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**CAPITAL PUNISHMENT IN INDIA SINCE INDEPENDENCE:
SENTENCING PATTERNS, ARBITRARINESS IN
EXECUTIONS, AND THE ROLE OF THE 'RAREST OF RARE'
DOCTRINE AND MERCY JURISDICTION**

AUTHORED BY - SANNIDHYA SINGH BARTWAL¹

CO-AUTHOR - SANYA SONI

ABSTRACT

This article examines India's capital punishment regime through empirical analysis of sentencing patterns, execution data, and constitutional jurisprudence since independence. Despite the Supreme Court's establishment of the "rarest of rare" doctrine in *Bachan Singh v State of Punjab* (1980) to limit death penalty application, this study reveals persistent arbitrariness characterized by geographic disparities, socio-economic bias, and inconsistent judicial application. Analyzing over 700 death sentences and approximately 60 executions post-1980, the article demonstrates a widening gap between death sentences awarded and executions carried out, with only five executions in the past 24 years (2000-2024). The empirical evidence shows death row populations disproportionately comprise economically disadvantaged individuals and marginalized communities, raising Article 14 equality concerns. The article critiques mercy jurisdiction's opacity, prolonged delays, and absence of guidelines, which introduce additional arbitrariness. Examining the "death row phenomenon" of prolonged pre-execution detention averaging 7-10 years, the article analyzes how Indian courts increasingly recognize extended detention as violating Article 21, leading to commutations. Through comparative analysis with international jurisdictions and assessment of Law Commission recommendations, this article argues that current death penalty administration fails to meet constitutional standards of non-arbitrariness, equality, and due process. The article concludes by proposing comprehensive reforms including formal moratorium, enhanced procedural safeguards, mercy jurisdiction guidelines, and ultimately, complete abolition aligned with constitutional commitments to human dignity and international human rights norms.

¹ Sannidhya Singh Bartwal, 4th year law student at UPES, Dehradun

I. INTRODUCTION

Capital punishment—the state-authorised execution of persons convicted of certain crimes—remains among the most contested issues in Indian criminal justice. Since independence in 1947, India has retained the death penalty whilst progressively restricting its application, culminating in the Supreme Court's landmark pronouncement in *Bachan Singh v State of Punjab*² limiting capital punishment to the "rarest of rare" cases. This doctrinal framework seeks to balance complete abolition advocated by human rights organisations with demands for broader application following heinous crimes, reflecting deeper societal tensions regarding punishment philosophy, deterrence theory, victim rights, and constitutional morality.

Yet significant questions persist regarding this framework's operation in practice. The Constitution of India, 1950, whilst not explicitly abolishing capital punishment, subjects it to rigorous procedural safeguards under Article 14 (equality before law), Article 20 (protection against ex post facto laws and double jeopardy), and Article 21 (protection of life and personal liberty).³ The Indian Penal Code, 1860 (IPC) prescribes death penalty for specific offences including murder (section 302), waging war against the State (section 121), and certain terrorism-related crimes,³ whilst the Code of Criminal Procedure, 1973 (CrPC) establishes procedural requirements including mandatory High Court confirmation⁴ and separate sentencing hearings.

This article examines whether the "rarest of rare" doctrine has achieved its constitutional objective of eliminating arbitrariness in death penalty administration. Through empirical analysis of sentencing patterns, execution data, and judicial decisions from 1980-2024, this study reveals persistent arbitrariness characterised by geographic disparities, socio-economic bias, and inconsistent application across jurisdictions. The widening gap between death sentences awarded (hundreds annually) and executions carried out (only five in 24 years, 2000-2024) suggests a de facto moratorium contradicting formal legal retention. Additionally, mercy jurisdiction under Articles 72 and 161,⁵ plagued by prolonged delays and lack of transparency, introduces further unpredictability into the system.

² *Bachan Singh v State of Punjab* (1980) 2 SCC 684.

³ Indian Penal Code 1860, ss 121, 132, 302, 364A, 376A, 396; Unlawful Activities (Prevention) Act 1967, s 16.

⁴ Code of Criminal Procedure 1973, s 366.

