away attention from other more effective preventive approaches, including improving socioeconomic conditions, strengthening law enforcement, and providing rehabilitation. In addition, the socioeconomic backgrounds of criminals as well as the complexities of the motives for crimes make the deterrent argument of little applicability to the most heinous of crimes.<sup>16</sup>

### **1.4.3 CASE STUDIES ON DETERRENCE IMPACT (E.G., NIRBHAYA CASE):**

The Nirbhaya case (*Mukesh vs. State for NCT of Delhi*<sup>17</sup>) It will act as an important case study for studying the deterrent effect of capital punishment in India. Four people have received a death sentence for their role in a gruesome 2012 gang rape and murder, a crime that horrified the country. Supreme Court upheld death sentences on such heinous crimes against women terming the punishments so harsh to deter such crimes. Unprompted by the case, the ***Criminal Law (Amendment) Act, 2013***, was legislated, designed to bolster the country's anti-rape laws, yet crime statistics after the case continue to show a high level of sexual violence. These raise questions about the Nirbhaya case; did it, as a high-profile case, reduce the rate of such offences. Many legal scholars and activists argue this case shows that capital punishment cannot serve as an effective deterrent. They instead call for broad reforms in police practice and broader societal attitudes toward gender-based violence as a means of tackling the deeper

<sup>16</sup> Marshan Singh and Shubham Raj, Constitutionality of the Death Penalty and Its Comparative Study and Implications on Modern Penology, available at: <https://law.dypvp.edu.in/plr/Publication/Research-Papers/Marshan-Singh-Shubham-Raj/Constitutionality-of-Death-Penalty-and-its-Comparative-Study-and-Implications-on-Modern-Penology.pdf> (last visited on October 14, 2024).

<sup>17</sup> [2017] 6 SCC 1.

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causes of these crimes.

#### **1.4.4 COMPARATIVE ANALYSIS WITH OTHER COUNTRIES:**

A comparison of the calculation of the deterrence effect of the death penalty with countries where the death penalty has been abolished or retained may elucidate the effectiveness of capital punishment in deterring crime. For example, societies such as Canada and countries of the European Union have the death penalty and report lower levels of violent crime, and as such, some argue that other factors, such as social policies and effective policing, may play a bigger role in the prevention of crime than the death penalty itself. On the contrary, crime rates within the United States, where capital punishment is still practiced in some states, show wide variation and no consistent relationship between a state's retention of the death penalty and lower crime rates. In the U.S., for instance, studies have tended to show that states that don't have the death penalty don't have higher rates of capital crimes than those that do. In Asia death penalty is observed in countries like Japan and Singapore which take up this excuse that for the seriousness of offenses, this penalty acts as a deterrent however evidence in support of such a claim remains inconclusive. In India, which also has capital punishment for certain grave offenses, then this measure appears ineffective for similar offenses, for crime rates for such offenses have not been seen in a definite decline. International comparisons also show that while the death penalty may be a national reflection of how people view crime severity, its actual deterrent impact is minimal, something that also depends on a variety of other factors, economic and otherwise, that dictate the dimensions of criminal behavior.<sup>18</sup>

#### **1.5 JUDICIAL PERSPECTIVES AND KEY JUDGMENTS:**

Capital punishment in India has been mould and formed by landmark judgments and an

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<sup>18</sup> Jayraj Mahadev Kakade, "Comparative Study on Capital Punishment: India and USA", *5 International Journal of Research Publication and Reviews* 7643 (2024).

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evolving judicial philosophy to the extent of a deterrent. The death penalty cannot be accepted in a strict sense without this justification. The Supreme Court of India has been trying to strike a delicate balance between the principle of justice and human considerations in interpreting the constitutionality, applicability and limitations of the death penalty.

Judgments such as *Jagmohan Singh vs. State of Uttar Pradesh*<sup>19</sup>, *Bachan Singh vs. State of Punjab*<sup>20</sup>, and *Macchi Singh vs. State of Punjab*<sup>21</sup>, have laid down some basic principles that India's death penalty jurisprudence can rest on. These cases lay forth detailed conditions under which death penalty could be imposed, which is being grounded on the 'rarest of rare' doctrine to avoid undue application of the penalty. In each of these judgments' deterrence is justified and strict limitations are necessary to prevent misuse. As a consequence, these rulings established a legal focus on the deterrent value of the death penalty, in which the ultimate punishment is granted but the irreversible consequences of and risk of misapplication of that ultimate sanction are reaffirming that that punishment should be exercised with caution and prudence.

