

Globalized Capital Punishment and Executive Clemency in India: A Constitutional and Restorative Justice Perspective

Vishal Balasaheb Nimbalkar¹ & Dr. Avani Mistry²

¹BLS LL.B., LL.M., Ph.D. Scholar, ²Ph.D. Scholar,
Chhatrapati Shivaji Maharaj University, Panvel, Navi Mumbai, Maharashtra, India.
advvishalrajenimbalkar@gmail.com

Abstract: *In a globalized legal order, justice must not only punish, it must heal. This evolving conception of justice reflects a paradigmatic shift in criminal jurisprudence across jurisdictions, where the traditional emphasis on retributive punishment is increasingly being supplemented, and in many cases replaced, by restorative and rehabilitative frameworks aimed at reconciliation, reintegration, and the preservation of human dignity. The contemporary discourse on criminal justice reform recognizes that punishment, if divorced from humanitarian values and social responsibility, risks degenerating into institutionalized vengeance rather than serving the ends of justice. Consequently, modern constitutional democracies are progressively reimagining penal systems to align with principles of proportionality, fairness, compassion, and social harmony.*

India's criminal justice system stands at a critical intersection of inherited colonial penal philosophies and transformative constitutional ideals. While the Constitution of India enshrines values of dignity, equality, fairness, and humane treatment under Articles 14 and 21, the continued retention of capital punishment alongside expansive executive clemency powers reflects an enduring tension between retributive justice and constitutional humanism. Judicial innovations such as the "rarest of rare" doctrine and procedural safeguards in sentencing demonstrate a cautious judicial approach towards limiting arbitrariness. Simultaneously, evolving victim-centric reforms, compensatory jurisprudence, and restorative justice mechanisms indicate a growing commitment to therapeutic justice. However, the persistent legitimacy accorded to the death penalty raises profound moral, constitutional, and jurisprudential concerns in a global legal order increasingly oriented toward abolition.

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I. INTRODUCTION

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This paper undertakes a critical examination of capital punishment and executive clemency in India through the lens of globalized constitutionalism, international human rights norms, and restorative justice philosophy. It seeks to interrogate whether the irreversible sanction of death can coexist with contemporary notions of justice that emphasize healing, reconciliation, and reintegration. Furthermore, it evaluates the constitutional function of executive pardon as a corrective and humanitarian instrument, capable of mitigating judicial fallibility and promoting restorative outcomes. By situating Indian jurisprudence within broader comparative and international legal developments, this study advocates for a transformative reorientation of India’s penal philosophy toward dignity-centered justice.

II. PHILOSOPHICAL EVOLUTION OF PUNISHMENT: FROM RETRIBUTION TO HEALING

Historically, punishment within legal systems was justified predominantly on the principles of retribution and deterrence, rooted in the classical understanding of crime as a moral transgression warranting proportionate suffering. The notion of *lex talionis*, an eye for an eye, symbolized sovereign authority and societal condemnation, with capital punishment representing the ultimate assertion of punitive power. Over time, however, criminological research, sociological insights, and constitutional developments have significantly reshaped this understanding, revealing the limitations of deterrence-based punishment in preventing crime and fostering social order.

Contemporary criminal jurisprudence increasingly acknowledges that punishment must transcend mere infliction of suffering and serve broader objectives, including rehabilitation, social reintegration, and restoration of broken relationships. Restorative justice, as an emerging paradigm, shifts the focus from offender-centric retribution to victim-centered healing and community reconciliation. It seeks to repair the harm caused by crime through dialogue, accountability, empathy, and participatory processes that enable victims, offenders, and society to collectively engage in the pursuit of justice.

This philosophical shift finds constitutional resonance in Article 21 of the Indian Constitution, which mandates fairness, reasonableness, and humane treatment within the criminal justice system. Judicial interpretation of this provision has consistently emphasized dignity as the foundational value underpinning criminal jurisprudence. In this evolving normative framework, punishments that permanently extinguish human life appear fundamentally incongruent with constitutional morality, particularly when irreversible penalties foreclose the possibility of repentance, redemption, and social reintegration. Consequently, the legitimacy of capital punishment is increasingly subjected to rigorous ethical and constitutional scrutiny.