⁵ Constitution of India 1950, arts 72, 161.

This article proceeds in ten parts. Part II examines the constitutional and statutory framework governing capital punishment. Part III analyses the Bachan Singh decision and subsequent development of the "rarest of rare" doctrine. Part IV presents empirical data on sentencing patterns since 1980, revealing troubling disparities. Part V examines execution trends and the growing gap between sentences and executions. Part VI critically evaluates evidence of systemic arbitrariness. Part VII assesses mercy jurisdiction's operation in practice. Part VIII addresses the death row phenomenon and prolonged detention issues. Part IX provides comparative international perspectives. Part X considers reform proposals and the abolition debate. The article concludes that India's death penalty regime, despite constitutional safeguards, fails to meet standards of non-arbitrariness and equality, warranting comprehensive reform toward eventual abolition.

II. CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. *Constitutional Provisions*

The Constituent Assembly debates (1946-1949) addressed capital punishment but rejected complete abolition proposals.⁶ The Assembly's compromise—neither constitutionalising nor prohibiting capital punishment—left the question to legislative wisdom subject to constitutional constraints. Article 21 states: "No person shall be deprived of his life or personal liberty except according to procedure established by law."⁷ This provision implicitly acknowledges capital punishment's possibility whilst requiring lawful procedure. In *Maneka Gandhi v Union of India*,⁸ the Supreme Court held that "procedure established by law" must be just, fair, and reasonable, not merely formally valid law, substantially expanding Article 21's protective scope.

Article 14's equality guarantee requires that death penalty administration not discriminate based on religion, caste, sex, or place of birth. Empirical evidence suggesting class or geographic bias potentially violates this fundamental right. In *EP Royappa v State of Tamil Nadu*,⁹ the Court established that arbitrariness violates both Articles 14 and 21: "Equality is antithetic to arbitrariness... where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law." This principle assumes particular significance in capital cases given execution's irreversibility.

⁶ Constituent Assembly Debates, Vol VII (4 November 1948) 486-502.

⁷ Constitution of India 1950, art 21.

⁸ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

⁹ *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3

Article 72 grants the President power to grant pardons, reprieves, respites, or remissions of punishment including death sentences, whilst Article 161 provides similar powers to State Governors for offences under State law. These provisions create dual clemency mechanisms intended as constitutional safety valves against miscarriages of justice, though their exercise has proven controversial, as examined in Part VII.

B. Statutory Framework

The IPC prescribes capital punishment for several offences: waging war against the Government of India (section 121), abetment of mutiny (section 132), murder (section 302), abetment of suicide by a child or insane person (section 305), kidnapping for ransom resulting in death (section 364A), rape causing death or persistent vegetative state (section 376A), and dacoity with murder (section 396).¹⁰ Special legislation extends capital punishment to terrorism-related offences and certain drug trafficking offences resulting in death.¹¹

The Criminal Procedure Code (Amendment) Act, 1955 made life imprisonment the default punishment for murder, with death penalty requiring special justification—a crucial reform limiting capital punishment's application. The CrPC establishes procedural requirements including: mandatory separate hearing on sentence after conviction (section 235(2)) requirement of "special reasons" for death sentence with life imprisonment as norm (section 354(3));²⁰ mandatory High Court confirmation before execution (section 366) and right to appeal to Supreme Court (sections 379, 380). These layered safeguards reflect legislative recognition of capital punishment's gravity and attempt to minimise arbitrary application.

III. THE "RAREST OF RARE" DOCTRINE: BACHAN SINGH AND ITS AFTERMATH

A. Pre-Bachan Singh Jurisprudence

In *Jagmohan Singh v State of UP*,¹² a five-judge bench upheld capital punishment's constitutional validity, rejecting arguments that unguided judicial discretion in sentencing violated Articles 14, 19, and 21. The Court held that judicial discretion, though broad, was not arbitrary if exercised judicially. However, subsequent decisions revealed growing judicial discomfort with unlimited sentencing discretion. In *Rajendra Prasad v State of UP*,¹³ another

¹⁰ Indian Penal Code 1860, ss 121, 132, 302, 305, 364A, 376A, 396.

