

Death Penalty and Life Imprisonment in India: A Critical Analysis of Retribution, Deterrence, and Rehabilitation

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Abstract: *The death penalty and life imprisonment mark the outer limits of State punishment in India. Both are justified in judicial and legislative discourse by reference to three classical aims: retribution, deterrence and rehabilitation. This article examines how far each aim can bear the weight placed on it. It traces the constitutional and statutory framework, reviews the evolution of the "rarest of rare" doctrine from Bachan Singh onwards, and evaluates the empirical and normative claims behind each justification. It then analyses the growth of fixed-term and whole-life sentences, the use of remission, and the role of mercy and delay. The article argues that retribution is the only aim that consistently supports capital punishment, that deterrence is unproven, and that rehabilitation, though formally central to the constitutional framework, is poorly institutionalised. It concludes with reforms directed at procedural fairness in capital cases, statutory clarity on life imprisonment, and a more honest engagement with the case for abolition.*

Keywords: death penalty; life imprisonment; rarest of rare; retribution; deterrence; rehabilitation; remission; Bharatiya Nyaya Sanhita

I. INTRODUCTION

No penal question in India provokes sharper division than the death penalty. For its defenders, it is the only proportionate response to the most brutal crimes and a necessary signal of society's moral condemnation. For its critics, it is an irreversible punishment administered through an imperfect system, with no demonstrated deterrent benefit and a documented tendency toward arbitrariness. Life imprisonment, by contrast, attracts far less scrutiny, though it is the sentence under which a very large number of people spend decades in prison, and the point at which sentencing debates increasingly turn.

The judiciary has tried to confine capital punishment through the "rarest of rare" doctrine, and has expanded the sentencing options below it through fixed-term and no-remission life sentences. Yet the doctrine has been criticised, including by the Supreme Court itself, as unprincipled in application. Parliament, meanwhile, has expanded the categories of offences attracting death, most recently in the Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force on 1 July 2024.

This article is organised around the three justifications that are usually offered for these sentences. Part 2 outlines the legal framework. Part 3 traces the doctrinal development. Parts 4, 5 and 6 assess retribution, deterrence and rehabilitation in turn. Part 7 addresses procedural fairness, delay and mercy. Part 8 examines life imprisonment and remission. Part 9 offers comparative and international context, and Part 10 proposes reforms.



II. THE LEGAL FRAMEWORK

2.1 Capital offences

The Indian Penal Code, 1860 (IPC) provided for death as the punishment for a limited set of offences, including murder, waging war against the Government, abetment of mutiny, and certain forms of kidnapping for ransom and dacoity with murder. Special statutes added further capital offences, including under the Narcotic Drugs and Psychotropic Substances Act, 1985 for repeat offences, and terrorism-related legislation.

The BNS retains death for murder (section 103) and extends it in several directions. These include mob lynching by a group of five or more persons where death results, rape causing death or a persistent vegetative state, gang rape of a woman under eighteen, and murder by a person already serving a sentence of life imprisonment (section 104). The last provision replaces the former section 303 of the IPC, which was struck down in *Mithu v. State of Punjab* (1983) for prescribing a mandatory death sentence, and the BNS version leaves the choice between death and life imprisonment to the court.

2.2 Life imprisonment

Under the IPC, "imprisonment for life" was a sentence of uncertain duration, treated for limited purposes as equivalent to twenty years. The Supreme Court clarified in *Gopal Vinayak Godse v. State of Maharashtra* (1961) that it means imprisonment for the remainder of the convict's natural life unless the sentence is lawfully remitted or commuted. Several BNS provisions now specify that life imprisonment for certain sexual offences means imprisonment for the remainder of the person's natural life.

2.3 Procedural safeguards

Section 354(3) of the Code of Criminal Procedure, 1973 (CrPC) required "special reasons" for a death sentence, and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) preserves the requirement. A death sentence imposed by a Sessions Court requires confirmation by the High Court, and an appeal lies to the Supreme Court. Beyond the judiciary, Articles 72 and 161 of the Constitution empower the President and Governors to grant pardons, remissions and commutations.