### **1.5.1 LANDMARK SUPREME COURT JUDGMENTS:**

In "*Jagmohan Singh vs. State of U.P.*"<sup>22</sup>, where the Supreme Court held the... What the Court ruled was that consistent with due process, the state does have the power to deprive someone of life as a legitimate means of justice as an outcome in the case of the most heinous crimes. But it was in *Bachan Singh vs. State of Punjab*<sup>23</sup>, the Court invented the 'rarest of rare' doctrine, restricting capital punishment only to cases that involved extreme brutality or exceptional depravity. This doctrine provided a framework within which courts had to consider aggravating and mitigating factors, which also reduced the arbitrariness that surrounded death

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<sup>19</sup> [1973] 2 SCC 486.

<sup>20</sup> [1980] 2 SCC 684

<sup>21</sup> [1983] 3 SCC 470,

<sup>22</sup> [1973] 2 SCC 486.

<sup>23</sup> [1980] 2 SCC 684

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sentences. *Macchi Singh v. State of Punjab*<sup>24</sup>, the above-laydown doctrine was further clarified and extended categories of cases in which the death penalty may be found to be warranted. These judgments are important because they vindicate the role of deterrence and set up safeguards against the death penalty being imposed except in circumstances of the utmost extreme heinousness.

### **1.5.2 EVOLUTION OF JUDICIAL PHILOSOPHY ON CAPITAL PUNISHMENT:**

The philosophy of the Indian judiciary on capital punishment has evolved from a stance of ready acceptance to one of extreme caution. In its early stages, judgments like *Jagmohan Singh vs. State of Uttar Pradesh*<sup>25</sup>, court said there is nothing 'cruel' about the death penalty, that its imposition is constitutional, and that whatever moral considerations exist are beyond the judiciary's reach. In absorbing a critical moral issue, this judgment reduced the legalistic framework. Over the next decades, though, the judiciary became more sensitive to human rights, the possibilities of reform, and rehabilitation.

In *Bachan Singh vs. State of Punjab*<sup>26</sup>, the Supreme Court particularly introduced the 'rarest of rare' doctrine, which in fact finally becomes a shift, if not from abolition, at least towards restricting the application of the death penalty. This was a doctrine which called for balance; a careful consideration of each case made, and a capital punishment not the answer to every severe crime. were later developed further in *Santosh Kumar Satish Bhushan Bariyar vs. State of Maharashtra*<sup>27</sup>, the Supreme Court emphasized above, a proper examination of offender's socioeconomic status, his chance for reformation, his mental state, and so on was necessary.

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<sup>24</sup> [1983] 3 SCC 470,

<sup>25</sup> [1973] 2 SCC 486.

<sup>26</sup> [1980] 2 SCC 684

<sup>27</sup> [2009] 6 SCC 498.

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This shift seems to be based on the fact that punishment should have a rehabilitative purpose and capital punishment only should be used in cases where it would not be a particularly just result. As such, however, the changing judicial philosophy takes into account the deterrent value of capital punishment and the moral problems of taking a life, and endorses the idea that this method of punishment should be exceedingly rare.

### **1.5.3 BALANCING DETERRENCE WITH HUMAN RIGHTS**

#### **CONCERNS:**

In the last few years, the Indian judiciary has progressively begun to accept this tension between deterrence function of capital punishment and individuals' fundamental rights. The death penalty has long been recognized by the Supreme Court as constitutional, although the court has also acknowledged the risk of miscarriage of justice in, for example, cases where a defendant's position in society likely makes it impossible to decide guilt or innocence fairly. In *Shatrughan Chauhan vs. Union of India*<sup>28</sup>, while the Court was unanimous in its findings, the four justices in dissent felt that inordinate delays in carrying out a death sentence which may ultimately be considered cruel and inhuman punishment, should result in a commutation of the sentence to life imprisonment. The decision was a measure of the judiciary's role as an advocate of human rights and refuted any contention that inmates serving death row deserved little dignity. In addition, judiciary has also shown leniency in mental health cases to give rehabilitative treatment more than punitive treatment. This is a nuanced approach that acknowledges that although deterrence is a valid aim, it must not be done at the price of fundamental rights. As such, India's judicial position on capital punishment has become one of employing capital punishment as a deterrent, and human rights, only where it is utterly warranted in the most exceptional and clear-cut cases.<sup>29</sup>

<sup>28</sup> [2014] 3 SCC 1.

<sup>29</sup> Chanjana Elsa Philip, "Theory of Deterrence: A Justification for Capital Punishment", 1 *We the People DSNLU Journal of Social Sciences* 198 (2023).