¹¹ Narcotic Drugs and Psychotropic Substances Act 1985, s 31A

¹² *Jagmohan Singh v State of UP* AIR 1973 SC 947.

¹³ *Rajendra Prasad v State of UP* (1979) 3 SCC 646.

five-judge bench expressed reservations about death penalty's constitutionality, creating uncertainty that necessitated larger bench consideration in *Bachan Singh*.

B. The Bachan Singh Decision

Bachan Singh v State of Punjab, remains the foundational decision governing capital punishment in India. A constitutional bench, by 4:1 majority, addressed death penalty's constitutional validity and application standards comprehensively. The Court held that capital punishment for murder under section 302 IPC does not violate Articles 14, 19, or 21, provided procedural requirements satisfy Article 21's fairness mandate. Significantly, the Court established that death penalty should be imposed only in the "rarest of rare cases" when alternative option of life imprisonment is "unquestionably foreclosed."

The Court mandated that sentencing courts must consider both aggravating circumstances (crime brutality, victim vulnerability, social impact) and mitigating circumstances (offender's age, mental condition, provocation, reformation probability) in a balanced manner. Section 354(3)'s "special reasons" requirement must be interpreted to mean exceptional reasons requiring detailed justification. This framework sought to eliminate arbitrariness by requiring individualised sentencing based on comprehensive assessment of crime and criminal.

Justice PN Bhagwati's powerful dissent argued that capital punishment violated constitutional guarantees. He contended that empirical evidence showed death penalty failed to deter crime more effectively than life imprisonment, that arbitrariness in application was inherent and ineradicable, and that the punishment violated human dignity.¹⁴ Bhagwati J's dissent, though not legally binding, has influenced subsequent judicial thinking and abolition advocacy, with several judges citing it approvingly in later decisions.

C. Post-Bachan Singh Developments

In *Machhi Singh v State of Punjab*,¹⁵ the Supreme Court attempted to provide guidelines for identifying "rarest of rare" cases, suggesting five categories: manner of murder commission (exceptionally depraved or brutal); motive (personal gain, hired killing); anti-social nature (caste-based killings, dowry deaths); magnitude (multiple murders); and victim's personality (children, helpless persons, public servants). However, these guidelines have not ensured consistency, with different benches applying the doctrine variably, some emphasising crime-

¹⁴ See *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra* (2009) 6 SCC 498 [98] (referring approvingly to Bhagwati J's concerns about arbitrariness).

¹⁵ *Machhi Singh v State of Punjab* (1983) 3 SCC 470

centric factors whilst others focus on offender-centric considerations.

Recent decisions have shown increasing judicial reluctance to affirm death sentences. In *Shankar Kisanrao Khade v State of Maharashtra*,¹⁶ the Court emphasised that mitigating circumstances must be thoroughly examined, and mere brutality alone insufficient for death penalty. In *Santosh Kumar Satishbhushan Bariyar*,¹⁷ the Court commuted death sentence emphasising reformation potential and socio-economic deprivation as mitigating factors.³ These decisions suggest evolving judicial consciousness regarding capital punishment, though consistency remains elusive.

IV. EMPIRICAL ANALYSIS: SENTENCING PATTERNS SINCE INDEPENDENCE

Empirical analysis of death sentencing patterns reveals troubling disparities challenging the "rarest of rare" doctrine's efficacy. Data from the National Crime Records Bureau (NCRB) and Project 39A at National Law University, Delhi provide comprehensive insight into sentencing trends.¹⁸ Trial courts awarded approximately 150-200 death sentences annually between 2000-2020, yet High Courts confirmed only 20-30% on appeal, with Supreme Court further reducing this number.¹⁹ This dramatic attrition rate suggests trial courts frequently exceed "rarest of rare" constraints, raising concerns about doctrine comprehension and application at lower judiciary levels.

Geographic disparities prove particularly concerning. Uttar Pradesh averages 25-35 confirmed death sentences annually, whilst Kerala records only 0-2 annually, despite comparable population-adjusted murder rates. Allahabad High Court confirms approximately 35-40% of trial court death sentences, whilst Kerala High Court confirms less than 10%. Such variations cannot be explained by crime rate differences alone, suggesting judicial culture, public pressure, and institutional practices significantly influence outcomes, potentially violating Article 14's equality guarantee.

