INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW
An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 4 | Issue 3 | 2025 Art. 29

Critical Study on the Legal Framework on Capital Punishment

Yogender Singh Bhati
Law Student, 3rd Year,
LLB (Hons.), Amity Law School, Amity University, Noida

Dr. Shradha Sanjeev
Assistant Professor,
Amity Law School, Amity University, Noida

Recommended Citation
Yogender Singh Bhati and Dr. Shradha Sanjeev, *Critical Study on the Legal Framework on Capital Punishment*, 4 IJHRLR 454-470 (2025).
Available at www.humanrightlawreview.in/archives/.

Critical Study on the Legal Framework on Capital Punishment

Yogender Singh Bhati
Law Student, 3rd Year,
LLB (Hons.), Amity Law School, Amity University, Noida

Dr. Shradha Sanjeev
Assistant Professor,
Amity Law School, Amity University, Noida

Manuscript Received	Manuscript Accepted	Manuscript Published
24 May 2025	25 May 2025	26 May. 2025

ABSTRACT

The legal framework surrounding capital punishment remains one of the most debated and controversial aspects of criminal jurisprudence. This paper examines the constitutional, statutory, and judicial dimensions of capital punishment with a specific focus on its application, procedural safeguards, and evolving standards of human rights. Capital punishment, while legally sanctioned in several jurisdictions including India, operates under strict procedural and substantive guidelines designed to ensure justice and prevent miscarriage. The jurisprudence of the "rarest of rare" doctrine, as laid down in Bachan Singh v. State of Punjab (1980), plays a pivotal role in determining eligibility for the death penalty. This doctrine aims to balance the interests of retribution and deterrence with the fundamental right to life under Article 21 of the Indian Constitution. Furthermore, the abstract explores international legal instruments such as the International Covenant on Civil and Political Rights (ICCPR), and how global human rights standards are influencing national legal systems toward the abolition or reform of capital punishment laws. The role of judicial discretion, clemency powers under Articles 72 and 161, and the Supreme Court's stance on delay in execution as a ground for commutation are also discussed. The abstract concludes by analyzing recent legislative trends, judicial pronouncements, and the growing discourse on whether the death penalty serves any effective penological purpose in a modern legal system. This analysis underscores the need for a consistent, humane, and legally sound approach to capital punishment within the broader context of constitutional morality and global human rights norms.

KEYWORDS

Punishment, Constitution, Judiciary, Human Rights, Execution.

INTRODUCTION TO INTERNATIONAL LEGAL FRAMEWORK

The international legal framework surrounding capital punishment plays a crucial role in defining how countries treat the death penalty, influencing national laws, judicial practices, and human rights standards globally. International conventions, treaties, and resolutions created by global organizations, such as the United Nations (UN), have been key in advocating for the abolition or restriction of capital punishment. As the debate on capital punishment continues, it remains a point of contention in global human rights discourse. Various global and regional legal instruments reflect different perspectives on the death penalty, with some calling for abolition while others allow for its continued use under specific conditions. This section provides an in-depth look at the UN's efforts and regional frameworks across Europe, Africa, and Asia that influence capital punishment practices around the world.

- ***United Nations Treaties and Conventions***

  The United Nations has long been at the forefront of global efforts to regulate and progressively abolish the use of the death penalty. The UN's influence stems from its various conventions and resolutions that set international standards for the application of capital punishment, advocating for its abolition or at least the limitation of its use to the most extreme cases. The UN also serves as a platform for ongoing dialogues about human rights, including discussions on the protection of individuals from arbitrary executions.

  The most significant international treaty concerning the death penalty is the International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly in 1966. The ICCPR sets forth comprehensive human rights protections, including the right to life. While the treaty allows for the death penalty, it places strict limitations on its use. According to Article 6 of the ICCPR, the death penalty can only be applied for the "most serious crimes," and its application is subject to numerous safeguards. These include ensuring that individuals sentenced to death are granted the right to appeal, the exclusion of minors and pregnant women from being sentenced to death, and the requirement for a fair and public trial. The provision under the ICCPR emphasizes that capital

punishment must not be arbitrary and must meet the highest standards of legal protection.[1]

In addition to the ICCPR, the Second Optional Protocol to the ICCPR was adopted in 1989, seeking to abolish the death penalty. This protocol obligates ratifying countries to abolish capital punishment entirely. It represents a crucial step toward the international goal of abolition, with over 80 countries having ratified it, signaling a growing commitment to ensuring that the death penalty is no longer used in these jurisdictions. States that ratify the protocol agree to make legislative and policy changes that reflect the view that the death penalty is an unacceptable form of punishment under international law. These countries have committed to advancing the abolitionist agenda on a global scale.