III. CAPITAL PUNISHMENT IN INDIA: DOCTRINAL FRAMEWORK AND SYSTEMIC CONCERNS

The “Rarest of Rare” Doctrine

The constitutionality of the death penalty in India has been judicially upheld, most notably in *Bachan Singh v. State of Punjab*, wherein the Supreme Court restricted its imposition to the “rarest of rare” cases. This doctrine was conceptualized as a constitutional safeguard against arbitrary sentencing, mandating individualized assessment of aggravating and mitigating circumstances and requiring courts to prioritize life imprisonment unless the alternative option is unquestionably foreclosed.

Despite its normative intent, judicial application of the doctrine reveals troubling inconsistencies. Sentencing outcomes often vary dramatically across similar fact situations, reflecting subjective judicial discretion rather than principled uniformity. The absence of clear statutory sentencing guidelines further exacerbates arbitrariness, rendering capital



sentencing unpredictable and uneven. Such disparities undermine the constitutional guarantees of equality before law and due process, eroding public confidence in the criminal justice system.

Arbitrariness, Error, and Socio-Economic Disparities

Empirical evidence underscores that capital punishment disproportionately impacts economically marginalized and socially vulnerable individuals. Deficiencies in legal representation, investigative lapses, coercive policing, and procedural irregularities at the trial stage significantly increase the risk of miscarriages of justice. Structural inequalities within the criminal process amplify vulnerabilities, rendering impoverished accused persons more susceptible to wrongful conviction.

Given the irreversible nature of execution, even minimal error margins assume constitutional significance. Judicial acknowledgment of systemic fallibility, as reflected in delayed executions and subsequent commutations, exposes the fragility of the death penalty framework. In a justice system predicated upon human dignity and fairness, the possibility of executing an innocent person constitutes an unacceptable moral and constitutional risk, fundamentally challenging the legitimacy of capital punishment.

IV. EXECUTIVE CLEMENCY: CONSTITUTIONAL COMPASSION IN A GLOBALIZED FRAMEWORK

Nature and Constitutional Role

Executive clemency, enshrined under Articles 72 and 161 of the Constitution, functions as a humanitarian safety valve within the criminal justice system. It empowers constitutional authorities to temper judicial severity, correct potential injustices, and incorporate compassionate considerations beyond rigid legal formalism. Clemency acknowledges human fallibility and institutional limitations, serving as a final opportunity to preserve life and advance restorative ideals.

Procedural Deficits and Restorative Potential

Despite its constitutional significance, the clemency mechanism in India suffers from chronic procedural infirmities, including excessive delays, lack of transparency, absence of standardized guidelines, and susceptibility to political influence. The opacity surrounding decision-making processes erodes the legitimacy of clemency outcomes and undermines public trust.

A globalized restorative justice framework necessitates reforming clemency procedures to ensure transparency, accountability, and victim participation. Time-bound adjudication, mandatory recording of reasons, and structured consultation mechanisms can transform executive pardon into an effective instrument of restorative justice, capable of reconciling humanitarian compassion with constitutional accountability.

V. GLOBAL JURISPRUDENCE AND THE ABOLITIONIST MOVEMENT

The global movement toward abolition of capital punishment represents a significant normative shift in international human rights law. An overwhelming majority of nations have either abolished the death penalty in law or ceased its practical application, recognizing its incompatibility with evolving standards of decency, dignity, and rehabilitation. International human rights instruments increasingly regard capital punishment as inconsistent with the right to life and freedom from cruel, inhuman, and degrading treatment.

