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THE INHERENT SOCIO-ECONOMIC BIAS IN CAPITAL PUNISHMENT IN INDIA: A LEGAL ANALYSIS FROM AN EGALITARIAN PERSPECTIVE

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ABSTRACT :

Capital punishment in India is defended as an exceptional penalty reserved, through the “rarest of rare” doctrine, for a narrowly defined class of offenders, but the manner of its administration tells a different story. The doctrine was meant to confine the death penalty and to guard against arbitrariness, yet it has produced a jurisprudence marked by inconsistency, indeterminacy and an unmistakable correlation between the socio-economic status of the accused and the likelihood of a capital sentence. This paper examines that correlation through the lens of egalitarian jurisprudence, drawing upon constitutional law, criminal law and comparative legal analysis. It traces the legal framework from the colonial penal order to *Bachan Singh* and its progeny, and it evaluates the empirical evidence of poverty, caste and inadequate legal representation among the death row population. It argues that a sentencing regime whose outcomes track wealth, caste and access to counsel cannot be reconciled with Articles 14 and 21 of the Constitution, or with the constitutional morality that the Supreme Court has itself identified as the animating principle of the constitutional order. The philosophies of Rawls, Dworkin and Ambedkar converge on the same conclusion. The paper concludes that India must either fundamentally restructure the administration of the death penalty, through effective legal aid, systematic mitigation evidence and a principled sentencing framework, or abolish it.

Keywords: *capital punishment, rarest of rare, egalitarian jurisprudence, Article 14, legal aid, caste, constitutional morality.*

INTRODUCTION

The question of capital punishment has been one of the most enduring and contested problems in the history of legal and moral philosophy. From Cesare Beccaria’s foundational critique in *On Crimes and Punishments*³ through the abolitionist movements of the nineteenth and twentieth centuries to the contemporary human rights discourse, the legitimacy of the State’s power to take the life of one of its citizens has been persistently questioned. In India, the debate assumes a distinctive character, shaped by the country’s colonial legal inheritance, its deeply unequal social structure and its constitutional commitment to a transformative egalitarianism.

The Constitution of India, 1950 represents, in the words of Dr. B.R. Ambedkar, a declaration of the Indian people’s commitment to liberty, equality and fraternity. Article 14 guarantees equality before law and the equal protection of laws, Article 21 protects the right to life and personal liberty, and Article 22 furnishes specific procedural safeguards against arbitrary arrest and detention. Read together, these provisions establish a constitutional architecture premised on the dignity and equal worth of every person. Yet the practice of capital punishment in India, in its application, its administration and its demographic pattern, has remained in profound tension with these commitments.

The Supreme Court has, over the decades, attempted to reconcile the existence of the death penalty with constitutional values through the “rarest of rare” doctrine, first comprehensively articulated in *Bachan Singh v State of Punjab*.⁴ The Court held that the sentence ought to be imposed only when the alternative option of life imprisonment is unquestionably foreclosed. The formulation was intended to restrict the death penalty to an extraordinarily narrow category of cases and thereby to safeguard against its arbitrary or excessive use. In practice, however, the doctrine has not achieved this objective. It has generated instead a body of jurisprudence marked by inconsistency and unpredictability and, most gravely from an egalitarian standpoint, by a

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³Cesare Beccaria, *On Crimes and Punishments* (1764, tr Henry Paolucci, Bobbs-Merrill 1963).

⁴*Bachan Singh v State of Punjab* (1980) 2 SCC 684; AIR 1980 SC 898.

systematic correlation between the socio-economic status of the accused and the likelihood of a capital sentence.

The 262nd Report of the Law Commission of India, titled “The Death Penalty”, is a landmark document in this regard.⁵ After a comprehensive examination of the subject, the Commission recommended the abolition of capital punishment for all offences other than terrorism-related offences and waging war against the State. Crucially, it observed that the administration of the death penalty was vitiated by structural inequality, and that the criminal justice system, from investigation through prosecution and trial to appeal, systematically disadvantaged the poor and the marginalised. The Commission drew support from the dissent of Blackmun J in *Callins v Collins*, where the effort to impose the death sentence consistently and rationally, while also remaining fair, was acknowledged to have proved irreconcilable.⁶

This paper proceeds from the conviction that the foregoing is not merely a problem of criminal justice administration but a jurisprudential crisis of the first order. If the legal system delivers the ultimate and irreversible punishment to those who are already the most disadvantaged, it does not merely fail in its administrative function; it reproduces and entrenches existing social inequalities under the imprimatur of legal authority. Such a system cannot claim to embody the rule of law in any meaningful sense.

