

(JOINT JURIST)

[NATIONAL-LEVEL | PEER-REVIEWED | OPEN-ACCESS LEGAL JOURNAL]

| VOLUME 1 | ISSUE 1 | MAY 2026

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**“Rethinking Justice:
Why Capital Punishment Should No Longer Be the Answer”**

*AUTHOR:-[Prof.(Dr.) Nuzhat Parveen Khan,
Presently Professor and Former Dean, Faculty of Law,
Jamia Millia Islamia, New Delhi,
Former Chairperson, ICC. Jamia UNIVERSITY,
Former Dean School of Law,
Bennett University, The Times of India Group]*

Is executing a person truly the best form of punishment to give justice? Does it genuinely set an example in the eyes of criminals? if it does not then why does it still continue to exist within modern legal systems?

A vicious crime that has demoralised society is often met with an impulsive response demanding the stringent possible punishment. Many people are driven by sorrow, anger and a burning urge to see justice done because of which the demand of death penalty rises. The agony of victims' families is inexpressible and the desire to see the perpetrator punished severely becomes natural. Yet, in such moments, a deeper question arises: does taking another life deliver justice or does it will merely repeat the same cycle of violence in a different form?

A vicious crime that has shook the society can usually be met with the instinctive response that demands the extent of punishment possible. Many people are driven by grief, anger and a burning urge to have justice done which causes them to demand death penalty. The agony of the families of the victims is inexplicable, and the desire to have the perpetrator punished harshly is quite normal.

But when such a situation happens, a big question arises, will the killing of a person give justice or will it be a repetition of the violence in a different form? Capital punishment is an old concept which has been justified using various conventional theories of punishment. The retributive

theory is one of the most effective justifications that states that punishment ought to be proportional to the moral seriousness of the offense. In this view, the criminal offenders of serious crimes should receive the equivalent punishment as justice is to restore the moral equilibrium.¹ This is the logic many people who champion the death penalty would use, that a person who claims to have taken another person should lose theirs.

The deterrence theory is another theory that is often referred to. According to this theory, the future crimes are deterred by harsh penalties which incur fear of punishment.² The argument claims that knowledgeable potential criminals might shudder in front of committing the crimes in case murder can be punishable by death. Historically, philosophers such as Jeremy Bentham and Cesare Beccaria examined how punishment could influence human behaviour through deterrence and rational calculation.³

The third rationale revolves around the aspect of incapacitation which is aimed at securing the society by shutting down dangerous criminals in society. In this sense, capital punishment is a sure way of making sure that one who had perpetrated a crime of high degree of violence will never be able to commit another crime against another person.

Although these theories might sound convincing on paper, the facts of the capital punishment bring serious legal and moral issues. Another problem that is most disturbing is the risk of false convictions. The criminal justice systems do not work perfectly. Wrongful convictions have been recorded in various jurisdictions due to investigative errors, false confessions, unreliable eyewitness testimony and also poor legal representation. In cases where the punishment is imprisonment, there are instances where the mistakes can be rectified. But where death is the penalty the wrong can never be made right. The danger of executing at least one innocent individual suffices to call in question the moral rightfulness of death penalty.

The other issue is unequivocal and inconsistent use of the capital punishment. Research and legal publications have demonstrated that people with low economic status usually do not have access to quality and competent legal representation. As a result, the outcome of a trial may

¹H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edn., Oxford University Press, 2008).

²Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (Hill and Wang, New York, 1976).

³Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford University Press, 1907); Cesare Beccaria, *On Crimes and Punishments* (Hackett Publishing, 1986).

sometimes depend not only on the facts of the case but also on the resources available to the accused.⁴

In India, the law attempts to limit the use of capital punishment through the “rarest of rare” doctrine, developed by the Supreme Court in *Bachan Singh v. State of Punjab*.⁵ Under this principle, death penalty ought to be applied to the most extraordinary situations in which the life imprisonment will not suffice. The Code of Criminal Procedure (now replaced by the Bharatiya Nagarik Suraksha Sanhita) required that judges prescribing death penalty must give special reasons.⁶ The Court further required a balancing of aggravating and mitigating circumstances. Later, the Court in *Machhi Singh v. State of Punjab*⁷ expounded the doctrine, listing the kinds of cases that could qualify: the mode of commission of murder, the motive, the anti-social or socially abhorrent character of the crime, the scale of the crime, the personality of the victim. attempted to further clarify this doctrine by identifying certain categories of cases that might justify capital punishment.

