

Death Penalty in India: Legal Framework and Contemporary Debates

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Abstract:

This paper will investigate the legal framework surrounding the death sentence in India, tracing this framework back through the 'Indian Penal Code of 1860' and on to the recently passed 'Bharatiya Nyaya Sanhita of 2023 and 'Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 of 2023. This paper will investigate the validity of the death sentence in a constitutional framework through landmark Supreme Court decisions and provisions of the Indian Constitution. This paper will also illustrate the widening scope of offense liable to the death sentence in the new code with respect to gang rape, mob lynching, and organized crime. This paper will explore the procedural aspects of a death sentence and related appeals and clemency provisions. This paper will hopefully provide insight into a developing country like India with respect to the efficacy and moral justification of the death sentence in light of current international human rights provisions and a rapidly changing legal environment surrounding the death sentence in India.

Keywords: Death Penalty; Capital Punishment; Indian Penal Code; Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Constitutional Validity; Human Rights.

Introduction

The death sentence is still an issue of contention in constitutional discourse, especially when it comes to the basic rights to life and liberty. Several nations, including India, still use the death penalty for the most serious crimes, despite the fact that many jurisdictions throughout the world have abolished it in favour of reformatory justice approaches. Critical concerns about constitutional morality, proportionality of punishment, and procedural fairness in the criminal justice system are brought up by this continued retention.

Through a review of pertinent constitutional provisions, court rulings, and developing sentencing guidelines established by Indian courts, this essay critically investigates the constitutionality of the death penalty. In view of the newly passed criminal legislation, specifically the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023, it delves deeper into the current applicability of the death penalty. The article aims to highlight the legislative approach taken by the Indian legal system toward the death penalty and determine whether such an approach is consistent with constitutional values and

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international human rights standards by offering a comparative analysis of the earlier and recently introduced statutory frameworks.

Conceptual Foundations of capital punishment:

The execution of a criminal who has been found guilty of a crime and condemned to death by a court of law is referred to as the death penalty, sometimes called as the capital punishment. It is crucial to distinguish extrajudicial executions which take place without following the correct legal procedures from the death penalty. Generally, death penalty is awarded to a person convicted of committing cold blooded murders.

Death penalty is one of the harshest kinds of punishment and from ancient to contemporary world it has a deep history. The imposition of death penalty is a great constitutional concern because it has no place to rectify the errors committed by judiciary. It is to be noted that death penalty synonym is capital punishment.

Death Penalty in India – Legal Architecture:

Sanctions have been employed by cultures throughout history to make criminals fearful. The death penalty is sanctioned where a person is convicted for committing heinous crimes. The death sentence is based on the punitive premise that "life should pay for life and eye for eye."

The Supreme Court has voiced concerns about the death penalty for the last ten years. The essential implementation of laws pertaining to the death penalty and its constitutional prejudice have often presented challenges for the Apex Court. In the past, the death penalty has been a divisive issue and a subject of ethical debate. Many attempts have been made to either outlaw this type of punishment or, at the very least, overturn the minority global legal standards that prioritize the protection of the rights of individuals facing the death sentence in light of the international human rights framework.