The study is guided by two hypotheses. The first is that the imposition of capital punishment in India is not a value-neutral and legally objective exercise but is heavily influenced by the socio-economic status, caste identity and access to effective legal representation of the accused, and that the “rarest of rare” standard, despite its aspirational neutrality, has functioned as an indeterminate doctrine that vests excessive discretion in sentencing courts and so creates space for extra-legal factors. The second is that the failure of the State to provide meaningful, quality legal aid to persons facing capital charges is not an administrative lapse but a structural denial of the right to a fair trial under Articles 21 and 22(1). The paper adopts the doctrinal method. It analyses the constitutional and legislative framework, examines the empirical evidence on the profile of death row prisoners, evaluates the framework through egalitarian jurisprudence, and proposes reforms to align the administration of capital punishment with constitutional morality and the rule of law.

The scholarship on which the paper builds is of two kinds. Upendra Baxi’s pioneering critique of the unchecked discretion wielded by Indian judges in death penalty cases argued that such power often veils class bias and undermines the promise of equal justice.⁷ Marc Galanter showed how the legal system operates in many rooms, in which elite litigants navigate the formal courts with sophisticated advocacy while the poor are relegated to unequal forums.⁸ The empirical foundation is supplied by the *Death Penalty India Report* of Project 39A at the National Law University, Delhi, the first study of its kind, which profiled the death row population and exposed patterns of socio-economic disadvantage, prolonged trials and inadequate representation.⁹ The normative foundation is drawn from Granville Austin’s account of the egalitarian ethos of the Constitution, from Rawls’s veil of ignorance and from Dworkin’s insistence on equal concern and respect.¹⁰

HISTORICAL AND LEGAL FRAMEWORK OF CAPITAL PUNISHMENT IN INDIA

The legal history of capital punishment in India is inseparable from the colonial history of the Indian Penal Code, 1860 and the Code of Criminal Procedure. The Code, drafted by the First Law Commission under Lord Macaulay, made death the principal punishment for murder under Section 302, with life imprisonment as the alternative. Under the colonial procedural law, a court that declined to award the death sentence for murder was required to record its reasons for doing so,¹¹ which meant that death operated, in effect, as the norm. This position prevailed until the enactment of the Code of Criminal Procedure, 1973. Section 354(3) of that Code reversed the presumption by requiring that, where the death sentence is imposed, the court must record “special reasons” for not imposing life imprisonment. Life imprisonment thereby became the norm and death the exception.¹²

The legislative reversal was itself the product of sustained judicial deliberation. In *Jagmohan Singh v State of Uttar Pradesh*, a Constitution Bench, while upholding the constitutional validity of the death penalty, acknowledged the need for a principled sentencing framework that would distinguish capital cases from those deserving of life imprisonment.¹³ The Court held, however, that the question of sentence must be guided by the broad circumstances of

⁵Law Commission of India, *The Death Penalty* (Report No 262, 2015).

⁶*Callins v Collins* 510 US 1141 (1994).

⁷Upendra Baxi, ‘The Rights of the Condemned: Observations on the Death Penalty in India’ (1982) 24 *Journal of the Indian Law Institute* 305.

⁸Marc Galanter, ‘Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law’ (1981) 19 *Journal of Legal Pluralism* 1.

⁹Project 39A, National Law University Delhi, *Death Penalty India Report* (2016).

¹⁰Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966); John Rawls, *A Theory of Justice* (Harvard University Press 1971); Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977).

¹¹Code of Criminal Procedure 1898, s 367(5) (prior to its amendment in 1955).

¹²Code of Criminal Procedure 1973, s 354(3).

¹³*Jagmohan Singh v State of Uttar Pradesh* (1973) 1 SCC 20.

the crime and the criminal, without laying down any specific principles. The inadequacy of this approach became apparent in the following decade and prompted the Constitution Bench to revisit the matter in *Bachan Singh*.

The constitutional validity of the death penalty for murder under Section 302 was comprehensively debated in *Bachan Singh*. The majority, in an opinion authored by Sarkaria J, held that the death penalty was not *per se* violative of Articles 14, 19 or 21, provided that the sentencing procedure gave adequate weight to both the aggravating and the mitigating circumstances of the case. The Court articulated the “rarest of rare” standard and directed that courts must be very reluctant to impose the death sentence and must give weight to mitigating factors, including the background, age and mental condition of the accused. The animating idea was that a real and abiding concern for the dignity of human life postulates resistance to taking a life through the instrumentality of law, save in the rarest of rare cases when the alternative option is unquestionably foreclosed.¹⁴

The dissent of Bhagwati J in *Bachan Singh* is of cardinal importance for the present study.¹⁵ His Lordship argued that the death penalty was inherently violative of Article 21 because no procedure, however elaborate, could eliminate the arbitrariness and irrationality that attend its imposition. He further observed, with considerable prescience, that capital punishment was administered in a discriminatory manner against the poor and the disadvantaged, who lacked the resources to mount an adequate defence, and that such discriminatory application rendered it violative of Article 14 as well. Though not the opinion of the Court, the dissent has exercised an enduring influence on the critical literature and has been vindicated by subsequent empirical research.

