

3. Death Penalty in India- Polity & Governance

According to an annual report on capital punishment published by Square Circle Clinic at NALSAR University of Law, the Supreme Court of India has not confirmed a single death sentence in the past three years, reflecting a highly restrictive approach toward capital punishment.

Death Penalty in India- Key Findings, Legal Framework, and Contemporary Challenges

Key Findings of the Report (2016–2025)

Persistent Imposition of Death Sentences by Lower Courts

Sessions Courts imposed 1,310 death sentences between 2016 and 2025, including 128 sentences in 2025 alone. This trend continues despite increasing judicial caution and scepticism at the High Court and Supreme Court levels. It reflects a disconnect between trial courts and higher judiciary jurisprudence on capital punishment.

Extremely Low Confirmation Rates in High Courts

Out of 1,310 death sentences, 842 cases reached High Courts. Only 70 sentences (8.31%) were confirmed.

The overwhelming majority were-

1. Acquitted
2. Commuted to life imprisonment

This highlights serious errors in trial-level adjudication, investigation, and sentencing.

Supreme Court's Rejection of Death Sentences

Even in cases where High Courts confirmed death sentences, the Supreme Court of India has- Not upheld a single death sentence in the last three years

Of 37 such cases, outcomes included-

1. Acquittal
2. Commutation to life imprisonment

This indicates a near-de facto moratorium at the apex court level, though not a formal abolition. Record Acquittals in 2025.

In 2025, the Supreme Court acquitted 10 death row prisoners, the highest number in a decade.

Most acquittals occurred after-

1. Long incarceration
2. Multiple appellate stages

Raises grave concerns about irreversible miscarriages of justice.

Large and Vulnerable Death Row Population

As of 31 December 2025, India had-

1. 574 death row prisoners
2. Including 24 women

Many prisoners remain on death row despite weak evidentiary foundations.

Prolonged Time on Death Row

Prisoners spent over five years on average on death row before acquittal. Some waited nearly a decade for exoneration.

This prolonged uncertainty causes-

1. Severe psychological trauma
2. Violation of human dignity

Often described as the “death row phenomenon”.

Widespread Procedural Violations

Nearly 95% of death sentences in 2025 were imposed without complying with mandatory Supreme Court sentencing guidelines.

Violations include failure to-

1. Conduct proper mitigation hearings
2. Obtain psychological evaluations
3. Consider reformatory potential

This undermines the constitutional guarantee of fair, just, and reasonable procedure.

Shift Towards Alternatives

Courts are increasingly opting for- Life imprisonment without remission

This reflects-

1. Judicial discomfort with irreversible punishment
2. Preference for punishment that preserves scope for correction

What is Capital Punishment?

Conceptual Understanding

Capital punishment is the most severe form of criminal punishment, involving State-sanctioned execution.

Reserved for the gravest offences threatening-

1. Social order
2. National security
3. Collective conscience

‘Rarest of Rare’ Doctrine

Developed by the Supreme Court to limit death penalty use. Death sentence may be imposed only when life imprisonment is wholly inadequate.

Requires-

1. Balancing aggravating and mitigating circumstances
2. Individualised sentencing

Designed to prevent arbitrary or excessive use of capital punishment.

Legal Basis of Capital Punishment in India

Constitutional Validity

Capital punishment is permitted under Article 21, provided- Procedure is fair, just, and reasonable. The Constitution does not prohibit the death penalty per se.

Statutory Framework

Prescribed for certain offences under-

1. Bharatiya Nyaya Sanhita (BNS)
2. Unlawful Activities (Prevention) Act (UAPA)
3. Other special laws

Execution occurs only after-

1. Exhaustion of all judicial remedies
2. Decision on mercy petitions

Role of Sessions Courts (Trial Courts)

Trial and Conviction

Sessions Courts conduct trials for offences punishable with death.

They assess-

1. Evidence
2. Witness testimony
3. Guilt beyond reasonable doubt

Sentencing Responsibility

After conviction, courts must hold a separate sentencing hearing.

Required to weigh-

1. Aggravating factors (brutality, nature of crime)
2. Mitigating factors (age, mental health, socio-economic background, reform potential)

Supreme Court Guidelines (2022)

Mandatory consideration of-

1. Psychological evaluation reports
2. Probation officer's report
3. Prison conduct and social background

Non-compliance has become systemic, eroding fairness.

Mandatory High Court Reference- A death sentence does not take effect automatically.

Under Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)- Every death sentence must be confirmed by the High Court.

Role of High Courts

First Appellate Safeguard

High Courts act as constitutional sentinels.

They re-examine-

1. Facts
2. Evidence
3. Law
4. Application of 'rarest of rare' doctrine

Correction of Trial-Level Errors

High Courts frequently-

1. Overturn convictions
2. Commute sentences

Reflects systemic deficiencies at the trial stage.

Role of the Supreme Court of India

Final Judicial Authority

Appeals reach via-

1. Criminal appeals
2. Special Leave Petitions (SLPs)

Due Process and Constitutional Oversight

Ensures compliance with- Articles 14 and 21

Reviews-

1. Quality of investigation
2. Fairness of trial
3. Adequacy of sentencing hearings

Sentencing Jurisprudence

Developed-

1. 'Rarest of rare' doctrine
2. Individualised sentencing norms
3. Mandatory procedural safeguards

Review and Curative Jurisdiction

Allows-

1. Review petitions
2. Curative petitions in exceptional cases

Acts as the last judicial safety net.

Mercy Petition Interface

Can examine-

1. Inordinate delays
2. Arbitrariness
3. Procedural violations

Even after judicial remedies are exhausted.

Role of President and Governor

President of India – Article 72

Powers include-

1. Pardon
2. Reprieve
3. Respite
4. Remission
5. Commutation

Applicable where-

1. Sentence is death
2. Offence under Union law
3. Court-martial cases

Governor – Article 161

Similar powers for State law offences. Cannot pardon a death sentence but can commute it.

Key Issues and Challenges

High Rate of Erroneous Convictions

Large-scale overturning of death sentences reveals-

1. Weak investigations
2. Poor prosecution
3. Inadequate trial adjudication

Disproportionately affects-

1. Poor
2. Marginalised communities

Inadequate Mitigation and Sentencing Hearings

Sentencing hearings often-

1. Rushed
2. Superficial

Crucial mitigating factors are ignored.

Non-Compliance with Due Process

Despite binding Supreme Court guidelines- Psychological and social assessments are routinely skipped
Increases risk of irreversible injustice.

Socio-Economic and Caste Bias

Death row prisoners largely belong to-

1. Economically weaker sections
2. Socially marginalised groups

Lack of competent legal representation worsens outcomes.

Prolonged Delays and Mental Trauma

Long incarceration on death row leads to-

1. Psychological breakdown
2. Violation of human dignity

Delays in mercy petitions aggravate suffering.

Concluding Assessment

India's death penalty system reveals a paradox-

1. Frequent imposition at trial level
2. Near-total rejection at appellate levels

This raises serious questions about-

1. Fairness
2. Reliability
3. Moral legitimacy

The evidence strengthens the argument for-

1. Radical reform
2. Or gradual abolition, in line with constitutional morality and human rights.

Source- [https://epaper.thehindu.com/ccidist-
ws/th/th_delhi/issues/169362/OPS/G8PFHM27S.1.png?rev=2026-02-04T00-42-01+05-
30&cropFromPage=true](https://epaper.thehindu.com/ccidist-
ws/th/th_delhi/issues/169362/OPS/G8PFHM27S.1.png?rev=2026-02-04T00-42-01+05-
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