Comparative constitutional jurisprudence demonstrates that abolitionist regimes effectively maintain public safety through rehabilitative sentencing, restorative justice mechanisms, and robust victim support systems. These models illustrate that social order and deterrence need not depend upon irreversible punishment. Such global developments exert persuasive influence on Indian constitutional discourse, reinforcing arguments for progressive restriction and eventual abolition.



VI. NORMATIVE TENSION: PUNISHMENT VERSUS HEALING

The coexistence of capital punishment and restorative justice reforms within Indian jurisprudence reflects a profound normative contradiction. While constitutional values increasingly prioritize dignity, fairness, and healing, the death penalty remains anchored in retributive philosophy. This doctrinal dissonance underscores the transitional phase of Indian criminal justice, characterized by an ongoing struggle to reconcile inherited punitive structures with transformative constitutional aspirations.

Resolving this tension requires a paradigmatic shift toward justice models that privilege healing over vengeance, restoration over retribution, and compassion over coercion. Such a transformation demands sustained judicial innovation, legislative reform, and institutional commitment to humanistic values.

The interface between capital punishment and executive clemency also raises significant concerns regarding democratic accountability and constitutional governance in a globalized legal framework. In constitutional democracies, the legitimacy of penal power depends not merely upon formal legality, but upon substantive adherence to principles of justice, transparency, rationality, and proportionality. The death penalty, by its irreversible nature, imposes an exceptional burden of constitutional justification, demanding the highest procedural safeguards and moral legitimacy. However, persistent systemic shortcomings—such as investigative biases, evidentiary inconsistencies, prolonged incarceration under death row conditions, and unequal access to competent legal representation—expose structural vulnerabilities within the criminal process. These deficiencies, when combined with socio-economic inequalities and institutional capacity constraints, significantly heighten the risk of irreversible injustice, thereby undermining the democratic legitimacy of capital sentencing.

Furthermore, executive clemency, though constitutionally conceived as a humanitarian corrective, remains institutionally underdeveloped and procedurally opaque. The absence of codified standards, coupled with inconsistent decision-making practices, diminishes its transformative potential and fosters perceptions of arbitrariness. In a globalized constitutional order, clemency must operate as a transparent, accountable, and principled mechanism, grounded in restorative justice ideals and human rights norms. Meaningful victim engagement, reasoned adjudication, and time-bound resolution are essential to restore public confidence and ensure constitutional fidelity. By reconceptualizing clemency as an instrument of democratic compassion rather than discretionary mercy, the Indian legal system can transform it into a vehicle for restorative justice, capable of harmonizing penal authority with humanitarian governance. Such recalibration would not only enhance constitutional legitimacy but also strengthen India's commitment to global human rights standards and evolving jurisprudential ideals.

VII. REFORM IMPERATIVES FOR A HEALING-ORIENTED CRIMINAL JUSTICE SYSTEM

A comprehensive reorientation of India's penal framework necessitates progressive restriction of death-eligible offences through statutory amendments, establishment of presumptive life imprisonment as the normative sentencing standard, and periodic legislative review of capital punishment provisions. Simultaneously, executive clemency mechanisms must be institutionalized through codified procedures, time-bound decision-making, reasoned orders, and participatory victim consultation.

Furthermore, strengthening restorative justice frameworks requires the development of structured victim-offender mediation programs, community-based rehabilitation initiatives, and integrated psychological and social support services. Such reforms can facilitate healing, accountability, and reintegration, advancing both victim welfare and societal harmony.

VIII. CONCLUSION

In a globalized legal order, justice must not only punish, it must heal. The moral and constitutional legitimacy of criminal punishment increasingly depends upon its capacity to uphold dignity, proportionality, and restoration. India's continued reliance on capital punishment, moderated through executive clemency, reflects a justice system in normative transition, grappling with competing philosophies of retribution and humanism.



A principled movement toward progressive abolition, transparent clemency processes, and restorative justice mechanisms is imperative for aligning Indian criminal jurisprudence with constitutional morality and global human rights standards. The future of justice lies not in perfecting instruments of death, but in strengthening institutions of healing, compassion, and social reconciliation.