The majority framework was elaborated in *Machhi Singh v State of Punjab*, where the Court identified five categories of cases that might qualify as the rarest of rare: those involving extreme depravity in the manner of commission, the murder of a large number of persons, the murder of a public servant, murder accompanied by torture or sexual assault, and cases that shock the collective conscience.¹⁶ This attempt to give substantive content to the *Bachan Singh* standard proved, in practice, insufficiently determinate, and the decades that followed have witnessed a pattern of inconsistency which the Supreme Court has itself acknowledged.

THE “RAREST OF RARE” DOCTRINE: A CRITICAL APPRAISAL

The “rarest of rare” doctrine, as the primary jurisprudential standard governing capital sentencing in India, has been the subject of sustained critical scrutiny. Its fundamental difficulty, as scholars have observed and as the Supreme Court has increasingly conceded, is that it establishes a threshold without providing the tools for its principled application. In *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*, the Court acknowledged that the *Bachan Singh* principles had not been consistently applied and that capital sentencing in India suffered from a serious problem of inconsistency.¹⁷ Sinha J, speaking for the Court, emphasised that the doctrine requires a balancing exercise that gives equal weight to the criminal and to the crime. In a large number of cases, the Court noted, sentencing courts had concentrated on the nature of the crime while overlooking the circumstances of the offender, with the consequence that the sentencing regime was not consistent with constitutional values.

The research of Anup Surendranath and his colleagues at Project 39A revealed that, in the years between 2000 and 2015, the Supreme Court decided death penalty cases in a manner that defied consistent legal principle.¹⁸ In numerous instances, accused persons convicted of materially similar offences received diametrically different sentences, one receiving death and another life imprisonment, with no principled distinction apparent from the judgments themselves. This is not merely an academic concern; it carries direct constitutional implications. If the application of the ultimate penalty is governed by factors that a court cannot articulate and justify by reference to law, its application is, in constitutional terms, arbitrary.

In *Shankar Kisanrao Khade v State of Maharashtra*, Patnaik J attempted to provide a more structured approach by formulating a “crime test” and a “criminal test” that must both be satisfied before the death penalty is imposed.¹⁹ The Court held that even where the crime is of the gravest character, death ought not to be imposed if the circumstances of the criminal, including age, background, mental state and potential for reform, weigh in favour of life. The judgment was a significant step towards a more holistic sentencing framework, but it has not been consistently followed, which demonstrates the structural difficulty of imposing principled constraint on a discretion as wide as that entailed by the doctrine.

The Law Commission identified the inconsistency of capital sentencing as one of its central concerns and concluded that the doctrine had failed to deliver

¹⁴*Bachan Singh v State of Punjab* (1980) 2 SCC 684 [209].

¹⁵*Bachan Singh v State of Punjab* (1982) 3 SCC 24 (Bhagwati J, dissenting).

¹⁶*Machhi Singh v State of Punjab* (1983) 3 SCC 470.

¹⁷*Santosh Kumar Satishbhushan Bariyar v State of Maharashtra* (2009) 6 SCC 498.

¹⁸Project 39A, National Law University Delhi, *Matters of Judgment: An Inquiry into the Supreme Court's Death Penalty Jurisprudence* (2017); Anup Surendranath and Rahul Abeyratne, ‘The Rarest of Rare: The Supreme Court's Death Penalty Cases 2000–2015’ (2017) Project 39A Working Paper.

¹⁹*Shankar Kisanrao Khade v State of Maharashtra* (2013) 5 SCC 546.

the consistency and predictability that the rule of law requires.²⁰ Relying on the research of David Baldus and others in the American context, it noted that across jurisdictions that retain the death penalty, extra-legal factors such as the race, class and social status of the accused have consistently been found to influence capital sentencing. The Commission concluded that India's experience was consistent with this global pattern, and that the structural bias was not incidental but inherent in any regime that entrusts such discretion to individual decision-makers operating within a deeply unequal social order.

The Supreme Court in *Manoj v State of Madhya Pradesh* made a significant intervention by directing sentencing courts to solicit and consider mitigating circumstances actively, including the socio-economic background of the accused, their childhood and the conditions in which they grew up.²¹ It further directed that trial courts should call for material on the accused, analogous to a probation report, so that the court has a comprehensive picture of the accused as a person. The direction is a positive development, but its practical effectiveness is contingent on the capacity of the legal aid system to assist accused persons in placing relevant material before the court, a capacity that, as the following sections show, is severely deficient.