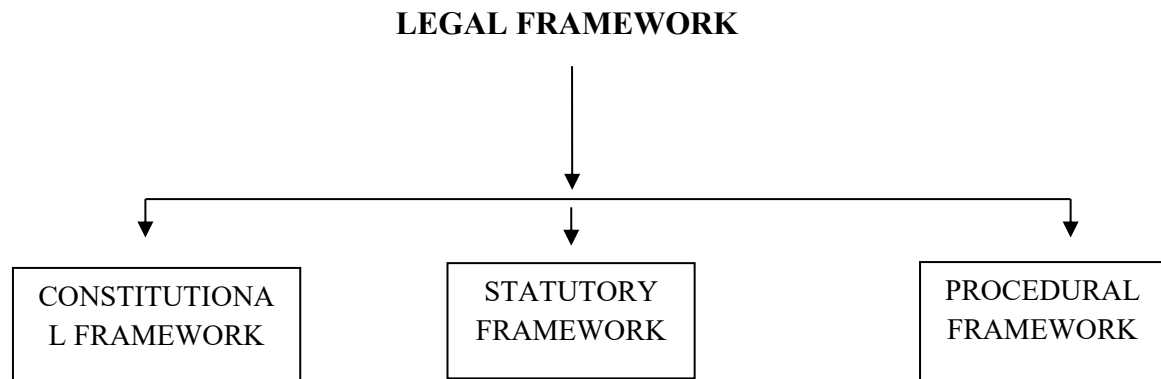
The long-term, execution-free reign of the convicts of Nirbhaya gang rape has led many to argue and think that India should consider the practicality and economic benefits of maintaining this most amazing absolute sentence. This has given rise to discussion over the ultimate outcome of retaining such a penalty in the laws. As a result, this topic has generated a lot of discussion in traditional media. Various prisoners are awarded death penalty but their sentences are still not executed which shows that executions related to death penalty are rare in India. The least valuable demands are satisfied by the death penalty. The first is to punish those who have perpetrated horrible atrocities against different groups of people or the general population, usually murder or genocide.

Therefore, it is not intrinsically unethical in any way. Certainly, the principle that "a man who takes other people's life must pay with his own" is still accepted wisdom in many societies. Deterring future offenders is the second, and possibly more significant, goal of the death penalty. It increases the possibility that future criminals will carry out such deeds, undoubtedly because life is valuable.¹

¹Xiaohua Zhu, Another View, Economic and Political Weekly, 2 January 2026.

Indian Legal Framework on Death Penalty in India.

The Indian legal framework can be studied by dividing it into three parts which are as follows:



Constitutional Framework: Constitutional Constraints on Capital Sentencing

The Indian constitution is one of the largest constitutions in the world. It is because it is a blend of various constitutions of different countries around the globe, namely the United States, Japan, the U.K., and Canada; the list is not exhaustive. The right to life is borrowed by the US and Japanese constitution. This right has substantial evidentiary significance and is acknowledged as essential and fundamental. The right to life and liberty is protected by constitutional norms, giving residents a significant amount of personal freedom.² All people of India are guaranteed the right to life by the Indian Constitution, although this right may be curtailed by legal processes.³

“Article 14⁴ of the Indian Constitution promises ‘Equality before law and equal protection of the laws,’ meaning that no one will face discrimination unless it is necessary to accomplish equality.” The soul of preamble could be found in Article 14 of the Indian Constitution.

“Article 21⁵ guarantees everyone the fundamental ‘right to life that is, the right to life with dignity’ under which no one can be deprived of his life until the legally mandated process is followed.”

Despite the Indian Constitution's many provisions, such as the preamble, fundamental rights, and guiding principles for state policy, the constitutionality of the death penalty might be questioned. There are two main ways to classify its constitutionality in India.

First and foremost, the essential topic to be addressed is whether the death penalty as a whole is unlawful and whether it should never be applied in any situation by enacting any kind of legal procedure.

² Allan Gledhill, The Life and Liberty in First Ten Years of Republican India, 2 JILI 241, 266 (1959–60).

³ Art. 21, Constitution of India, 1950.

⁴ INDIAN CONSTITUTION. art. 14.

⁵ INDIAN CONSTITUTION. art. 21.

The second concern that comes up is whether the laws regarding the death penalty found in the Indian Penal Code are unconstitutional since they might violate certain constitutional principles, even though the death penalty itself might not be illegal.

Rather than legislative constraint, judicial interpretation has played a major role in the evolution of the death penalty's constitutional legitimacy in India. The Supreme Court took a procedural stance in *Jagmohan Singh v. State of UP*⁶, stressing adherence to legal protections rather than challenging the morality of the death penalty. As long as sentencing discretion was used within the parameters of recognized legal procedures, this early judicial position established the precedent for seeing the death sentence as constitutionally permissible.

But the only reliance on procedural legality quickly came under fire for allowing for undue judicial discretion. *Rajendra Prasad v. State of UP*⁷ the Court voiced concerns about unguided sentencing discretion and emphasized the necessity of fundamental restrictions on the application of the death penalty. The logic behind this ruling was short-lived and eventually re-examined, despite the fact that it showed a shift toward greater constitutional sensitivity.