Socio-economic analysis reveals concerning patterns. Approximately 74% of death row

¹⁶ *Shankar Kisanrao Khade v State of Maharashtra* (2013) 5 SCC 546

¹⁷ *Santosh Kumar Satishbhushan Bariyar* (n 32).

¹⁸ Anup Surendranath and others, *Death Penalty India Report* (Project 39A, National Law University Delhi 2016) <<https://www.project39a.com/dpir>> accessed 15 October 2024

¹⁹ National Crime Records Bureau, *Crime in India Reports 2000-2023* (Ministry of Home Affairs) <<https://ncrb.gov.in>> accessed 15 October 2024.

prisoners come from economically disadvantaged backgrounds, with over 60% unemployed or engaged in low-wage informal labour at offence time.²⁰ Scheduled Castes and Scheduled Tribes constitute 35-40% of death row prisoners, disproportionate to their 25% population share, whilst Muslims constitute approximately 30%, significantly disproportionate to their 14-15% population share. These patterns suggest systemic bias favouring privileged accused, potentially attributable to legal representation quality differences, judicial perception of rehabilitation potential, and differential access to character witnesses and family support evidence.

V. EXECUTION TRENDS: THE WIDENING GAP BETWEEN SENTENCE AND EXECUTION

Unlike death sentences (awarded relatively frequently), actual executions have declined dramatically. Historical records suggest approximately 1,200-1,500 executions occurred between 1947-1960, declining to 400-500 during 1971-1980.²¹ Post-Bachan Singh, executions dropped precipitously: approximately 120-150 during 1981-1990, 50-60 during 1991-2000, and merely one execution (Dhananjay Chatterjee, 2004) during 2001-2010. Between 2011-2020, only four executions occurred: Ajmal Kasab (2012), Afzal Guru (2013), Yakub Memon (2015), and the Nirbhaya case convicts (2020). No executions have occurred since 2020, effectively creating a de facto moratorium.

This gap between approximately 1,800+ trial court death sentences awarded during 2000-2024 and only five executions reflects multiple factors: extensive appellate processes creating years-long delays; mercy jurisdiction adding additional review layers; judicial reluctance with Supreme Court increasingly converting death sentences to life imprisonment; political considerations affecting clemency decisions; international pressure from abolitionist nations; and recognition that prolonged death row detention itself becomes ground for commutation.²² This ambiguous position—formal retention with de facto moratorium—satisfies neither abolitionists nor retentionists whilst perpetuating hundreds of prisoners' suffering languishing on death row in legal limbo.

²⁰ Anup Surendranath and Soumya Saxena, 'The Lethal Lottery: The Law and Practice of Death Penalty in India' (Project 39A Report, NLU Delhi 2016) 42-45

²¹ Amnesty International, *Death Sentences and Executions Annual Reports 1980-2023* (Amnesty International) <<https://www.amnesty.org>> accessed 15 October 2024

²² See Law Commission of India, Report No 262: *The Death Penalty* (August 2015) [2.13]-[2.18]

VI. ARBITRARINESS IN DEATH PENALTY ADMINISTRATION

Arbitrariness in constitutional law refers to state action lacking rational basis, applied unequally, or characterised by whimsical or discriminatory power exercise.²³ The Supreme Court established in *EP Royappa* that arbitrariness violates both Articles 14 and 21.⁵⁰ Applied to capital punishment, arbitrariness analysis examines whether death penalty administration reflects reasoned judgment based on objective criteria or arbitrary factors including geographic location, economic status, identity factors, presiding judge's personal views, public pressure, political considerations, and random timing affecting procedural outcomes.

Comparative case analysis reveals inconsistent outcomes. Project 39A's study analysing 215 death row prisoners found similar crimes in different states received vastly different sentences, with economic status strongly correlating with sentencing outcome and legal representation quality proving decisive.²⁴ Individual judge variation shows some judges imposing death sentences at rates 3-5 times higher than colleagues in the same High Court, controlling for case characteristics, suggesting personal philosophy rather than case-specific factors drive outcomes.²⁵ Temporal factors show courts exhibiting increased death sentencing temporarily following high-profile crimes before reverting to baseline rates, indicating reactive rather than principle-based decision-making.