SOCIO-ECONOMIC BIAS IN SENTENCING: EMPIRICAL AND JUDICIAL EVIDENCE

The empirical evidence of socio-economic bias in capital sentencing in India is now extensive and compelling. The *Death Penalty India Report* constitutes the most comprehensive empirical investigation of the issue.²² Based on interviews with 373 death row prisoners, it documented that approximately three-quarters of those on death row were economically vulnerable, and that a similar proportion belonged to backward classes and religious minorities, including Scheduled Castes, Scheduled Tribes and Other Backward Classes. A substantial majority had not completed secondary education, and the overwhelming majority had been represented at trial not by private counsel of their choice but by whatever assistance the State provided.

These findings cannot be attributed to the possibility that the most serious offences are disproportionately committed by the poorest members of society. As the Law Commission noted, there is no credible evidence that persons from marginalised backgrounds commit a higher proportion of the most heinous offences. The correlation between marginalisation and death row is better explained by the cumulative disadvantages that marginalised persons face at every stage of the criminal process: the quality of the legal representation they receive, their ability to gather and present mitigating evidence, their treatment by investigating authorities, and the implicit biases that may affect judicial perception of their credibility and character.

The Supreme Court has repeatedly confronted the inadequacy of legal representation for persons facing capital charges. In *Anokhilal v State of Madhya Pradesh*, the Court set aside a conviction and death sentence in a case in which the accused had been represented by counsel appointed on the eve of the hearing, and it stressed that a capital accused is entitled to effective, competent and experienced legal assistance and not merely to the formal appointment of a lawyer.²³ The decision in *Mohd Hussain v State (Government of NCT of Delhi)* had earlier emphasised that, in capital cases, the right to counsel must be real and effective at every stage.²⁴ The recognition of the inadequacy of the existing system was itself an implicit acknowledgment that inequality in legal representation has the potential to distort capital sentencing.

The correlation between poverty and capital punishment is not unique to India; it has been documented in virtually every jurisdiction that retains the death penalty. In the United States, the seminal study by David Baldus, Charles Pulaski and George Woodworth demonstrated a statistically significant relationship between race and the probability of a death sentence, even after controlling for the severity of the offence.²⁵ The study was placed before the United States Supreme Court in *McCleskey v Kemp*, where the Court, in a deeply controversial decision by a margin of five to four, held that statistical evidence of systemic bias was insufficient to establish an equal protection violation in an individual case.²⁶ The dissent of Brennan J, which argued that the majority's reasoning permitted the perpetuation of a biased system of capital punishment, has proved far more persuasive to subsequent scholarship than the majority opinion.

In the Indian context, the implications of such evidence are, if anything, more constitutionally acute, because the Constitution's commitment to substantive equality, as distinct from the more formal equality of the Fourteenth Amendment, is expressly articulated in its structure and evident in the transformative

²⁰Law Commission of India, *The Death Penalty* (Report No 262, 2015).

²¹*Manoj v State of Madhya Pradesh* (2023) 2 SCC 353.

²²Project 39A, National Law University Delhi, *Death Penalty India Report* (2016).

²³*Anokhilal v State of Madhya Pradesh* (2019) 20 SCC 196.

²⁴*Mohd Hussain @ Julfikar Ali v State (Government of NCT of Delhi)* (2012) 2 SCC 584.

²⁵David C Baldus, Charles Pulaski and George Woodworth, 'Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience' (1983) 74 *Journal of Criminal Law and Criminology* 661.

²⁶*McCleskey v Kemp* 481 US 279 (1987).

vision of its framers. Article 14 has been interpreted to include a guarantee against arbitrariness, as authoritatively established in *E.P. Royappa v State of Tamil Nadu*.²⁷ If capital sentencing is systemically influenced by the socio-economic status of the accused, it is, on the *Royappa* doctrine, inherently arbitrary and thus violative of Article 14.

THE RIGHT TO LEGAL REPRESENTATION AND ITS CLASS DIMENSIONS

The right to legal representation is a cornerstone of the right to a fair trial and is constitutionally anchored in Article 22(1), which provides that a person arrested shall not be denied the right to consult and to be defended by a legal practitioner of their choice. In *Hussainara Khatoon v Home Secretary, State of Bihar*, the Supreme Court extended this right to encompass a positive obligation on the State to provide free legal aid to persons who, by reason of poverty or other disability, cannot afford a lawyer.²⁸ Bhagwati J articulated the basis of this obligation in the right to life under Article 21, holding that a procedure which does not make legal services available to an accused who is too poor to afford a lawyer cannot be regarded as “reasonable, fair and just”.

The Legal Services Authorities Act, 1987, enacted in response to these judicial directives, created the National Legal Services Authority and a hierarchy of State and district authorities with the mandate to provide free legal services to those unable to afford them.²⁹ Section 12 specifies the categories of persons entitled to such services, including members of the Scheduled Castes and Scheduled Tribes, women, children, persons with disabilities and persons whose annual income does not exceed a specified threshold. In the context of capital punishment, the guarantee is that an accused who cannot afford private counsel must be provided with legal representation at State expense.