The verdict in *Rajendra Prasad's* case was overturned in the landmark case of *Bachan Singh v. State of Punjab*.⁸ The Supreme Court established the "rarest of rare" doctrine. Although this framework aimed to limit the use of the death penalty to extraordinary circumstances, its implementation has remained mostly arbitrary. The doctrine's efficacy as a safeguard against arbitrariness has been limited by subsequent judicial practice, which shows that courts have had difficulty developing consistent standards for identifying cases that fall within this category.

In *Machhi Singh v. State of Punjab* (1983)⁹, the Court endeavoured to establish illustrative categories for distinguishing "rarest of rare" circumstances, further examining the question of sentencing discretion. Despite this attempt, there has been a great deal of variety in court decisions due to the lack of strict sentence criteria. Because of this, similar offenders have frequently gotten different penalties, which raises questions about equality before the law under Article 14 of the Constitution.

Sentencing guidelines have not been the exclusive subject of judicial review. The Supreme Court considered the constitutionality of the method of execution in *Deena v. Union of India*¹⁰ upholding its validity while also recognizing the necessity to prevent needless cruelty. The ruling shows judicial understanding of the human dignity issues raised by the death penalty, even though the Court maintained the current manner of execution.

In cases involving post-conviction delays, the procedural aspect of the death penalty became more prominent. The Supreme Court acknowledged in *Triveni Ben v. State of Gujarat*¹¹ case, that an excessive delay in the processing of mercy petitions may violate Article 21 and result

⁶*Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947

⁷*Rajendra Prasad v. State of U.P.*, AIR 1979 SC 916

⁸*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684; AIR 1980 SC 898, 209

⁹*Machhi Singh v. State of Punjab*, (1983) 3 SCC 470; AIR 1983 SC 957

¹⁰*Deena v. Union of India*, (1983) 4 SCC 645.

¹¹*Triveniben v. State of Gujarat*, (1989) 1 SCC 678; AIR 1989 SC 142

in the commuting of the death penalty. This recognition implied that the use of the death penalty must continue to be constitutionally humane even after conviction, marking a major extension of procedural protections.

There is growing uneasiness with the death penalty's final aspect, according to further recent judicial tendencies. In *Shatrughan Chauhan v. Union of India*¹² case, the Court stressed that executive delay and arbitrariness compromise the constitutional validity of the death penalty and reaffirmed the significance of procedural fairness during the mercy stage. These rulings show an increasing judicial tendency to put human dignity and error avoidance ahead of retaliatory reasons.

When taken as a whole, these rulings show that Indian courts have chosen a model of constitutional compromise over outright support or opposition to the death sentence. Despite efforts to humanize capital punishment, judicial notions like the "rarest of rare" criterion and delay-based commutation have not allayed worries about arbitrariness and inconsistency. These unresolved judicial tensions take on new significance in the current context, especially in light of the expansion of capital offenses under the *Bharatiya Nyaya Sanhita, 2023*. This calls for a revaluation of whether judicially imposed limitations alone are adequate to protect constitutional morality.

“The president of India and state governors are authorized by Articles 72¹³ and 161¹⁴ of the Indian Constitution to ‘grant pardon, reprieve respite or remission of punishment suspend, remit or commute a sentence of punishment’ for any accused person found guilty of a crime.

- (a) In each and every instance when a court martial is used to impose a penalty or punishment
- (b) In every situation in which the penalty or sentence for breaking any law pertains to a subject over which the union has executive authority
- (c) In every situation in which the punishment carries a death sentence.”

According to the constitution, a convicted person may submit a last request for clemency to the president following the Supreme Court's verdict, provided that all appeals have been denied.

The principles of a prompt trial and the timely consideration of mercy pleas were established by the cases of *Madhu Mehta v. Union of India*¹⁵ and *Triveni Ben v. State of Gujarat*¹⁶. The court agreed to reduce the death sentence to life in prison, citing a lack of logical cause for the nine-year delay in the final disposition of a mercy petition in these situations.

Statutory Framework: legislative expansion of capital offences (BHARTIYA NYAYA SANHITA 2023 specially cited.)

