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Death Penalty and the Criminal Justice System: Why the Debate Has Returned

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In this article: The UN vote, India's position, constitutional position, key judgments, arguments on both sides, way forward, practice questions, FAQ



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Why in the news

On 13 November 2026, the UN General Assembly's Third Committee approved draft resolution A/C.3/81/L.43 on a moratorium on the use of the death penalty. Introduced by Mexico, the draft received 133 votes in favour and 33 against, with 16 abstentions. Committee approval is distinct from final adoption by the full General Assembly. India voted against, alongside China, the United States, Japan, Pakistan, Saudi Arabia, Iran, Iraq, Egypt, Qatar, Kuwait, Oman, Bahrain and the Maldives. The resolution voiced deep concern over a significant surge in reported executions in 2025 and urged all States to progressively restrict and eventually abolish capital punishment. India reiterated its long-held position that criminal justice policy is a sovereign matter and that Indian law carries adequate judicial safeguards. The vote has renewed the debate on the death penalty and the reliability of India's criminal justice system.

Legal position in India

Capital punishment is constitutionally valid in India, but its use is confined to the rarest exceptions:

- **The "rarest of rare" doctrine:** In Bachan Singh v. State of Punjab (1980), a Constitution Bench upheld the death penalty but restricted it to the "rarest of rare" cases; Machhi Singh v. State of Punjab (1983) refined the categories.
- **Mandatory High Court confirmation:** A death sentence by a sessions court cannot be executed unless confirmed by the High Court. Appeals and mercy petitions (**Article 72** and **Article 161**) remain open.
- **No mandatory death penalty:** Mithu v. State of Punjab (1983) struck down Section 303 IPC's mandatory death sentence.
- **Delay and mental health:** Shatrughan Chauhan v. Union of India (2014) held inordinate delay in deciding mercy petitions and mental illness to be grounds for commutation.

- **Mitigating circumstances:** Manoj v. State of Madhya Pradesh (2022) made a meaningful assessment of the convict's reformative potential and life circumstances mandatory before sentencing.

India last carried out executions in 2020 (the Delhi gang-rape and murder convicts), even as the Bharatiya Nyaya Sanhita expanded the list of capital offences. According to Project 39A, 574 prisoners were on death row on 31 December 2025, the highest since 2016. Between 2016 and 2025, the Supreme Court freed 38 people from death row, after an average of about eight years each.

Arguments for retention

- Proportionate punishment for the gravest crimes (terrorism, brutal murders).
- Public faith in justice and a sense of closure for victims' families.
- A claimed deterrent effect in some cases.

> **Related reading:** Due Process in the Death Penalty: Bachan Singh to Manoj - Four Decades of the Supreme Court's Safeguards

Arguments for abolition

- **The risk of irreversible error:** The criminal justice system is human; faulty evidence, weak investigation or poor legal aid can convict the innocent, and an execution cannot be undone.
- **No proven deterrence:** Research has repeatedly failed to show that the death penalty deters more than life imprisonment. Real deterrence comes from the certainty of arrest and conviction, where poor policing and low conviction rates are India's actual weaknesses.
- **Inequality:** Poor and marginalised accused, without competent lawyers, bear the penalty disproportionately.
- **Law Commission (2015):** The 262nd Report, chaired by Justice A.P. Shah, concluded that the death penalty "fails to achieve any constitutionally valid penological goals" and recommended abolition for all crimes except terrorism and waging war.
- **Global trend:** A large majority of countries have abolished the penalty in law or practice. India's distinction between judicial executions and extrajudicial killings is legally valid, but the claim that due process always protects those facing execution is weaker in practice.

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Way forward

- A formal moratorium on executions, with an independent review of penal statutes and of conditions on death row.
- Removing the penalty from offences not involving intentional killing; excessively harsh punishment for non-fatal crimes can push offenders to greater violence, including killing witnesses.
- Improving investigation, prosecution and legal aid so that the system can meet the "rarest of rare" standard.
- The eventual goal: abolition in law, alongside stronger investigative and prosecutorial institutions.

Mains practice questions

Q1. "The death penalty demands a measure of infallibility that no criminal justice system can supply." In light of this statement, evaluate the arguments for retaining capital punishment in India and the objections raised against it. (250 words, 15 marks)

Approach pointers: Open with the UN resolution and India's vote; constitutional-judicial safeguards ("rarest of rare", High Court confirmation); retention arguments versus abolition arguments (irreversible error, no deterrence, inequality, Law Commission 262); conclude with moratorium, review and institutional reform.

Q2. Assess the evolution of the Indian Supreme Court's approach to the death penalty. Has the "rarest of rare" doctrine worked in practice? (150 words, 10 marks)

Approach pointers: Bachan Singh, Mithu, Machhi Singh, Shatrughan Chauhan, Manoj cases; death-row data (574 prisoners, 38 released); expansion of Article 21; limitations.

Frequently Asked Questions (FAQ)

Is the death penalty constitutional in India?

Yes. In Bachan Singh v. State of Punjab (1980), the Supreme Court upheld it but confined it to the "rarest of rare" cases.

What was the result of the 13 November 2026 UN vote?

133 countries in favour, 33 against (including India) and 16 abstentions; the resolution was adopted.

What did the Law Commission recommend on the death penalty?

In its 262nd Report (2015), it recommended abolishing the death penalty for all crimes except terrorism and waging war.

Sources

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- press.un.org

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