The gap between this statutory mandate and the reality of legal aid in capital cases is, however, vast. The *Death Penalty India Report* documented that the great majority of death row prisoners had been represented by legal aid lawyers at trial and that, in most cases, the representation was wholly inadequate. Legal aid lawyers were frequently unfamiliar with the legal issues peculiar to capital cases, conducted little or no independent investigation, failed to gather and present mitigating evidence about the accused’s background, and in many cases met their clients for the first time on the day of the hearing. The remuneration of legal aid counsel was also nominal and often delayed, which further undermined any incentive for dedicated representation.

In *Mohd. Ajmal Amir Kasab v State of Maharashtra*, the Supreme Court underscored that legal representation at the trial of an accused facing the gravest charges goes to the root of the fairness of the trial, and that a conviction secured in the absence of proper legal representation would be unsustainable.³⁰ Where the consequence of conviction is irreversible, the constitutional imperative for effective representation is at its strongest. Yet the empirical record suggests that numerous capital convictions in India have been sustained on the basis of trials at which the accused received representation that fell far below any meaningful constitutional standard.

The structural dimension of the problem is exacerbated by the fact that the quality of representation available to a capital accused is almost entirely determined by financial means. Accused persons with resources are able to engage senior counsel with specialist expertise in criminal law, who can and routinely do mount complex constitutional and factual challenges, secure bail and file timely appeals. Accused persons without resources must depend on whatever legal aid the State chooses to provide, and the State’s legal aid infrastructure is chronically underfunded and institutionally neglected. The result is a two-tier system of justice in capital cases, one for the wealthy and one for the poor, which is structurally incompatible with the principle of equality before law.

THE PROCEDURAL CONSTITUTION OF CAPITAL SENTENCING

The socio-economic bias inherent in capital punishment is not confined to the final act of sentencing. It is produced cumulatively through a chain of procedural decisions beginning with investigation and continuing through trial, appellate review and the exercise of executive clemency. The constitutional validity of the death penalty therefore cannot be assessed solely by examining whether the sentencing judge formally considered aggravating and mitigating circumstances. It must also be assessed by asking whether the accused had a genuine and meaningful opportunity to place those circumstances before the court.

The Supreme Court’s decision in *Anokhilal v State of Madhya Pradesh*³¹ provides a particularly clear illustration of this principle. In that case, the accused was provided legal representation at a stage when counsel had insufficient time to examine the evidence, consult the accused or prepare a defence. The

²⁷*E.P. Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

²⁸*Hussainara Khatoon (IV) v Home Secretary, State of Bihar* (1980) 1 SCC 98.

²⁹Legal Services Authorities Act 1987, s 12.

³⁰*Mohd. Ajmal Amir Kasab v State of Maharashtra* (2012) 9 SCC 1.

³¹ *Anokhilal v State of Madhya Pradesh* (2019) 20 SCC 196.

Court held that the appointment of a lawyer in name did not satisfy the constitutional guarantee of legal assistance. In capital cases, representation must be effective, competent and afforded sufficient time for preparation. The Court consequently set aside the conviction and sentence and directed a fresh trial. The decision is significant because it rejects the formalistic assumption that the mere presence of counsel cures procedural inequality.

The reasoning in *Anokhilal* is consistent with the broader constitutional jurisprudence developed in *Hussainara Khatoon*³² and *Mohd Hussain*³³. The right to legal aid is not a charitable concession extended to an indigent accused; it is a component of the fair, just and reasonable procedure mandated by Article 21. Where the possible consequence is the irreversible deprivation of life, the standard of representation must be correspondingly rigorous. A trial in which counsel is appointed moments before proceedings commence, or in which no investigation is undertaken into the accused's personal and socio-economic circumstances, cannot satisfy that standard.

The problem extends beyond trial representation. Capital litigation requires specialised preparation at the sentencing stage, including the collection of evidence concerning childhood deprivation, education, employment, mental health, family circumstances, caste identity and the possibility of rehabilitation. In *Manoj v State of Madhya Pradesh*³⁴, the Supreme Court recognised that sentencing courts have an affirmative duty to obtain such information rather than passively await submissions from counsel. This approach marks an important departure from the traditional model in which sentencing was treated as a brief and largely intuitive exercise following conviction.

The decision also reinforces the principle that mitigation is not limited to evidence of extraordinary virtue. Poverty, abuse, social exclusion, intellectual disability, addiction, childhood trauma and the absence of meaningful educational or familial support may all be relevant to determining whether the accused can be reformed and whether life imprisonment remains a viable alternative. The failure to investigate these matters disproportionately harms defendants who lack the resources or social networks necessary to produce such evidence independently.