The IPC, which listed certain offenses for which the death penalty was an option, essentially governed the country's criminal justice system. IPC contained eleven provisions that carried

¹²*Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 : AIR 2014 SC 169

¹³ INDIAN CONSTITUTION. art. 72.

¹⁴ INDIAN CONSTITUTION. art. 161.

¹⁵*Madhu Mehta v. Union of India*, (1989) Supp (1) SCC 174.

¹⁶*Madhu Mehta v. Union of India*, (1989) Supp (1) SCC 174.

the death penalty. However, with the enactment of Bhartiya Nyaya Sanhita, 2023 the number of crimes where death penalty may be awarded has climbed from 11 to 15. The crimes were heinous and of a serious nature, and the individual perpetrating them appears to be the greatest threat to society. The capital offenses are listed under several national statutes.

There are total 11 provisions in the Indian Penal Code, 1860 that deals with death penalty which are as follows: Indian Penal Code, 1860 List-

Table 1 Capital Offences Punishable with Death under the Indian Penal Code, 1860¹⁷.

No.	Nature of Offence	Statutory Basis (IPC)	Analytical Explanation
1	Waging war against the State	s. 121	Recognises acts threatening national sovereignty as deserving of the highest punishment.
2	Participation in mutiny	s. 132	Applies where armed rebellion directly undermines military discipline.
3	False evidence causing execution	s. 194	Penalises misuse of judicial process leading to irreversible harm.
4	Coercion to give fatal false testimony	s. 195A	Extends liability to those manipulating witnesses resulting in death.
5	Murder	s. 302	Central provision where sentencing depends on aggravating circumstances.
6	Abetment of vulnerable suicide	s. 305	Protects minors and mentally incapacitated persons from exploitation.
7	Attempted murder by life convict	s. 307(2)	Reflects heightened culpability of repeat violent offenders.
8	Kidnapping for ransom	s. 364A	Addresses organised criminal conduct involving coercion and violence.
9	Rape causing death or vegetative state	s. 376A	Recognises extreme sexual violence with fatal consequences.
10	Habitual sexual offenders	s. 376E	Targets repeat offenders posing persistent societal threat.
11	Dacoity accompanied by murder	s. 396	Combines property crime with lethal violence, warranting enhanced punishment.

Source: Author's analytical reconstruction based on IPC, 1860.

¹⁷Indian Penal Code, 1860, §§ 121, 132, 194, 195A, 302, 305, 307(2), 364A, 376A, 376E, 396.

The Indian Penal Code (IPC, 1860) has been replaced by the BNS in order to bring justice and punishment into modern times. But in addition to carrying out the existing IPC's death penalty crimes, the BNS has added four new death-row offences. In summary, there are now fifteen offenses in the BNS that carry the death penalty, up from the previous eleven.

Bhartiya Nyaya Sanhiita, 2023 list-

Table 2 Capital Offences under the Bharatiya Nyaya Sanhita, 2023¹⁸

Category	BNS Provision	Substantive Change Introduced
Intentional homicide	ss. 103–104	Retains capital punishment framework with updated classification.
Sexual offences against minors	ss. 65(2), 70(2)	Expands protection by covering gang rape of girls below 18 years.
Collective violence (mob killings)	s. 103(2)	New recognition of lynching as a capital offence.
Organised criminal activity	s. 111	Introduces death penalty where criminal networks cause death.
Terror-related offences	s. 113	Broadens terrorism definition to include large-scale lethal acts.
Kidnapping resulting in death	s. 140(2)	Continues ransom-based capital liability.
Armed robbery with homicide	s. 310(3)	Reinforces deterrence against violent property crimes.
Repeat capital offenders	s. 71	Addresses recidivism in serious crimes.
Abetment of suicide	s. 107	Protects vulnerable individuals from inducement to death.
War against State authority	s. 147	Modern equivalent of treason-related offences.
Military mutiny facilitation	s. 160	Applies capital liability where assistance leads to rebellion.
Perjury causing execution	s. 230(2)	Penalises judicial manipulation leading to death.