However, the promise of principled sentencing has not materialised. Empirical research has consistently demonstrated that the "rarest of rare" doctrine is applied arbitrarily, varying not with the objective features of the crime but with the subjective philosophy of individual judges. The doctrine has not always been applied uniformly in spite of these judicial protections. What is considered the “rarest of the rare” is subject to interpretation by different courts; hence making sentencing unpredictable. There are instances of similar cases giving different punishments depending on how the cases are interpreted by the courts. Such inconsistency shows the fact that it is not so easy to administer the death penalty in a fair and equal way. The other reason that has been widely used to justify capital punishment is its deterring effect. Nevertheless, the empirical studies have yielded ambivalent and inconclusive outcomes.

The most extensive empirical study of the death penalty sentencing in India has been carried out by Project 39A of National Law University, Delhi. Their research tells a very grim tale: trial courts imposing death sentences in cases that are overwhelmingly found by the appellate courts to fall short of the "rarest of rare" standard. The acquittal rate is high, almost one in every three

⁴National Law University Delhi – Project 39A, *Death Penalty India Report* (2016).

⁵*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (Supreme Court of India).

⁶The Bharatiya Nyaya Sanhita, s. 393 (3).

⁷(1983) 3 SCC 470.

death row inmates is ultimately exonerated, exposing the chilling prospect of executing the wrong person.⁸

This arbitrariness further extends to the process of sentencing. Between 2018-2020, 36 percent of death sentences were imposed on the same day as conviction, without the separate sentencing hearing required under Section 235(2) of the CrPC⁹. The trial court did not even mention mitigating circumstances in 40 percent of cases.¹⁰ The procedural protection which the *Bachan Singh* majority hoped would near-eliminate arbitrariness has proven to be absolutely ineffective. Even the Supreme Court has admitted the ineffectiveness of the *Bachan Singh* framework. In *Manoj v. State of Madhya Pradesh*¹¹, the Court observed that the protection in Section 235(2) had been rendered ineffective without guidelines or framework. Dissenting in *Chhannu Lal Verma v. State of Chhattisgarh*¹², Justice Kurian Joseph remarked that death sentence remains “arbitrarily and freakishly imposed”.

The analysis of capital punishment cannot be limited to the time of sentencing or execution. The interval in between--which may be years or decades long--punishes in its own way. This was recognised by the Supreme Court in *Shatrughan Chauhan v. Union of India*¹³ where it was decided that “undue delay in execution constitutes torture and provides grounds for commutation.” But the issue is not solely that of delay, but rather that of the cruelty of prolonged imprisonment facing a death sentence. Project 39A research has documented an enormous mental health crisis within death row prisoners: 62.2% inmates are mentally ill and 11% intellectually disabled.¹⁴ All these factors are exacerbated by solitary confinement, social isolation, absence of meaningful activity, and the eternal psychological torture of living in anticipation of execution.

⁸ Project 39A, National Law University, Delhi, *Death Penalty India Report* (Centre on the Death Penalty, National Law University, Delhi Press, New Delhi, 2016).

⁹ Project 39A, National Law University, Delhi, *Death Penalty Sentencing in Trial Courts* (2022).

¹⁰ *Ibid.*

¹¹ (2022) SCC OnLine SC 1015.

¹² (2018) SCC OnLine SC 2631

¹³ (2014) 3 SCC 1.

¹⁴ Project 39A, National Law University, Delhi, *Deathworthy: A Mental Health Perspective of the Death Penalty* (2021).