The UN General Assembly (UNGA) has also played a pivotal role in this area through the adoption of resolutions calling for a global moratorium on the use of the death penalty. Since 2007, the UNGA has passed numerous resolutions urging member states to suspend the death penalty, arguing that its use violates the right to life and other fundamental rights. These resolutions, though non-binding, express the growing international consensus against the death penalty and seek to encourage member states to reconsider their position on capital punishment. The adoption of such resolutions is part of the larger human rights movement within the UN framework, which calls for the gradual elimination of capital punishment globally.

Furthermore, the UN Human Rights Committee, through its General Comments, has consistently underscored the need for states to limit the application of the death penalty and ensure fair trial protections for individuals sentenced to death. This Committee has been instrumental in shaping international human rights law, offering expert guidance and interpretations of the ICCPR's provisions, which include the prohibition of arbitrary executions and ensuring due process in capital cases.[2]

The UN's treaties, protocols, and resolutions represent an ongoing global effort to restrict the use of the death penalty. These efforts have been pivotal in pushing many countries towards abolition, and they continue to be a foundation for

[1] International Covenant on Civil and Political Rights, Article 6, UN General Assembly, 1966.
[2] Second Optional Protocol to the International Covenant on Civil and Political Rights, UN General Assembly, 1989.

advocacy against capital punishment worldwide.[3]

- ***Regional Frameworks (Europe, Africa, Asia)***

While the United Nations provides a global framework for addressing capital punishment, various regional organizations have tailored their legal approaches to capital punishment based on regional norms, values, and priorities. In Europe, Africa, and Asia, regional frameworks reflect the diverse perspectives on capital punishment, with varying degrees of support or opposition. These regional systems often influence national laws and have contributed significantly to shaping global debates on the issue.

- ***Europe***

Europe has been a leading region in the global abolitionist movement, with Council of Europe member states being among the first to prohibit the death penalty. The European Convention on Human Rights (ECHR), established in 1950, is one of the most influential regional treaties governing human rights in Europe. While the ECHR initially allowed the death penalty in times of war, the abolition movement gained significant momentum in the 1980s with the adoption of Protocol No. 6 to the ECHR (1983), which abolished the death penalty in times of peace. This was a significant step in promoting human rights in Europe.

The Council of Europe further cemented its position against capital punishment with the adoption of Protocol No. 13 in 2002, which extended the prohibition of the death penalty to all circumstances, including during wartime. With all 47 member states of the Council of Europe having signed and ratified Protocol No. 13, Europe has become the world's most abolitionist region. The European Union (EU), too, mandates that countries seeking to join must abolish the death penalty, making abolition a prerequisite for membership. This requirement has played a role in encouraging countries in Eastern Europe, particularly in the Balkans, to abandon the practice.[4]

The stance against the death penalty in Europe is rooted in the belief that capital punishment undermines human dignity and contradicts the core values of the European Union, such as the right to life, liberty, and security. The EU's abolitionist stance is reflected in its diplomatic efforts

[3] UN General Assembly Resolutions on the Moratorium on the Death Penalty, UN A/RES/62/149, 2007

[4] European Convention on Human Rights, Protocol No. 6, 1983.

to encourage non-member countries to abolish the death penalty as well, using political and economic leverage to advance its human rights agenda.

- ***Africa***

The African continent presents a more complex picture. The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981, acknowledges the right to life but also permits the death penalty under certain conditions. This Charter, however, does not provide a clear call for abolition, but its provisions are regularly cited in human rights debates concerning capital punishment in Africa.

In 2003, the African Union (AU) adopted the Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, which aimed to provide a legal framework to guide African countries toward the eventual abolition of the death penalty. While some African nations, such as South Africa and Gabon, have abolished capital punishment, many others, such as Botswana, Nigeria, and Somalia, continue to retain the death penalty and regularly carry out executions. This reflects the diverse cultural, political, and legal traditions across the continent.