¹⁸ Bharatiya Nyaya Sanhita, 2023, §§103,104,109(2), 65(2),70(2),103(2),111,113,140(2),310(3),71,107,147,160,230(2),232(2),66.

Induced false evidence	s. 232(2)	Mirrors culpability of wrongful execution instigators.
Rape leading to death	s. 66	Consolidates fatal sexual violence provisions.

Source: **Author's analysis of Bharatiya Nyaya Sanhita, 2023.**

Table 3 Comparison: IPC vs BNS – Death Penalty Provisions.¹⁹

The following table provides the comparative analysis of both the old and new criminal law.

Parameter	IPC Regime	BNS Regime	Critical Observation
Legislative era	Colonial framework (1860)	Contemporary criminal law (2023)	Reflects shift from colonial morality to modern governance.
Scope of capital offences	Limited to traditional crimes	Expanded to social crimes like mob violence	Shows legislative emphasis on public order.
Sexual offences	Restricted to extreme cases	Broader victim protection	Strengthens gender justice concerns.
Terrorism	Narrow interpretation	Comprehensive coverage	Aligns with national security policy.
Sedition	Included capital liability	Death penalty removed	Indicates partial liberalisation.
Technological crimes	Absent	Recognised indirectly	Responds to modern crime patterns.
Organised crime	No specific provision	Explicit inclusion	Reflects concern over criminal syndicates.

Source: Comparative analysis by the author.

Other Legislations Dealing with Death Penalty.

Various other legislations that dealt with capital punishment are as follows:

Table 4 India Law Commission Report no. 262 on Death Penalty.²⁰

Legislative Domain	Illustrative Statutes	Rationale for Capital Punishment
Armed forces discipline	Army Act, Air Force Act, Navy Act	Maintains national security and military order.

¹⁹Indian Penal Code, 1860; Bharatiya Nyaya Sanhita, 2023.

²⁰Law Commission of India, 262nd Report on the Death Penalty (2015).

Internal security	UAPA, MCOCA	Addresses threats to sovereignty and public safety.
Social evils	Sati Prevention Act	Protects human dignity and constitutional morality.
Drug offences	NDPS Act	Targets large-scale narcotics trafficking.
Border forces	BSF Act, ITBP Act	Ensures discipline in paramilitary forces.
Caste atrocities	SC/ST Act	Penalises extreme violence against vulnerable groups.

Source: Synthesised by the author from statutory frameworks.

Procedural Framework: procedural safeguards in capital sentencing (BHARTIYA NAGARIK SURAKSHA SANHITA ,2023 Specially cited)

The process for capital offenses follows the same guidelines as for other types of criminal offenses: following a fair and impartial trial, the offender is given the death penalty in accordance with the law, which provides him with all the opportunity to present his case. After the High Court upholds the session court's decision to apply the death penalty, the Indian Supreme Court must make a decision that can be submitted to the President for compassion. The death penalty will be carried out on a specific day and time if the curative plea is denied.

Prior to the passing of 'Bhartiya Nagarik Suraksha Sanhita, 2023(BNSS)', the 1973 'Criminal Procedure Code (CrPC)' governed the execution of death sentences and petitions for mercy. This article discusses both the CrPC and BNSS provisions related to death penalty.