Executive clemency presents a further layer of inequality. Although Articles 72 and 161 confer constitutional powers of pardon and commutation, the quality of a mercy petition often depends upon the availability of competent legal assistance. Wealthier prisoners are more likely to obtain specialised representation capable of presenting constitutional, humanitarian and factual grounds, whereas indigent prisoners may remain dependent on hurried or incomplete petitions. Thus, inequality persists even after judicial remedies have been exhausted.

The cumulative effect is a process in which poverty is converted into procedural disadvantage and procedural disadvantage is then treated as evidence of culpability. This circularity is constitutionally troubling. A system committed to equal protection must ensure that the accused's social position does not determine the quality of the defence, the availability of mitigation evidence or the likelihood of receiving mercy. Otherwise, the death penalty becomes not merely a punishment for the most serious crime, but a punishment intensified by the absence of resources.

CASTE, MARGINALITY AND THE DEATH ROW POPULATION

The intersection of caste and capital punishment demands particular attention. Caste is not merely a social identity in India; it is a structural determinant of access to education, employment, political representation and legal protection. The Scheduled Castes and Scheduled Tribes, who together constitute approximately a quarter of India's population, account for a disproportionate fraction of the prison and death row population. The *Death Penalty India Report* found that approximately 24.5 per cent of death row prisoners were Dalits or Adivasis, a significant overrepresentation relative to their share of the general population.³⁵

The relationship between caste and capital punishment operates at multiple levels. Within the criminal justice system, persons from Scheduled Caste and Scheduled Tribe backgrounds are disproportionately targeted by police investigations, more frequently subjected to custodial abuse, less likely to be granted bail and less likely to command effective legal representation. At the level of the trial, they are less able to present their cases effectively, less likely to have witnesses who will speak in their favour, and more likely to be evaluated adversely by decision-makers who may harbour implicit assumptions about the criminal propensity of particular castes.

Dr. B.R. Ambedkar's analysis of the relationship between caste and law is profoundly relevant to this inquiry. In *Annihilation of Caste*, he argued that caste is not merely a social phenomenon but one that the legal system has historically been deployed to maintain.³⁶ The caste system, in his famous formulation, is not merely a division of labour but a division of labourers, graded one above the other in a hierarchy. The post-constitutional legal order, while formally committed to the abolition of caste discrimination, has not succeeded in extirpating caste from the operation of the criminal justice system. As Ambedkar recognised, formal legal equality is insufficient to overcome the structural disadvantages of caste; what is required is an active and

³² *Hussainara Khatoon (IV) v Home Secretary, State of Bihar* (1980) 1 SCC 98.

³³ *Mohd Hussain @ Julfikar Ali v State (Government of NCT of Delhi)* (2012) 2 SCC 584.

³⁴ *Manoj v State of Madhya Pradesh* (2023) 2 SCC 353.

³⁵ Project 39A, National Law University Delhi, *Death Penalty India Report* (2016).

³⁶ B.R. Ambedkar, *Annihilation of Caste* (1936, reprint Verso 2014).

transformative commitment to substantive equality.

The prohibition of caste discrimination in Articles 15 and 17 must, in the context of capital punishment, be read as imposing an affirmative obligation on the State to ensure that caste does not operate as a determinant of criminal liability or of the quantum of punishment. If the evidence demonstrates that caste is a significant predictor of the likelihood of a capital sentence, whether directly through judicial bias or indirectly through its correlation with poverty, lack of education and inadequate representation, the constitutional violation is not one of administrative inadequacy but a fundamental breach of the guarantee of equal protection under Article 14 read with Article 15.

The Supreme Court's decision in *Sukanya Shantha v Union of India* is instructive. The Court struck down caste-based discrimination in the prison manuals of several States, holding that such practices violated Articles 14, 15, 17 and 21.³⁷ Its reasoning, that the formal equality of prison administration is insufficient to address the substantive inequality embedded in caste-based practices, has direct implications for the analysis of capital sentencing, for it recognises that facially neutral rules may reproduce caste hierarchy in their operation.

AN EGALITARIAN JURISPRUDENTIAL CRITIQUE

The foregoing analysis of the empirical evidence and the legal doctrine calls for a systematic jurisprudential assessment of capital punishment in India from an egalitarian perspective. Egalitarian jurisprudence, as understood in this paper, encompasses a tradition running from Rawls and Dworkin in the Western liberal canon to Ambedkar's transformative constitutionalism in the Indian context. It takes the equal moral worth of every person as its foundational premise and evaluates legal institutions by their conformity with that premise.