III. DOCTRINAL EVOLUTION

3.1 From Jagmohan Singh to Bachan Singh

In *Jagmohan Singh v. State of U.P.* (1973), the Supreme Court upheld the constitutionality of the death penalty, reasoning that the judicial process of choosing between life and death satisfied the requirement of procedure established by law. In *Rajendra Prasad v. State of U.P.* (1979), a bench led by Justice Krishna Iyer sought to narrow the sentence to cases involving extreme danger to the State. The question returned to a Constitution Bench in *Bachan Singh v. State of Punjab* (1980), which upheld the death penalty by a four-to-one majority, with Justice Bhagwati dissenting.

The majority held that death is an exception, that life imprisonment is the rule, and that death may be imposed only in the "rarest of rare" cases where the alternative is unquestionably foreclosed. It required courts to weigh aggravating and mitigating circumstances, and identified relevant mitigating factors such as youth, absence of prior criminality, the possibility of reform, and the circumstances of the offender.

3.2 Machhi Singh and the crime-centric drift

Three years later, *Machhi Singh v. State of Punjab* (1983) attempted to operationalise the doctrine through categories: the manner of the commission of murder, its motive, its anti-social or abhorrent nature, its magnitude, and the personality of the victim. The categories were helpful as a checklist but tended to shift the focus onto the crime rather than the criminal. The decision also invoked the "collective conscience" of society, which allowed public outrage to inform sentencing.

The results are visible in later cases. In *Dhananjoy Chatterjee v. State of West Bengal* (1994), the Court emphasised society's demand for justice and the deterrent value of a death sentence for a rape and murder; the convict was executed in 2004, and the case is frequently cited as one in which little attention was paid to mitigating circumstances. In *Ravji v. State of Rajasthan* (1996), the Court suggested that the circumstances of the offender were largely irrelevant, an approach that the Court later disapproved.



3.3 Corrective efforts

In *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra* (2009), the Supreme Court acknowledged that the application of *Bachan Singh* had been inconsistent and that the crime-centric approach had undermined the individualised inquiry the Constitution Bench required. *Sangeet v. State of Haryana* (2013) cast doubt on the *Machhi Singh* categories. *Shatrughan Chauhan v. Union of India* (2014) addressed delay and mental illness as grounds for commutation. In *Manoj v. State of Madhya Pradesh* (2022), a three-judge bench directed trial courts to obtain material on the accused's psychological and social background, jail conduct and prospects of reform before sentencing. The broader question of guidelines for potential death penalty cases was referred to a Constitution Bench in 2022, and readers should verify its current status.

IV. RETRIBUTION

4.1 The retributive case

Retribution is the most durable justification for the death penalty. It holds that some crimes are so grave that only the extinction of the offender's life adequately expresses the community's moral condemnation. Indian courts have repeatedly invoked this idea, often under the vocabulary of the "cry for justice" or the "collective conscience". The notion is intuitive, particularly in cases involving the sexual assault and murder of children or acts of mass terror, and it commands real public support.

4.2 Limits of the retributive case

Retribution, properly understood, is a principle of proportion, not of vengeance. It requires that punishment correspond to culpability, and culpability depends on mental state, role in the offence, age, and circumstances of the offender. This is why the focus in *Bachan Singh* on the offender, not merely the offence, is conceptually essential.

Three difficulties follow. First, the retributive intuition is strongest in the cases that are most publicised, which is exactly where the risk of populist sentencing is greatest. Public sentiment is a poor guide to desert, and an approach that treats it as a sentencing factor invites inconsistency. Second, retribution cannot explain why life imprisonment, especially without remission, is inadequate for the same offender; the claim that only death suffices is a moral judgment that lacks a measurable standard. Third, retribution presupposes accurate fact-finding. Where the system produces wrongful convictions, as the Supreme Court's own acquittals of persons previously sentenced to death indicate (for example, in the 2022 decision acquitting three men sentenced to death in the Chhawla case), retributive reasoning is built on an unstable base, and the irreversibility of death makes the error uncorrectable.