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## **1.6 ARGUMENTS FOR AND AGAINST CAPITAL PUNISHMENT AS A DETERRENT:**

The arguments in favour of and against capital punishment as a deterrent in India are extremely polarized, and both sides have pretty strong arguments to make their point. Proponents of capital punishment contend that it deters heinous crimes, particularly those that outrage the public consciousness, while opponents reject the empirical foundation of these claims and question the morality of the state's ability to take a human life. Most of these arguments stem from different looks at what is just and fair and the extent to which an environment of retribution and social exile are facilitative of reform. We thus evaluate capital punishment's role as a deterrent along various dimensions: theoretical application of the death penalty as a deterrent to crime; the moral and ethical implications of using capital punishment; and capital punishment's role as a deterrent in actual application. This paper delves in detail into these arguments, providing the perspectives that guide the current debate regarding whether capital punishment fulfils its intended purpose in India.<sup>30</sup>

### **1.6.1 ARGUMENTS SUPPORTING CAPITAL PUNISHMENT:**

Proponents of capital punishment argue that it serves as a necessary tool in combating the most severe crimes due to its potential to deter others from committing similar offenses. They contend that society benefits from the message conveyed by the death penalty: those who commit crimes that warrant this ultimate punishment will face it. Without the threat of capital punishment, they argue, offenders may feel emboldened to commit heinous crimes, with life imprisonment as the worst possible outcome. This argument is especially pertinent in high-profile cases such as the Nirbhaya case (*Mukesh vs. State for NCT of Delhi*)<sup>31</sup>, However, where both the public and judiciary stated that the possibility of preventing further acts of

<sup>30</sup> Hashem Dezhbakhsh and Joanna M. Shepherd, "The Deterrent Effect of Capital Punishment: Evidence from a 'Judicial Experiment,'" 44 *Economic Inquiry* 512 (2006).

<sup>31</sup> [2017] 6 SCC 1.

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brutalities of women depended on the death penalty. And keep in mind, many supporters believe that some crimes, particularly the most violent, those of a terrorist nature, or threatening public order, deserve a harsh treatment. This stance is reflected in *Macchi Singh vs. State of Punjab*<sup>32</sup>, the Supreme Court, in fact, notes that in some cases capital punishment is an effective deterrent: that it instils fear of a punishment. From this perspective capital punishment is considered a model of retributive justice, consonant with the should, in that a severe punishment should correspond the severity of the crime. Doing this discipline strengthens responsibility inside the justice system because it underscores the belief that offenders ought to be responsible to respond for their actions.

### **1.6.2 ARGUMENTS OPPOSING CAPITAL PUNISHMENT:**

However, critics dispute the deterrent effect of capital pain of death challenging that it has a scarce impact on reducing crime. The death penalty, and its different methods, are believed to deter more crime from taking place than life imprisonment, as argued by those rooted in the consequentialist theory and as basis for using the death penalty; such evidence however has been scant. The Law Commission of India, in its 262<sup>nd</sup> Report on the Death Penalty, references studies regarding developments in crime rates which show little or no correlation with dead penalty and crime prevention. They also argue that the death penalty is often racially biased as well, based on factors such as socioeconomic status, quality of legal representation, and judicial discretion. The other concern is wrongful convictions, and racial bias. But on these issues the death penalty is especially dire because it is irreversible—it rules out exoneration when new evidence of innocence surfaces after a conviction. In *Santosh Kumar Satish Bhushan Bariyar vs. State of Maharashtra*<sup>33</sup>, the Supreme Court pointed out that there should be a lot more care when giving death penalty and the court should consider other options. Furthermore, some

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people have pointed out that capital punishment seems to reinforce ‘the eye for an eye approach to justice implying that ‘the state is right in killing because it is doing so under the banner of law and order’. They argue that in criminal justice context they understand the concept of secular threat over religious threat of retributive justice by stating that the factors like poverty, illiteracy and social exclusion lead to criminality rather than the threat of retaliation.<sup>34</sup>

### **1.7 CONCLUSION:**

The question of preventive perspective distinction and capital punishment in India can be deemed as a still open question that has the background of controversies and that reflects tendencies for further legal and ethical analyses and discussions. Continuation of the death penalty in India, is only given in “Rarest of Rare” cases concerning the case ***Bachan Singh vs. State of Punjab***<sup>35</sup>, which indicates that the judiciary had tried to balance justice and humanism. Despite the Indian judiciary affirming the constitutional legitimacy of capital punishment, mechanized safeguards that necessarily check a potential misuse of the death penalty have been placed, thereby emphasizing the severity of the death penalty. On the contrary, statistical methods, systematized research, and case analysis, including studies conducted after the Nirbhaya case, indicate that the aversion to capital punishment may be overstated; there is not enough evidence to claim that the death penalty will automatically lower crime rates. On the other side, there are papers stating that purposes for the death penalty include maintaining law and order, putting the blame on the criminals, and giving justice to the victims, especially when the crimes committed are heinous. Nevertheless, the opponents assert that socio-economic, psychological, and educational factors are more influential than the efficiency of the death penalty as a punitive sanction and as a real deterrent. Further cross-cultural comparison presents additional evidence that the many nations with comparatively low

<sup>34</sup> Dravin Mahajan, "Comparative Analysis of Death Penalty Practices: Socio-Political Influences in India and Indonesia", 10 *Juris Gentium Law Review* 73 (2024).