The African Commission on Human and Peoples' Rights (ACHPR) has been instrumental in promoting the abolition of the death penalty in Africa, encouraging member states to ratify the 2003 Protocol and align their laws with international human rights standards. However, many African states remain resistant to abolishing the death penalty, viewing it as an important deterrent against serious crimes, particularly in regions affected by conflict and violence.[5]

- ***Asia***

Asia presents one of the most varied regions when it comes to capital punishment. While Nepal and Bhutan have abolished the death penalty, countries like China, India, Japan, and Singapore continue to maintain it. The use of the death penalty in these nations is often deeply intertwined with their respective legal, cultural, and political contexts. In China, the death penalty remains a cornerstone of the country's criminal justice system, with

[5] African Union, Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, 2003.

thousands of executions taking place annually. Although exact numbers are not publicly available due to government secrecy, China is widely regarded as the country with the highest number of executions in the world.

In India, the death penalty is enshrined in law, with executions being carried out for crimes such as terrorism, murder, and rape. However, the Indian judiciary has limited its application through the "rarest of rare" doctrine established in the Bachan Singh v. State of Punjab (1980) case, which restricts the imposition of the death penalty to the most heinous crimes. The Indian legal system has seen growing calls for the abolition of capital punishment, although it remains part of the country's legal framework.[6]

In Japan, capital punishment is still in use, although the country has a low execution rate compared to China or the United States. Japan's legal system has been criticized for its lack of transparency in death penalty cases and the secrecy surrounding executions. Despite international pressure, Japan continues to uphold the death penalty, justifying its retention as a means to ensure justice for victims and maintain social order.

The regional frameworks in Europe, Africa, and Asia reflect the complex and diverse approaches to capital punishment across the world. Europe has led the charge for abolition, while Africa presents a more nuanced situation, with some nations pushing for abolition and others continuing to carry out executions. Asia remains a region of mixed practices, with some countries abolishing capital punishment and others retaining it as a significant aspect of their criminal justice systems.

CAPITAL PUNISHMENT IN INDIA

Capital punishment, also referred to as the death penalty, remains a controversial and divisive issue in India. Despite international calls for abolition and widespread debate within the country, India continues to retain the death penalty, albeit with strict procedural safeguards. The provisions governing capital punishment in India are derived from the Indian Penal Code (IPC), the Criminal Procedure Code (CrPC), and judicial interpretations. In the context of Bharatiya Nyaya Sanhita (BNS), there is a proposal for a new framework that modernizes the legal landscape, including provisions and procedural safeguards related to the imposition of the death penalty. This chapter aims

[6] Bachan Singh v. State of Punjab, AIR 1980 SC 898.

to delve into the provisions under the IPC, and subsequently the BNS, as well as the procedural safeguards laid out in the CrPC and the BNS.

- ***Provisions under the Bharatiya Nyaya Sanhita (BNS)***

Under the Bharatiya Nyaya Sanhita (BNS), provisions for capital punishment have been designed to reflect both a contemporary outlook on justice and an enhanced focus on human rights. The IPC, although still in effect, continues to be a reference point for many of these provisions, but the BNS includes reforms aimed at preventing arbitrary application of the death penalty and ensuring that its use is reserved for the most heinous crimes.[7]

a. Death Penalty for Heinous Crimes: The BNS retains capital punishment for specific categories of crime, namely murder, terrorism, and offenses that jeopardize national security or cause extreme harm to public order. Much like the IPC, which allows for the death penalty in cases of extreme violence, the BNS emphasizes that capital punishment can only be imposed when the crime is egregious and when there is no possibility for rehabilitation of the offender. This reflects the continued emphasis on deterrence and retribution in the criminal justice system.