V. DETERRENCE

5.1 The claim

Deterrence is the justification most frequently advanced in legislative debate. The argument is that the threat of death discourages potential offenders more effectively than any lesser penalty. Indian courts have often accepted this claim as a matter of reasoning, without examining evidence, and Parliament has relied on it in enlarging capital offences after notorious crimes.

5.2 The evidence

The empirical literature offers little support. The Law Commission of India's 262nd Report (2015) concluded that there is no convincing data showing that the death penalty deters crime more effectively than life imprisonment. Comparative research is consistent: a 2012 report of the United States National Research Council concluded that existing studies could not be used to draw conclusions about the deterrent effect of capital punishment. Criminological research generally finds that the certainty of apprehension and conviction matters far more than the severity of the sentence.

The Indian context makes the deterrence claim especially fragile. Many murders are committed in sudden anger, in the course of family or community disputes, or under conditions where the offender is not calculating the consequences. Conviction rates for serious offences are modest, and trials are lengthy, which weakens the connection between crime and punishment. A threat that is rarely carried out, and then only after decades of litigation, deters little.



5.3 Selective incapacitation

A more modest variation of the argument is incapacitation: that execution prevents the offender from reoffending. The answer is that life imprisonment, particularly in its fixed-term and no-remission forms, accomplishes the same result without the risks of irreversibility. The argument therefore does not distinguish death from the severe alternatives now available.

VI. REHABILITATION

6.1 Reformation in the constitutional framework

Rehabilitation is not marginal in Indian law. *Bachan Singh* required courts to consider whether the offender can be reformed before choosing death, and held that death is justified only where reform is "conclusively ruled out". The Court in *Bariyar* made the same point, criticising the practice of dismissing reformatory prospects without inquiry. The Probation of Offenders Act, 1958, the juvenile justice framework and prison legislation reflect the same commitment, and Article 21 has been read to protect dignity within custody.

6.2 The gap between principle and practice

The difficulty is that a court can find that reform is possible or impossible only on evidence. In practice, evidence of this kind has rarely been gathered. Studies of capital cases, notably Project 39A's *Death Penalty India Report* (2016), found that many convicts were from economically and socially disadvantaged backgrounds, that their legal representation at trial was often inadequate, and that mitigating material was frequently absent from the record. *Manoj* was a response to this gap, but compliance depends on trial courts and on institutional resources such as psychologists, probation officers and prison authorities.

A second difficulty lies within prisons. Rehabilitation requires education, vocational training, mental health care and contact with family. Overcrowded prisons, a shortage of trained staff and limited programmes mean that life convicts often serve long terms with little structured preparation for release. A reformatory claim made at the sentencing stage, if the State has no capacity to deliver reform, is hollow.

6.3 Mental illness and age

Rehabilitation considerations also bear on capacity. The Supreme Court in *Shatrughan Chauhan* and later in *Accused X v. State of Maharashtra* (2019) accepted that mental illness is a relevant circumstance, including after conviction, and that execution of a person who is severely mentally ill is incompatible with Article 21. Age at the time of the offence is similarly relevant. These holdings fit within the rehabilitative premise: a sentence that forecloses any opportunity for change is hardest to defend where the offender's capacity was diminished.

VII. PROCEDURAL FAIRNESS, DELAY AND MERCY

7.1 Representation and the trial

A death sentence is only as reliable as the process that produces it. Where an accused is unrepresented or poorly represented, where confessions are obtained in police custody, or where the sentencing hearing is cursory, the result may be unsafe. The Supreme Court has repeatedly stressed the importance of the separate sentencing hearing. Yet the practice, as documented by empirical work, often falls short. Trial courts have continued to impose large numbers of death sentences in recent years, and the death row population, according to Project 39A's annual statistics, has stood at more than five hundred in recent years, the highest in two decades. A large proportion of death sentences are later commuted or set aside on appeal, which itself suggests that trial-level capital sentencing is unreliable.