<sup>35</sup> [1980] 2 SCC 684.

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crime rates have chosen not to pursue the death penalty but rather employ more effective precautionary strategies and means of punishment that entail the rehabilitation of the criminals. Likewise, capital punishment has its ethical arguments polarized: the issue of human dignity, the possibility of the mistake, and the chance of change against the question of the fitting penalty. Finally, this study, like the broader literature on capital punishment, shows that despite its being a powerful deterrent and representation of retribution, the effectiveness of this punishment and its conformity to emerging human rights standards need to be questioned periodically. It is high time India must advance this balance without negating the criminal justice system and basic human rights by strictly following the theory of murder.

### **1.8 SUGGESTIONS:**

In analysing the issues surrounding the role of capital punishment as a deterrent in India, it is important to reason beyond punitive justice, therefore examining concepts such as prevention, redemption, and protection of personal rights. ***All these proposals are meant to improve the efficiency of the criminal justice processes and to maintain justice that is reasonable and humane at the same time.***

- The most effective way to fight crime is to create long-term correctional and reintegration plans for offenders that reach beyond helping them establish employment and housing. Plans that eliminate the socio-economic factors that led them to commit crimes in the first place, plans that give education and psychological help to those who were deprived of it before committing the crime. When the principles of rehabilitating offenders instead of focusing on punishment for minor crimes bear fruit, a constructive approach toward crime control surfaces.
- Therefore, rising from the previous point, making guidelines for the application of the death penalty can go a long way in reducing subjectivism of the use of the “rarest of the rare” criterion. Clear guidelines will help the different courts dealing in capital cases arrive at a consistent decision to reduce biases that may lead to whimsical capital

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sentencing for the death penalty.

- Reducing crime requires improved law enforcement, community policing to avoid situations that lead to crime, and several backing-up social structures. Initiation of programs that would target poverty, illiteracy, and joblessness will discourage people from indulging in criminal activities; thus, control of crime from its source is emphasized.
- Another important law embraces public education interventions that aim to inform people about legal implications, programs of justice, and social services to decrease crimes. As shall be shown by increasing legal knowledge of potential offenders, there may be a decrease in crime rates, and therefore there would be no need for severe punishment.
- Hearing an independent review of the death penalty cases could be of immense help to make certain that only the most deserving get executed. This body, composed of legal, human rights, and mental health professionals, can, as a second, review and check for any wrong convictions and also for a fair trial.
- Enhanced imposition of legislative values and the 'rarest of rare' doctrine: training judges in the area will improve deniers of the death penalty. This training should include socio-economic environment, psychology, and international trends in humane sentencing.
- Empirical work needs to be done to investigate other forms of sentencing, such as life imprisonment without the possibility of parole, as a way of ascertaining other, non-lethal ways of deterring recidivism. Some of the possibilities that the application of the research findings might bring to the judiciary and policymakers include investigating and finding out sentencing options that are just based on human rights.
- Here it is possible to turn to the experience of those states that have also cancelled the death penalty and were able to decrease the crime rate. India should interact with the



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worldwide community learn from other countries' experiences and examples and apply the very best practices in the fight against crimes, the reign of arrested individuals, and practices of restorative justice, not utilizing violent approaches in crime prevention in a humane approach.

- It is suggested that to avoid any irreversible mistakes and only leave the death sentence as a deterrent measure for the most heinous of crimes, it is vital to reconsider and make the process of pardon and clemency under "Articles 72 and 161" of the Indian Constitution a more rational and a deeper one for the cases related to the death penalty. Clemency procedures can be used to deal with the problems involved with excessive time taken as well as the toll that this takes on the psychological state of inmates who are on death row.

These suggestions as a package call for proportionality, reincarnation of justice from retaliatory to preventive, reformative, and transformative that respect and protect human rights. Implementation of these recommendations within the totality of the criminal justice policy will, thereafter, set India on course to construct an effective criminal justice policy that squeaky cleanses the country's social fabric while acknowledging the arc that the philosophy of human dignity and equality has taken in the progression of fairness.