John Rawls's theory of justice provides the most widely deployed framework for the assessment of social institutions from an egalitarian standpoint. On his account, the principles of justice that should govern the basic structure of society are those that rational persons would choose from behind a veil of ignorance, not knowing their place in society, their class, their social status or their fortune in the distribution of natural assets.³⁸ Applied to capital punishment, a person choosing from behind the veil would be unwilling to endorse a sentencing regime that, as a matter of empirical fact, operates to the systematic disadvantage of those who are already most disadvantaged, since from behind the veil they might be one of those very persons.

Ronald Dworkin's theory of law as integrity offers a complementary perspective. A legal system has integrity when it applies to all persons a coherent set of principles that reflect equal concern and respect.³⁹ A capital sentencing regime that generates systematically different outcomes for the rich and the poor, not because the rich commit less serious offences but because they command better lawyers, better access to mitigating evidence and greater social capital, fails the test of integrity. It applies principles not consistently and coherently but selectively, in a manner that tracks the extra-legal factors of wealth and social status. Such a system is, in Dworkin's terms, not a legal system in the full sense but a system of power dressed in the language of law.

In the Indian constitutional context, the most compelling egalitarian critique is grounded not in external philosophical frameworks but in the transformative vision of Dr. Ambedkar. His constitutionalism was animated by the insight that formal legal equality, unaccompanied by the substantive transformation of social and economic relations, would perpetuate rather than abolish the hierarchies of caste and class. The provisions on fundamental rights, directive principles and reservations were designed as instruments of that transformation. A penal system that delivers the ultimate punishment disproportionately to the most marginalised members of society is, in Ambedkar's terms, antithetical to the very purpose for which the Constitution was enacted.

The doctrine of constitutional morality, given renewed significance in *Navtej Singh Johar v Union of India*, is particularly pertinent.⁴⁰ Chandrachud J, in his concurring opinion, articulated constitutional morality as a standard of fidelity to the values embedded in the Constitution which transcends public morality and popular sentiment, drawing directly on Ambedkar's own use of the phrase. It requires courts to give effect to the transformative promise of the Constitution even, and perhaps especially, when social majorities might prefer otherwise. Applying the doctrine to the present context, a capital sentencing regime that in its operation systematically disadvantages the poor, the low-caste and the legally unrepresented offends constitutional morality as much as it offends any specific constitutional provision. The obligation of the courts is then not merely to apply the "rarest of rare" standard in individual cases but to evaluate the capital sentencing system as a whole against the egalitarian demands of the Constitution and, if it is found wanting, to respond with structural remedies adequate to the wrong.

³⁷*Sukanya Shantha v Union of India*, Supreme Court of India, 3 October 2024.

³⁸John Rawls, *A Theory of Justice* (Harvard University Press 1971).

³⁹Ronald Dworkin, *Law's Empire* (Belknap Press 1986).

⁴⁰*Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

COMPARATIVE PERSPECTIVES

A comparative analysis illuminates the Indian experience and provides a broader canvas against which to evaluate its egalitarian failings. The decision of the South African Constitutional Court in *S v Makwanyane* is of particular relevance.⁴¹ The Court held the death penalty unconstitutional as a violation of the rights to life and dignity guaranteed by the Interim Constitution. Chaskalson P acknowledged the systemic bias in the administration of capital punishment, noting that under apartheid the penalty had been applied disproportionately to Black South Africans, and that a pattern of discriminatory application was itself an argument against its retention.

The Constitutional Court also engaged with the argument from the fallibility of the justice system, namely that, given the possibility of error, the infliction of an irreversible punishment is constitutionally impermissible. The argument has particular force in India, where the evidence demonstrates not only the theoretical possibility but the practical reality of error. Error may take the form of wrongful conviction, as the work of Project 39A on false convictions illustrates, and also of wrongful sentencing, where procedurally deficient trials have resulted in capital sentences that would not have been imposed had the accused enjoyed adequate legal representation.

The European Court of Human Rights, in *Soering v United Kingdom*, held that the extradition of an individual to the United States to face capital charges would violate Article 3 of the European Convention on Human Rights, having regard to the death row phenomenon, namely the prolonged period of uncertainty and anxiety experienced by persons awaiting execution.⁴² Although India is not a party to the Convention, the reasoning has been applied by analogy by the Supreme Court. In *Triveniben v State of Gujarat*, the Court held that prolonged delay in the execution of a death sentence, where the delay is not attributable to the condemned person, may constitute a ground for commuting the sentence to life imprisonment under Article 21.⁴³

The United Nations Human Rights Committee, in General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights, to which India is a party, stated that the death penalty must not be applied in a discriminatory manner, including on grounds of social origin, property, birth or other status.⁴⁴ This international standard engages directly with the evidence of socio-economic bias in Indian capital sentencing and creates an obligation on India, as a party to the Covenant, to take positive steps to address it.