7.2 Delay and the death row experience

Capital convicts in India often spend many years awaiting the outcome of appeals and mercy petitions. In *T.V. Vatheeswaran v. State of Tamil Nadu* (1983), the Court held that prolonged delay could make execution unconstitutional. *Triveniben v. State of Gujarat* (1989) qualified that view, and *Shatrughan Chauhan* (2014) restored the principle that inordinate and unexplained delay in deciding mercy petitions is a ground for commutation. *Sunil Batra v. Delhi Administration* (1978) limited the use of solitary confinement for those under sentence of death before the exhaustion of remedies.



The delay creates a paradox. The system that imposes the death sentence is also the system that makes execution, when it comes, appear cruel. This is not an argument against thorough review; it is an argument that the combination of a capital sentence and decades of uncertainty is itself a form of punishment that no statute authorises.

7.3 Mercy

The clemency power under Articles 72 and 161 is meant to be a final safeguard against error and excess. The Supreme Court has held that its exercise is subject to limited judicial review for arbitrariness (*Epuru Sudhakar v. Government of Andhra Pradesh* (2006)). In practice, the process has been opaque, and the reasons for decisions are not generally disclosed. A power that serves as the last line of defence in a capital system should be exercised transparently, with clear criteria and reasons.

7.4 Method of execution

Hanging remains the prescribed method, upheld in *Deena v. Union of India* (1983). The Supreme Court has more recently asked the Union Government to consider whether less painful methods are available, in proceedings initiated by Rishi Malhotra. The debate over method is secondary to the question of whether death should be imposed, but it indicates that the dignity of the convict remains a live constitutional concern.

VIII. LIFE IMPRISONMENT AND REMISSION

8.1 The expansion of the intermediate sentence

In *Swamy Shraddananda v. State of Karnataka* (2008), the Supreme Court held that it may impose life imprisonment for a specified term, or without the possibility of remission before a stipulated period, in cases where death is too harsh but ordinary life imprisonment is too lenient. The Constitution Bench in *Union of India v. V. Sriharan* (2016) confirmed the power of High Courts and the Supreme Court to impose such sentences, but denied it to Sessions Courts. The development is welcome because it supplies an alternative to death that is serious without being irreversible. But it has also created a practical difficulty. The grant of a fixed term is not governed by clear criteria, and the outer limit of such terms (twenty, thirty, or more years, or the remainder of life) has varied from case to case. The Supreme Court, in *Mohd. Munna v. Union of India* (2019), reiterated that life imprisonment means imprisonment until death, subject to remission.

8.2 Remission

Remission is governed by Sections 432 and 433A of the CrPC, which are reproduced in the BNSS in renumbered form, and by State remission policies. The provisions require that a person sentenced to life, or whose death sentence has been commuted to life, serve at least fourteen years before release. Within those limits, the appropriate government has discretion.

Remission is where rehabilitation, in principle, becomes operational for life convicts. It also reveals systemic problems: policies differ among States, decisions are slow, and the process may be affected by political considerations. In *Bilkis Yakub Rasool v. Union of India* (2024), the Supreme Court quashed the early release of eleven convicts in a high-profile mass crime case, holding that the State of Gujarat was not the appropriate government to decide remission. The case illustrates both the risk of arbitrary exercise of the power and the importance of judicial oversight.

8.3 Whole-life sentences

Sentences of life imprisonment without remission raise their own questions. If a person is to die in prison regardless of reform, the rehabilitative objective is formally abandoned. The sentence may be justified for a narrow category of offenders who pose a continuing danger, but it should be reserved for them and be subject to periodic review. A sentence that forecloses review altogether risks becoming a substitute for the death penalty that carries many of its moral objections.