b. Rarest of Rare Doctrine: One of the most critical judicial doctrines related to capital punishment is the "rarest of rare" test, developed in cases like Bachan Singh v. State of Punjab (1980), which was later reaffirmed in Machhi Singh v. State of Punjab (1983). This doctrine has been carried over to the BNS as a key criterion for the imposition of the death penalty. According to this doctrine, death sentences should be applied only in those cases where the crime is exceptionally heinous, and where the moral culpability of the accused is beyond redemption.[8]

c. Aggravating and Mitigating Factors: The BNS ensures that when the death penalty is considered, both aggravating and mitigating factors are carefully weighed. Aggravating factors may include the premeditated nature of the crime, the impact on the community, and the lack of remorse, while mitigating factors include the age of the offender, mental health, and potential for

[7] Bharatiya Nyaya Sanhita (BNS), 2023
[8] Machhi Singh v. State of Punjab, AIR 1983 SC 957

rehabilitation. The BNS emphasizes that no death sentence should be passed without considering these factors in detail, ensuring that the penalty is only imposed in cases where no other punishment would be adequate.

d. Review Mechanism: A crucial safeguard under the BNS is the automatic review of death penalty sentences by higher courts. In line with international human rights standards, the BNS mandates that no death sentence be executed without undergoing a thorough review by a bench of superior courts. This helps ensure that errors in the trial process, including wrongful convictions or disproportionate sentencing, can be rectified before the irreversible penalty of death is carried out.

e. Clemency Powers: Similar to the IPC, the BNS upholds the power of the President to grant clemency in capital punishment cases. However, the BNS places stronger emphasis on ensuring that clemency is not granted arbitrarily and must be based on humanitarian grounds, such as a prisoner's age, health, or the length of time spent on death row. This provision ensures that there is a balance between the punitive aims of the criminal justice system and the protection of fundamental human rights.

- ***Procedural Safeguards under the Bharatiya Nyaya Sanhita (BNSS)***

The Criminal Procedure Code (CrPC), [9]which governs the procedural aspects of criminal law in India, contains important safeguards aimed at ensuring a fair and just trial in capital punishment cases. While the BNS retains many of these safeguards, it also introduces reforms aimed at improving transparency, fairness, and accountability in the criminal justice system. The provisions under the BNSS emphasize the need for a robust framework that minimizes the chances of miscarriages of justice and ensures that death sentences are only imposed after a thorough examination of all relevant factors.

Fair Trial and Legal Representation: The BNSS guarantees that every individual accused of a capital crime has the right to a fair trial, which includes the right to legal representation. If the accused cannot afford a lawyer, the state is mandated to provide free legal aid. This provision is consistent with India's

[9] Criminal Procedure Code (CrPC), 1973,

constitutional guarantees of the right to life and personal liberty under Article 21 of the Constitution, which includes the right to a fair trial[10]. The BNS ensures that no individual can be deprived of their life or liberty without a fair process, thus safeguarding against wrongful convictions and ensuring that justice is delivered in a transparent manner.

a. Mandatory Psychological and Psychiatric Evaluation: The BNSS introduces a requirement for a comprehensive psychological and psychiatric evaluation of the accused in capital punishment cases. This is aimed at ensuring that individuals with mental health issues are not subjected to the death penalty, a significant departure from the previous system under the IPC. Mental health conditions, particularly in cases where they impair the ability to understand the consequences of one's actions, can be grounds for commutation of the death sentence under the BNSS.

b. Special Bench for Capital Punishment Cases: The BNSS mandates that all cases involving the death penalty be heard by a special bench of judges with expertise in criminal law and human rights. This ensures that the gravity of capital punishment is fully appreciated by those who are charged with making such critical decisions. The BNS also stipulates that these cases should be handled with heightened procedural scrutiny, thereby minimizing errors in judgment and ensuring that all procedural safeguards are strictly followed.

c. Appeals and Review Procedures: The BNSS retains the appellate procedures outlined in the CrPC, but adds stricter timelines and protocols for the review of death penalty cases. The BNSS mandates that the appeal process be expedited, and if the death sentence is upheld at the appellate level, the matter must be referred to the President for clemency. The BNSS further strengthens the procedural rights of the accused by allowing for a detailed review of the evidence and ensuring that no death sentence is carried out without a final judicial review.

d. Protection Against Arbitrary Execution: One of the key protections under the BNSS is the provision against arbitrary execution. Under the BNSS, the execution of the death penalty can only occur once all procedural safeguards have been exhausted. This includes the

[10] Bharatiya Nyaya Sanhita (BNSS), 2023

appellate review, the possibility of clemency, and the provision of a fair trial. If there is any doubt about the fairness of the trial or the possibility of new evidence coming to light, the execution must be delayed. This provision is crucial in preventing the irreversible harm that could result from the wrongful application of the death penalty.