RECOMMENDATIONS AND WAY FORWARD

The analysis yields a clear jurisprudential conclusion. The administration of capital punishment in India is structurally incompatible with the egalitarian demands of the Constitution, as evidenced by the documented bias in its application and the systemic inadequacy of the legal aid regime for capital accused. This calls not merely for incremental procedural improvement but for a fundamental re-examination of the constitutional legitimacy of the penalty in its present form.

The most comprehensive institutional response would be abolition, as recommended by the Law Commission in its 262nd Report.⁴⁵ The recommendation, which advocated abolition for all offences other than those relating to terrorism, rested on the recognition that the structural biases identified here could not be adequately addressed through procedural reform alone. A system of ultimate punishment that selects its victims predominantly from the ranks of the most vulnerable cannot claim to serve justice.

Short of abolition, the minimum requirements of constitutional conformity demand specific reforms. First, the legal aid system in capital cases must be fundamentally restructured. The directions of the Supreme Court on effective representation must be given institutional content through a specialised death penalty resource centre, staffed by experienced criminal lawyers and funded to provide comprehensive representation to every capital accused from the stage of investigation to the exhaustion of appellate review and executive clemency. This is not a counsel of perfection; it is a constitutional minimum.

Second, the sentencing framework must ensure that the socio-economic background, childhood circumstances and mental state of the accused are systematically placed before the sentencing court. The direction in *Manoj v State of Madhya Pradesh* that such material be collected is a positive development, but it requires statutory backing and adequate resources for its implementation.⁴⁶ Courts should, as a matter of constitutional obligation,

⁴¹*S v Makwanyane* 1995 (3) SA 391 (CC).

⁴²*Soering v United Kingdom* (1989) 11 EHRR 439.

⁴³*Triveniben v State of Gujarat* (1989) 1 SCC 678.

⁴⁴UN Human Rights Committee, General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights (2019) UN Doc CCPR/C/GC/36.

⁴⁵Law Commission of India, *The Death Penalty* (Report No 262, 2015).

⁴⁶*Manoj v State of Madhya Pradesh* (2023) 2 SCC 353.

decline to impose the death penalty in any case where the accused has not had the benefit of a comprehensive pre-sentencing investigation.

Third, the Supreme Court should, in an appropriate case, revisit the constitutional validity of the death penalty in the light of the evidence of systemic bias accumulated since *Bachan Singh*. The doctrine of constitutional morality, as articulated in *Navtej Singh Johar* and developed since, provides the tools for such a reappraisal.⁴⁷ A Constitution Bench would be required to consider not only the theoretical compatibility of the penalty with constitutional rights but also its empirically documented effects, which, as this paper demonstrates, are profoundly biased against the most vulnerable members of Indian society.

Fourth, India should accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which provides for the abolition of the death penalty.⁴⁸ India's obligations under the Covenant already require the non-discriminatory administration of any penal regime, including capital punishment. Accession would align its penal law with its international human rights commitments and with the egalitarian vision of its own Constitution.

CONCLUSION :

This paper has demonstrated, through an analysis of doctrine, empirical evidence and jurisprudential theory, that the administration of capital punishment in India is systemically and structurally biased against the poor, the low-caste and the legally under-resourced. The “rarest of rare” doctrine, which was intended to provide a principled constraint on the exercise of the ultimate penal power, has in practice generated a sentencing regime marked by inconsistency, unpredictability and a troubling correlation between the socio-economic status of the accused and the likelihood of a death sentence.

The constitutional dimensions of this finding are grave. A system whose application is determined not by the gravity of the offence alone but by the financial resources, caste identity and access to legal representation of the accused violates the guarantee of equality before law under Article 14, the right to life and personal liberty under Article 21, and the constitutional morality which the Supreme Court has identified as the animating principle of the constitutional order. The dissent of Bhagwati J in *Bachan Singh*, which identified the discriminatory application of the penalty as a constitutional violation, has been vindicated by decades of empirical research.

The frameworks of Rawls, Dworkin and Ambedkar converge, each in its own idiom, on the same conclusion: a legal system that delivers the ultimate punishment disproportionately to those who are already the most disadvantaged fails the most fundamental test of justice. Rawls's person behind the veil of ignorance would not consent to such a system. Dworkin's ideal of law as integrity is violated by its selective and inconsistent application. And Ambedkar's transformative constitutionalism, which saw the Constitution as an instrument for the annihilation of caste and class hierarchy, is directly contradicted by a penal system that reproduces those hierarchies through the administration of law.

The path forward is clear in principle, even if difficult in practice. India must either fundamentally reform the administration of capital punishment, through genuinely effective legal aid, the systematic collection of mitigating evidence and the structural reform of the sentencing framework, or abolish the death penalty, as the Law Commission has recommended and as the weight of constitutional analysis compels. The egalitarian promise of the Constitution, that every person, regardless of birth, caste or economic condition, shall be treated by the law as an equal, demands no less.

⁴⁷*Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁴⁸Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414.