Some scholars argue that arbitrariness in death penalty administration is not merely implementation failure but structural inevitability, echoing Justice Bhagwati's *Bachan Singh* dissent.²⁶ Determining "rarest of rare" inherently requires subjective moral judgments about human worth, reformation potential, and punishment appropriateness that cannot be reduced to objective criteria.²⁷ This structural critique suggests that unless death penalty is abolished entirely, some degree of arbitrariness is inevitable, raising questions whether such arbitrariness is constitutionally tolerable given execution's irreversibility.

²³ *EP Royappa* (n 11) [85].

²⁴ *Surendranath and Saxena* (n 43) 48-52

²⁵ Mrinal Satish, 'Discretion, Discrimination and the Rule of Law: Assessing the Supreme Court's Death Penalty Jurisprudence' (2014) 13 *NUJS Law Review* 533, 548-551

²⁶ *Bachan Singh* (n 1) [352]-[368] (Bhagwati J, dissenting).

²⁷ *Bikram Jeet Batra*, 'The Rarest of Rare Doctrine: A Critique' (2011) 4(3) *NUJS Law Review* 455, 468-472

VII. MERCY JURISDICTION: CONSTITUTIONAL FRAMEWORK AND CRITIQUE

Articles 72 and 161 provide mercy power as constitutional check on judicial sentencing.²⁸ In *Maru Ram v Union of India*,²⁹ the Supreme Court held that whilst broad, mercy power must be exercised in public interest, on valid grounds, not arbitrarily, and remains subject to judicial review for mala fide exercise. In *Kehar Singh v Union of India*,³⁰ the Court held that mercy power is constitutional safety valve for miscarriage of justice, with President able to consider matters beyond judicial scope including social impact, family circumstances, and defendant's background.

In *Shatrughan Chauhan v Union of India*,³¹ a landmark decision, the Supreme Court held that prolonged delay in executing death sentence has dehumanising effect on condemned prisoners, with unexplained delay in deciding mercy petitions violating Article 21. The Court established that mental illness supervening after conviction, including that induced by death row detention itself, warrants commutation. Courts must consider cumulative effect of all delays—judicial, executive, and mercy—in determining whether commutation appropriate.

Despite constitutional importance, mercy jurisdiction faces substantial criticism. Mercy decisions lack transparency, being made behind closed doors without public reasoning, preventing accountability and consistency analysis.³² Multi-year pendency creates mental anguish for condemned prisoners, arguably constituting cruel punishment. As mercy power is exercised on Cabinet advice, political considerations may override humanitarian factors, with election cycles, public opinion, and coalition politics potentially influencing outcomes.³³ Absence of guidelines enables arbitrary exercise, unlike "rarest of rare" doctrine for judicial sentencing. These critiques have led to calls for mercy jurisdiction reform including establishing timelines, requiring reasoned decisions, and creating guidelines for consistent application.

²⁸ Constitution of India 1950, arts 72, 161

²⁹ *Maru Ram v Union of India* (1980) 2 SCC 684

³⁰ *Kehar Singh v Union of India* (1989) 1 SCC 204

³¹ *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1

³² Upendra Baxi, 'Sinking the Death Penalty: Reflections on *Shatrughan Chauhan v Union of India*' (2014) 49(37) *Economic and Political Weekly* 14, 15-16

³³ Law Commission of India, Report No 262 (n 48) [4.76]-[4.82].

VIII. THE DEATH ROW PHENOMENON AND PROLONGED DETENTION

The "death row phenomenon" refers to psychological torture and mental deterioration experienced by condemned prisoners during prolonged pre-execution detention.³⁴ Originally identified in European Court of Human Rights jurisprudence,³⁵ the phenomenon encompasses severe anxiety from living under imminent death threat, deteriorating mental health including depression and psychosis, social isolation, uncertainty regarding execution timing, and dehumanising prison conditions. Indian death row prisoners experience some of the world's longest pre-execution detentions, averaging 7-10 years from final conviction to execution/commutation, with approximately 40% in custody over 10 years.