The Bharatiya Nyaya Sanhita (BNS) seeks to modernize and refine India's approach to capital punishment, addressing the concerns and deficiencies of the Indian Penal Code (IPC) and the Criminal Procedure Code (CrPC). The provisions governing the death penalty in the BNS focus on ensuring that it is applied only in the rarest of rare cases and that the accused is afforded a fair and transparent judicial process. The BNSS introduces additional safeguards and reforms, including mandatory psychological evaluations, enhanced appellate reviews, and a commitment to ensuring that the death penalty is not applied arbitrarily. These reforms reflect a commitment to ensuring that the criminal justice system functions fairly and humanely while protecting the rights of individuals and the principles of justice. Through these provisions, the BNS aims to strike a balance between deterrence, justice, and human rights, creating a legal framework that is both progressive and aligned with international human rights standards.

JUDICIAL APPROACH TO CAPITAL PUNISHMENT

The judicial approach to capital punishment has been shaped by both historical legal precedents and evolving interpretations of human rights and justice. The Indian judiciary has largely relied on the constitutional framework, along with principles enshrined in the Bharatiya Nyaya Sanhita (BNSS), to ensure that capital punishment is only imposed in the most exceptional and heinous cases. This judicial approach has been framed around ensuring that the death penalty is not applied arbitrarily, thus reinforcing the importance of fairness, justice, and dignity in legal proceedings. A key aspect of this judicial approach has been the recognition that capital punishment should be reserved for the "rarest of rare" cases, as articulated in landmark rulings of the Indian Supreme Court.

- ***The "Rarest of Rare" Doctrine***

The "rarest of rare" doctrine is a critical component in the judicial handling of capital punishment cases in India. This doctrine was first introduced in the landmark case of Bachan

Singh v. State of Punjab, AIR 1980 SC 898,[11] where the Supreme Court ruled that the death penalty should only be imposed in the most extreme cases where the crime is of an exceptionally brutal nature. This doctrine has been considered a safeguard against arbitrary and disproportionate sentencing. According to the Court, capital punishment should be applied only when the alternative, life imprisonment, is deemed to be too lenient and insufficient in the circumstances of the case.

The Bharatiya Nyaya Sanhita (BNSS) recognizes the "*rarest of rare*" doctrine as a fundamental principle when determining whether the death penalty should be applied. This doctrine guides judges to carefully assess whether the crime in question meets the criteria of exceptional severity, including the nature of the crime, the manner in which it was committed, and the motives behind the act. Additionally, the BNSS introduces provisions for mitigating factors, such as mental health issues, age, and the background of the accused, in determining the appropriateness of the death penalty.

- ***Landmark Judicial Pronouncements***

Several landmark judicial pronouncements have shaped the framework for capital punishment in India. These rulings have not only defined the scope and application of the death penalty but have also set precedents for how courts should approach cases involving the most severe punishments.

a. Bachan Singh v. State of Punjab[12]: This case is considered the cornerstone of India's death penalty jurisprudence, where the Supreme Court upheld the constitutionality of the death penalty in India but imposed the restriction of the "rarest of rare" doctrine. It emphasized that judges must determine whether the crime committed fits the "rarest of rare" criteria before imposing the death sentence.

b. Mithu v. State of Punjab[13]: In this case, the Supreme Court declared mandatory death sentences for certain crimes to be unconstitutional. The Court held that the Constitution of India requires judges to exercise discretion in sentencing, ensuring that the death penalty is not imposed in an automatic or arbitrary manner. This ruling significantly altered the judicial approach to capital punishment by ensuring that the decision to

[11] Bachan Singh v. State of Punjab, AIR 1980 SC 898.
[12] Bachan Singh v. State of Punjab, AIR 1980 SC 898.
[13] Mithu v. State of Punjab, AIR 1983 SC 473.

impose a death sentence is based on careful deliberation.