Many scholars argue that there is little convincing evidence that the death penalty is more effective in preventing crime than long-term imprisonment.¹⁵ Violent crimes are very common in the situations of high emotions, desperation or psychological disturbances. When faced with this kind of situation, people never take time to consider the legal implications of their actions. The value of human dignity is another more important ethical issue beyond the legal argument and the statistical debate. Even modern constitutional regimes are recognizing the fact that all human beings have an inborn dignity. When the state treats the wrong of killing in the state as the worst evil, the next thing is, can the state also treat the same evil with equal power?

Even the present means of execution, hanging by the neck until it died under Section 354(5) of the CrPC¹⁶, has been criticized as cruel and unusual. In the pending Public Interest Litigation, *Rishi Malhotra v. Union of India*¹⁷, the petitioner claims that hanging results in protracted pain and suffering and in some cases the body may take forty minutes before death is pronounced. In January 2026, the Attorney General notified the Court that the matter is under review at the highest level.¹⁸ But this recognition of the inhumanity of hanging only points out a still greater fact: that there is no human way of executing a criminal. The pursuit of a painless form of death penalty be it through lethal injection or electrocution or gas chamber is a chimera. Lethal injection has also been repeatedly botched in the United States, with prisoners suffering extended agony before dying.¹⁹

There has been a change in attitudes towards capital punishment across the globe. A growing number of countries have abolished the death penalty, reflecting an evolving understanding of justice that emphasizes restraint, human rights, and the possibility of reform.²⁰ The international organizations and the human rights groups have repeatedly urged states to rethink the use of capital punishment. Notably, to oppose the death penalty does not imply one should not feel the pain of the sufferings of the victim or underestimate the severity of violence. Rather, it needs to seek other ways of punishing without violating human dignity.

¹⁵Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn., Oxford University Press, 2015).

¹⁶ Now Section 393 (5) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

¹⁷W.P.(CrL.) No. 145/2017

¹⁸*Ibid.*

¹⁹*Id* (submissions of Senior Advocate Meenakshi Arora for Project 39 A).

²⁰Amnesty International, *Death Sentences and Executions 2023* (Amnesty International Global Report, 2024); United Nations General Assembly, *Moratorium on the Use of the Death Penalty*, UNGA Resolution A/RES/77/222 (2022).

An option available is the life imprisonment without the chance of being put on the parole on the most serious offences. This penalty permanently isolates the violent criminals out of the society without the irreparable results of execution. It guarantees the safety of the population, and does not provide the state with the authority to claim the life.

Restorative justice is another potential strategy that aims at recognizing the damage, assisting the victims, and holding offenders accountable. Restorative processes are concerned with dialogue, acknowledging suffering and developing social relations when feasible. Although restorative justice may not enliven the damages of the grave crimes, it provides a more human and positive way of dealing with the effects of the crimes. Moreover, criminal justice systems are to pay more attention to rehabilitation and reform. The state also has to deal with the underlying causes of violent crime. Poverty, inequality, lack of mental health care, and a dysfunctional criminal justice system are all factors that contribute to the circumstances under which serious crimes are committed. Understanding these causes will help to create safer communities; by educating, counselling and providing social support the chances of recidivism will be minimized. A genuinely reformatory strategy would put resources in these areas and not waste them in a punishment that has not been shown to serve any social useful purpose.

Finally, the capital punishment debate is not merely about punishment we should rather discuss the values that our concept of justice is based upon. A justice system is supposed to defend the society, bring criminals to justice and respect human life. The real power of a legal system is not its power to punish the most but to be able to react to transgression with justice, wisdom and humanity. A rejection of the death penalty will not undermine justice, quite the opposite, it is an expression of the promise of a more human and considerate vision of law.

In answering the question we began with, it becomes evident that execution is neither the best form of justice nor a demonstrably reliable example that deters crime. Its continued existence rests less on empirical evidence and fairness than on tradition and retribution. A justice system must condemn violence and rise above it. By embracing alternatives such as life imprisonment without parole, restorative practices and rehabilitative reforms, the law can safeguard society without degrading human dignity. Ultimately, true justice lies not in taking life but in preserving it while ensuring accountability, fairness, and humanity.