Indian courts have increasingly recognized prolonged detention as violating Article 21. In *TV Vatheeswaran v State of Tamil Nadu*,³⁶ the Supreme Court held that delay exceeding two years between final conviction and execution warranted commutation. Though this strict timeline was subsequently relaxed in *Triveniben v State of Gujarat*,³⁷ the Court maintained that prolonged delay remains significant factor requiring consideration of delay length, reasons, attribution to prisoner, detention conditions, and mental health effects. Post-Shatrughan Chauhan, numerous death sentences have been commuted citing prolonged detention, effectively using delay as backdoor pathway to de facto abolition.

IX. INTERNATIONAL COMPARATIVE PERSPECTIVES

India's death penalty retention places it among a diminishing global minority. As of 2024, 112 countries have abolished capital punishment for all crimes, nine for ordinary crimes only, and 23 maintain de facto moratorium, whilst only 55 countries actively retain and use capital punishment.³⁸ India falls in the retentionist category but exhibits characteristics of abolitionist-in-practice nations given limited recent executions, reflecting ongoing domestic debates about capital punishment's future.

³⁴ William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002) 285-289

³⁵ *Soering v United Kingdom* App no 14038/88 (ECtHR, 7 July 1989).

³⁶ *TV Vatheeswaran v State of Tamil Nadu* (1983) 2 SCC 68

³⁷ *Triveniben v State of Gujarat* (1989) 1 SCC 678

³⁸ Amnesty International, *Death Penalty in 2023: Facts and Figures* (Amnesty International 2024) <<https://www.amnesty.org>> accessed 15 October 2024

The United States provides interesting comparison as federal democracy with varying state approaches. In *Furman v Georgia*,³⁹ the US Supreme Court held arbitrary death penalty application unconstitutional, leading to moratorium. Subsequent reforms in *Gregg v Georgia*⁴⁰ held death penalty constitutional if administered according to guided discretion with mitigating factors consideration. Recent trends show growing state-level abolition, declining public support, and increasing recognition of racial bias and wrongful convictions.⁴¹

Post-apartheid South Africa's abolition provides relevant comparative example. In *S v Makwanyane*,⁴² the Constitutional Court held death penalty violated rights to life and dignity despite high violent crime rates and public support. The Court emphasized human dignity primacy, international human rights norms, irreversible error risk, and arbitrary application concerns. Abolition has sustained despite continued violent crime, suggesting death penalty unnecessary for public safety.⁴³

X. REFORM PROPOSALS AND THE PATH TOWARD ABOLITION

The Law Commission of India's 262nd Report (2015) represents significant shift toward abolition, recommending death penalty abolition for all offenses except terrorism-related crimes waging war against State.⁸² The Commission recommended commuting all pending death sentences to life imprisonment, establishing minimum 25-year imprisonment for terrorism offenses, improving investigation and trial quality, ensuring adequate legal representation, and establishing mercy petition disposal timelines.⁸³ These recommendations, based on extensive research documenting arbitrariness, discrimination, and absence of deterrent effect, remain unimplemented by government.

⁸² Law Commission of India, Report No 262 (n 48) [5.1]-[5.6].

⁸³ *ibid* [5.7]-[5.12].

Short-term reforms within current retention framework should include: formal moratorium declaration whilst comprehensive review conducted; detailed sentencing guidelines based on objective criteria; mandatory comprehensive psychiatric evaluation; specialized capital defense

³⁹ *Furman v Georgia* 408 US 238 (1972).

⁴⁰ *Gregg v Georgia* 428 US 153 (1976).

⁴¹ Death Penalty Information Center, *The Death Penalty in 2023: Year End Report (DPIC 2024)* <<https://deathpenaltyinfo.org>> accessed 15 October 2024.

⁴² *S v Makwanyane* 1995 (3) SA 391 (CC).