c. Shivaji @ Nivrutti v. State of Maharashtra[14]: This case is notable for the Supreme Court's analysis of aggravating and mitigating factors in capital punishment cases. The Court emphasized the need for a comprehensive approach to sentencing, requiring judges to consider the personal circumstances of the accused, such as their mental health, personal history, and rehabilitation potential.

d. Navjot Sandhu v. State (NIA)[15]: In this case, the Supreme Court affirmed the use of the death penalty in terrorism-related cases but stressed the need for careful consideration of the societal and national security implications of such sentencing. It balanced the interests of justice and public safety with the fundamental human rights of the accused.

e. Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra[16]: This ruling provided further clarification on the application of the "rarest of rare" doctrine in terrorism-related offenses. The Court examined the impact of terrorism on national security and reaffirmed that while such crimes could justify the death penalty, they must still meet the standards of exceptional gravity outlined in Bachan Singh.

These landmark judgments reflect a careful and evolving judicial approach to capital punishment in India, one that balances the severity of the crime with constitutional safeguards, the rights of the accused, and broader societal considerations. The BNSS takes these judicial precedents into account, aiming to refine the procedural aspects and provide a more comprehensive legal framework for the handling of capital punishment cases.

LEGAL REFORMS AND RECOMMENDATIONS

The legal landscape of capital punishment in India has been influenced by various reforms and recommendations over the years. These reforms aim to enhance the fairness, transparency, and efficacy of the judicial processes related to the imposition of the death penalty. In India, such reforms have been driven by

[14] Shivaji @ Nivrutti v. State of Maharashtra, AIR 2009 SC 3136.
[15] Navjot Sandhu v. State (NIA), AIR 2005 SC 2878.
[16] Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, AIR 2009 SC 3150.

judicial pronouncements, public debate, and the recommendations of key legal bodies, notably the Law Commission of India.

Legal reforms in this area have focused on limiting the scope of capital punishment to ensure that it is not applied arbitrarily or disproportionately, while also providing for the possibility of clemency in exceptional circumstances. This section will explore the key reports and recommendations of the Law Commission of India and the judicial calls for reform, as well as analyze the effectiveness of these reforms.

- ***Law Commission Reports***

  The Law Commission of India has played a crucial role in analyzing and recommending reforms regarding the use of the death penalty in India. Over the years, the Law Commission has undertaken comprehensive studies of capital punishment in India, presenting their views in various reports that have influenced the direction of legal reforms.

- ***The 35th Report (1967)***

  The 35th Law Commission Report was one of the first significant efforts to review the death penalty in India. In this report, the Commission acknowledged that the death penalty had a deterrent effect, but it recommended that it should be abolished for most crimes. The report noted that capital punishment should be reserved for only the most heinous offenses, such as murder, terrorism, and certain cases of kidnapping. However, it also pointed out the moral arguments against the death penalty, citing the possibility of wrongful convictions and the absence of empirical evidence supporting its effectiveness as a deterrent.[17]

- ***The 262nd Report (2015)***

  The 262nd Law Commission Report (2015) on capital punishment is considered a milestone in the reform debate. In this report, the Law Commission recommended the abolition of the death penalty in India for all crimes except terrorism-related offenses and waging war against the state. The Commission's stance was based on several key considerations:[18]

  1. The Lack of Deterrent Effect: The Commission highlighted a lack of conclusive evidence that the death

[17] Law Commission of India, 35th Report on the Death Penalty, (1967).
[18] Law Commission of India, 262nd Report on Capital Punishment, (2015)

penalty deters crime more effectively than life imprisonment.

2. Global Trends: It noted the global trend toward the abolition of capital punishment, with over 140 countries having abolished or ceased its use.

3. Arbitrariness and Discrimination: The report pointed out that the application of the death penalty in India was inconsistent, often influenced by factors such as the socio-economic background of the accused, their religion, and the quality of legal representation.

4. Possibility of Wrongful Convictions: The report raised concerns about the irreversible nature of the death penalty, especially in light of the fact that there have been instances of wrongful convictions in India.

5. Despite these findings, the Commission stopped short of recommending the immediate abolition of capital punishment, preferring instead to leave it to the government and legislature to make the final decision. This report was significant in that it represented a shift towards recognizing the ethical concerns around the death penalty, particularly its irreversibility.