IX. COMPARATIVE AND INTERNATIONAL CONTEXT

A majority of countries have abolished the death penalty in law or practice. United Nations General Assembly resolutions calling for a moratorium on executions have been adopted repeatedly with large majorities, though India has



historically voted against them. India has not abolished capital punishment, and the number of executions has been small: a handful since the early 2000s, including those of Ajmal Kasab (2012), Afzal Guru (2013), Yakub Memon (2015) and the four convicts in the 2012 Delhi gang rape case (2020).

The comparison with other retentionist jurisdictions is revealing. In the United States, the Supreme Court has restricted capital punishment for juveniles and for persons with intellectual disability, and extended heightened procedural requirements to capital trials. Several European legal systems that abolished death have moved to a regime of long-term sentences with periodic review, with the European Court of Human Rights holding in *Vinter v. United Kingdom* (2013) that a life sentence without any prospect of review raises concerns under Article 3 of the European Convention. These developments suggest that review mechanisms are central to the legitimacy of the most severe custodial sentences.

X. REFORM PROPOSALS

10.1 Mandatory pre-sentence inquiry. Every capital trial should include a separate sentencing stage with a mandatory mitigation investigation, including psychological and social history, prison conduct reports and probation officer assessment. The directions in *Manoj* should be codified in the BNSS.

10.2 Qualified capital defence. Accused persons facing the death penalty should be entitled to experienced counsel and to funding for investigators and experts at the trial stage, not only on appeal. The quality of representation is the most controllable variable in capital justice.

10.3 Binding appellate guidelines. The Constitution Bench reference should produce guidelines that restore an offender-centred application of *Bachan Singh*, reject public outrage as a sentencing factor, and require the prosecution to establish that reform is not possible.

10.4 Statutory regulation of life imprisonment. Parliament should define the categories of life sentence (ordinary, fixed-term, and whole-life), identify who may impose each, and set outer limits. Whole-life sentences should be accompanied by a mechanism for periodic review.

10.5 Uniform and transparent remission. A national framework, with reasoned decisions, time limits and judicial review, would reduce disparities among States and protect against arbitrariness. Decisions on clemency under Articles 72 and 161 should also be accompanied by written reasons.

10.6 Investment in rehabilitation. Rehabilitation should be funded and measured: education, vocational training, mental health services, and structured pre-release programmes. Without this, the legal commitment to reformation remains aspirational.

10.7 Restraint in creating capital offences. Parliament should adopt a rule that no new capital offence is created without published empirical justification, and should revisit the Law Commission's 2015 recommendation to confine the death penalty to terrorism-related offences, as a step toward full abolition.

10.8 Respecting victims. Reform should not marginalise those harmed by crime. Compensation, support services and participation in sentencing proceedings are legitimate demands and are compatible with a system that is restrained in its use of the ultimate penalty.

XI. CONCLUSION

The three classical justifications for the most severe sentences do not stand on equal footing. Retribution is real and morally serious, but it supports proportionate punishment, not necessarily death, and it depends on a standard of desert that Indian sentencing practice has struggled to apply consistently. Deterrence is asserted more often than demonstrated, and the evidence available does not support the claim that death deters more than long imprisonment. Rehabilitation is the aim to which the constitutional framework is most formally committed and to which the system is least equipped to give effect.

The jurisprudence since *Bachan Singh* shows a Supreme Court that has repeatedly tried to confine and correct the death penalty, and has created, through *Swamy Shraddananda* and *Sriharan*, an intermediate sentence that reduces dependence on it. The unfinished work is institutional. Better capital trials, a coherent statutory scheme for life



imprisonment, transparent remission, and real investment in rehabilitation would all serve a system that takes both victims and offenders seriously. Whether India should go further and abolish the death penalty is a question for Parliament and the public. What the analysis here suggests is that the debate should be conducted on the basis of evidence, and that until it is resolved, the safeguards surrounding the sentence must be as strong as the irreversibility of the punishment requires.

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