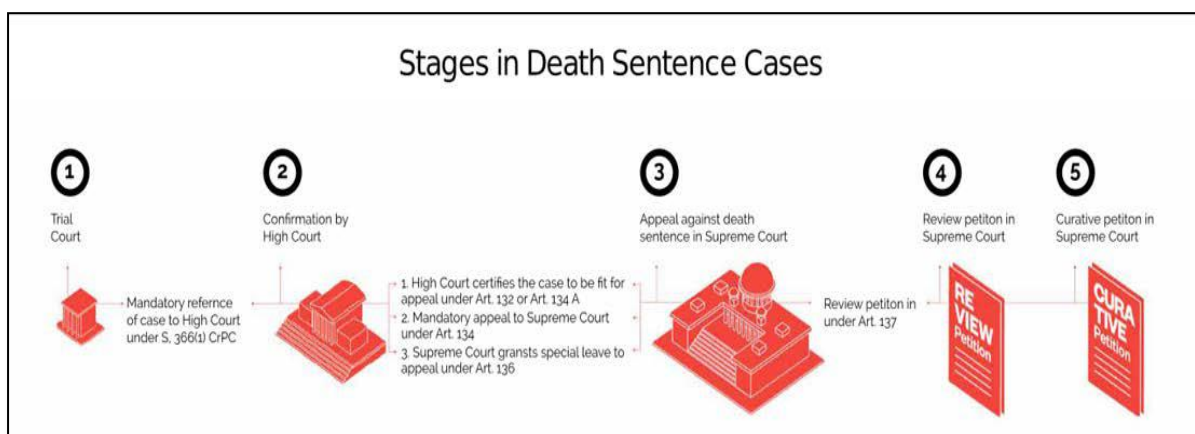


Figure 1 Stages of death penalty as per CrPC, 1973²¹

²¹Faculty, Explainer: Why Are the Reasons for Delay in the Execution of a Death Sentence.

The following table provides an overview of the regulations pertaining to the confirmation, execution, and appeal of death sentences under the ‘Code of Criminal Procedure (CrPC), 1973’, and the ‘Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023’.²²

Table: Procedural Safeguards in Capital Punishment: CrPC vs BNSS²³

Stage	Earlier Procedure (CrPC)	Revised Approach (BNSS)	Procedural Impact
Trial confirmation	Mandatory High Court approval	Retained with clearer safeguards	Ensures judicial oversight.
Execution warrant	Limited procedural clarity	Detailed execution protocol	Reduces arbitrariness.
Mercy petitions	No fixed timelines	Defined time limits	Addresses delay-related cruelty.
Commutation powers	Discretionary	Structured framework	Enhances predictability.

Source: Author’s procedural interpretation of CrPC& BNSS.

Conclusion and policy recommendations:

Short-term Recommendations:

- Reform the Bachan Singh framework to incorporate mitigating factors.
- Implement sentencing guidelines for trial courts.
- Prioritize and expedite capital offense cases.
- Establish a dedicated Supreme Court bench for death penalty cases.
- Exclude public opinion from capital punishment decisions.

Long-term Recommendations:

- Abolish the death penalty, aligning with international trends.
- Enhance the criminal justice system's efficiency and reduce delays.
- Improve legal representation for marginalized groups.
- Implement restorative justice and rehabilitation programs.
- Strengthen judicial training on sentencing guidelines.

²²Bharatiya Nagarik Suraksha Sanhita, 2023.

²³Code of Criminal Procedure, 1973, §§ 366–371, 413–414; Bharatiya Nagarik Suraksha Sanhita, 2023, 407–409, 454–456, 472–478.

Key Points:

- i. The death penalty in India requires significant reforms.
- ii. Subjectivity and arbitrariness plague the capital sentencing system.
- iii. The "rarest of rare" doctrine needs clarification and standardization.
- iv. Mitigating factors should be considered in sentencing decisions.
- v. Public opinion should not influence capital punishment decisions.
- vi. The quality of legal representation significantly impacts trial outcomes.
- vii. Delays in the justice system exacerbate psychological suffering for death row inmates.
- viii. The death penalty's deterrent effect is debatable and lacks empirical evidence.
- ix. Swift and certain punishment, rather than severity, deters crime more effectively.

Author's Stance:

- i. The death penalty should be retained in India, but with reforms.
- ii. The "rarest of rare" doctrine should be applied judiciously.
- iii. Fear of consequences is essential in deterring crime.
- iv. Severe life imprisonment can be an alternative to the death penalty.
- v. The death penalty serves as a deterrent, particularly in terrorism-related cases.
- vi. The expansion of capital offences under Bhartiya Nyaya Sanhita risks diluting the constitutional safeguards painstakingly developed through judicial interpretation.

Future Directions:

- i. Continue debating the efficacy and ethics of the death penalty.
- ii. Explore alternative sentencing options, such as life imprisonment.
- iii. Enhance the criminal justice system's efficiency and fairness.
- iv. Promote restorative justice and rehabilitation programs.
- v. Monitor international trends and best practices in capital punishment.

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