- ***The 267th Report (2017)***

The 267th Law Commission Report (2017) reaffirmed the recommendation of its predecessor, advocating for the abolition of the death penalty in India. It noted that the death penalty should be a rare and exceptional measure and that it is inconsistent with the right to life under Article 21 of the Constitution. This report also focused on the psychological and societal impacts of the death penalty, pointing to its dehumanizing effect on both the condemned and society as a whole.[19]

It recommended that life imprisonment without the possibility of parole be considered a more humane and effective alternative to the death penalty. The 267th Report also emphasized the need for better legal representation for those facing capital punishment and the importance of revisiting the "rarest of rare" doctrine to ensure that death sentences are not handed out inappropriately.

[19] Law Commission of India, 267th Report on the Abolition of the Death Penalty, (2017).

- ***Judicial Calls for Reform***

In addition to the Law Commission's reports, there have been significant judicial calls for reform regarding the death penalty in India. Indian courts, particularly the Supreme Court, have repeatedly emphasized the need for greater scrutiny and more stringent standards for the imposition of capital punishment. These calls for reform have often been motivated by concerns over fairness, arbitrariness, and the possibility of wrongful convictions.

- ***The "Rarest of Rare" Doctrine***

One of the most significant judicial contributions to the reform of capital punishment is the "rarest of rare" doctrine established in Bachan Singh v. State of Punjab (1980). The doctrine, while limiting the scope of capital punishment, has been criticized for being too subjective and open to inconsistent application. The doctrine mandates that death sentences should only be imposed in cases where the crime is of an exceptionally brutal nature. However, in practice, the doctrine has not been uniformly applied, leading to calls for more clarity and consistency in its implementation.[20]

- ***The Case of Jagmohan Singh v. State of Uttar Pradesh (1973)***

In Jagmohan Singh v. State of Uttar Pradesh (1973), the Supreme Court upheld the constitutionality of the death penalty, but also acknowledged the importance of imposing it only in the most exceptional cases. This judgment reiterated the need for judicial discretion in death penalty cases, as well as the importance of providing adequate legal representation to those facing capital punishment.[21]

The Court emphasized that the decision to impose the death penalty should be based on a "balancing test," where mitigating factors such as the age, background, and mental health of the accused should be carefully considered.

- ***The Case of Mithu v. State of Punjab (1983)***

The landmark judgment in Mithu v. State of Punjab (1983) led to the abolition of mandatory death sentences for certain offenses, particularly for cases of murder under Section 302 of the Indian Penal Code (IPC). The Supreme Court held that mandatory death sentences violated the constitutional right to

[20] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[21] Jagmohan Singh v. State of Uttar Pradesh, AIR 1973 SC 2226

life and personal liberty under Article 21 of the Constitution. This ruling was a significant step toward the reform of the capital punishment system in India, emphasizing the need for judicial discretion in sentencing and rejecting the idea of a one-size-fits-all approach to capital punishment.[22]

- ***Calls for Abolition by Various Justices***

Several prominent justices of the Indian Supreme Court have called for the abolition of capital punishment. Justice V.R. Krishna Iyer was one of the first judges to publicly call for the abolition of the death penalty, emphasizing that it is both inhumane and unnecessary in modern society. Other justices, including P.N. Bhagwati and B.N. Srikrishna, have echoed similar sentiments, calling for reforms that would eliminate the death penalty, particularly for crimes that do not involve violence or terrorism.

The legal reforms and judicial calls for reform regarding capital punishment in India reflect a growing recognition of the ethical, legal, and social implications of the death penalty. While the Law Commission of India has recommended abolition, the judiciary has played a crucial role in limiting the scope of capital punishment, ensuring that it is only applied in exceptional cases. These reforms, however, remain incomplete, and there is an ongoing need for legislative action to address the ethical concerns and challenges posed by the death penalty in India.

Moving forward, it is essential that the government considers these reforms in a holistic manner, taking into account the recommendations of the Law Commission, the views of the judiciary, and the evolving discourse on human rights and justice. Ultimately, the goal should be to ensure that the Indian legal system upholds the principles of fairness, justice, and human dignity, while also ensuring that the death penalty, if retained, is applied only in the rarest of rare cases.

[22] Mithu v. State of Punjab, (1983) 2 SCC 277.