⁴³ Dirk van Zyl Smit, 'Life Imprisonment as the Ultimate Penalty in International Law: A Human Rights Perspective' (2006) 9 *Criminal Law Forum* 5, 18-22

units ensuring competent representation; systematic proportionality review comparing similar cases; mercy reform implementing 6-12 month timelines with written reasoning and expanded judicial review; death row conditions improvement eliminating unjustified solitary confinement; comprehensive database tracking all death sentences enabling transparency; independent review commission examining consistency and arbitrariness; and categorical exclusions prohibiting death penalty for intellectually disabled, severely mentally ill, and elderly offenders.⁸⁴

⁸⁴ See generally Bikram Jeet Batra, 'Reforming India's Death Penalty: Options for Change' (2015) 50(8) Economic and Political Weekly 42, 45-47.

Medium-term transitional measures should include limited scope abolition implementing Law Commission recommendations, introducing genuine life without parole as alternative ensuring public safety whilst eliminating execution, investing in comprehensive victim support services addressing needs beyond retributive punishment, experimenting with restorative justice approaches, undertaking public education campaigns on death penalty issues including wrongful convictions risk and effectiveness of alternatives, allowing state-level flexibility for states to abolish capital punishment in state criminal codes, and enacting sunset legislation providing for complete abolition after specified transition period.⁸⁵

⁸⁵ Law Commission of India, Report No 262 (n 48) [5.13]-[5.18].

The long-term goal remains complete abolition through constitutional amendment explicitly prohibiting capital punishment, ratification of Second Optional Protocol to ICCPR,⁸⁶ legislative repeal removing death penalty provisions from IPC and special statutes, commutation of all existing sentences upon abolition, establishing commemorative justice mechanisms acknowledging wrongful convictions and system failures, and positioning India as regional abolition movement leader potentially influencing other South Asian nations.

⁸⁶ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414.

XI. CONCLUSION

India stands at a crossroads regarding capital punishment. The nation has effectively implemented a de facto moratorium through clemency and judicial commutations, yet formally

retains death penalty for symbolic purposes. This ambiguous position satisfies neither abolitionists nor retentionists whilst perpetuating hundreds of prisoners' suffering languishing on death row in legal limbo.

The "rarest of rare" doctrine, whilst constitutionally laudable in intent, has failed to eliminate arbitrariness inherent in deciding which human beings should live and which should die. Geographic location, economic status, legal representation quality, and often pure chance determine outcomes as much as crime characteristics or offender culpability. This arbitrariness violates basic constitutional principles of equality and due process enshrined in Articles 14 and 21.

Moreover, capital punishment's purported justifications fail empirical scrutiny. Death penalty does not deter crime more effectively than life imprisonment. It does not provide genuine closure to victims' families, many of whom oppose execution. It does not enhance public safety beyond what long-term incarceration achieves. It does, however, carry unacceptable risk of irreversible error, as no criminal justice system is infallible.

India's constitutional commitment to human dignity, equality, and protection of life points toward abolition. The Constitution's transformative promise—to build a just and humane society—cannot be fully realized whilst state maintains power to kill its citizens. International human rights law's evolution toward viewing capital punishment as inherently violating human dignity reinforces this conclusion.⁸⁷

⁸⁷ UN Human Rights Committee, General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc CCPR/C/GC/36 (3 September 2019) [34]-[35].

Yet abolition need not occur abruptly. India's federal structure, democratic traditions, and gradualist approach to social reform allow for incremental path. Formal moratorium, narrowed scope, enhanced safeguards, and sunset provisions can provide transition toward eventual complete abolition, building public consensus whilst ensuring no more executions occur.

This article's ultimate conclusion is clear: India should abolish capital punishment entirely. In the interim, immediate reforms addressing documented arbitrariness, discrimination, and prolonged detention are essential. The death penalty's continued formal retention serves neither

justice nor constitutional principles. India abolished untouchability, recognising that human dignity prohibits treating any person as inherently disposable. The same principle should guide capital punishment policy. Every human life has inherent worth that cannot be destroyed, no matter how grievous the crime. A mature democracy committed to constitutional morality and human dignity cannot maintain a punishment that negates these values. The path toward abolition is both constitutionally required and practically achievable. India must take it.

