
METHOD OF EXECUTION AND HUMAN RIGHTS IN INDIA: A CRITICAL STUDY OF THE SUPREME COURT'S RECENT JUDGMENT UPHOLDING HANGING TILL DEATH

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ABSTRACT

The method of execution in capital punishment continues to be a significant and contentious issue within India's criminal justice system, particularly in light of evolving human rights standards. The Supreme Court of India's recent judgment reaffirming hanging till death as the legally valid and constitutionally permissible method has sparked renewed debates about the ethical, humanitarian, and legal implications of state-sanctioned death. This study critically examines the judgment through the lens of constitutional protections under Articles 14, 19, and 21, which guarantee equality before the law, personal liberty, and protection against cruel, inhuman, and degrading treatment. The Court, relying heavily on earlier precedents such as *Deena v. Union of India* and subsequent jurisprudence in *Shatrughan Chauhan v. Union of India*, concluded that hanging does not per se violate human dignity, provided it is carried out swiftly and without unnecessary suffering.

However, human rights advocates have raised strong concerns regarding the physical and psychological pain associated with hanging, questioning whether it aligns with contemporary global standards aimed at minimising cruelty. While the Court acknowledged the existence of alternative methods like lethal injection, it observed the lack of medical and administrative preparedness in India to implement such procedures safely and effectively. This highlights a broader tension between judicial deference to legislative policy and the state's moral responsibility to ensure humane treatment, even in the context of punishment.

Thus, the paper argues that while the judgment upholds the legality of hanging, it simultaneously underscores the need for legislative review, empirical research, and wider societal dialogue on humane methods of execution. The debate ultimately reflects India's ongoing struggle to balance

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retributive justice with constitutional morality and respect for human dignity.

Keywords: Capital Punishment, Hanging Till Death, Human Rights, Supreme Court of India, Article 21, Constitutional Morality, Method of Execution, Death Penalty.

Introduction

The method of execution in capital punishment is not simply a procedural formality; rather, it reflects a State's ethical foundations, its understanding of justice, and its commitment to human dignity. India retains the death penalty, though it is administered in the "rarest of rare" cases as held in *Bachan Singh v. State of Punjab*.² However, while the substantive constitutionality of capital punishment has been debated extensively, the manner in which the State executes a person has received less consistent scrutiny. The question is not merely whether the State may take life, but whether it may do so in a way that causes unnecessary suffering, indignity, or cruelty.

The Supreme Court's recent decision upholding hanging till death as the constitutionally valid method of execution has revived debates on the limits of State power and the meaning of humane punishment. The Court reaffirmed Section 354(5) of the Code of Criminal Procedure, 1973³ (now under section 387 (1) of *Bhartiya Nyaya Sanhita*⁴), which prescribes hanging, and held that it does not violate the fundamental right to life and dignity under Article 21 of the Constitution. The judgment, however, exists within a global shift in penal thinking where many nations have abolished the death penalty or moved away from execution techniques that inflict physical and psychological trauma.

Historical and Legal Context of the Death Penalty in India

Capital punishment has remained a controversial subject of India's penal framework since the colonial period. The Indian Penal Code, 1860, under Section 53⁵, lists "death" as one of the punishments the courts may impose for certain grave offences, like murder under Section 302 and waging war against the State under Section 121. Following independence, while the Constituent Assembly recognised the necessity of criminal justice reform, it did not abolish the

² *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

³ Code of Criminal Procedure, No. 2 of 1974, Sec 354(5), INDIA CODE (1974).

⁴ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, Sec 387(1) (India).

⁵ Indian Penal Code, Section 53 (1860).

death penalty, leaving its retention to legislative and judicial discretion. Moreover, the approach of India's criminal justice system has remained reformatory and deterrent in nature, which also validates the need for capital punishment in India.

The first landmark case that challenged the constitutionality of the death penalty in India was *Jagmohan Singh v. State of Uttar Pradesh* (1973)⁶, where the Supreme Court upheld the constitutionality of the death penalty, ruling that it doesn't violate Article 21 because it follows the "procedure established by law." The Court, however, did not consider whether the method of execution itself could infringe constitutional protections against cruelty or inhuman treatment.

Further, in the case of *Bachan Singh v. State of Punjab* (1980)⁷, the court again upheld the constitutionality of the death penalty; however, it introduced the "rarest of rare" doctrine. The Court reasoned that while the death penalty was constitutional, it must be imposed only in exceptional circumstances when life imprisonment is inadequate. However, the court didn't explain what constitutes the rarest of the rare doctrine. Later in *Machhi Singh v. State of Punjab* (1983)⁸, the court provided guiding factors that can help in identifying rarest of rare cases, which made rarest of the rare cases practically workable. The Court also categorised the aggravating and mitigating factors guiding capital sentencing.

The procedural dimension of execution is governed by Section 354(5) of the Code of Criminal Procedure, 1973⁹, which mandates that "when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead."⁵ This provision, inherited from colonial practice, has remained largely unaltered, even as other jurisdictions have adopted less visibly violent methods such as lethal injection or electrocution. The persistence of hanging reflects both legislative inertia and judicial deference, where courts have often treated the method of execution as a policy matter rather than a constitutional question.

Nevertheless, debates surrounding the cruelty of hanging have periodically resurfaced, most notably in the case of *Deena v. Union of India* (1983),¹⁰ where the Supreme Court upheld hanging as a constitutionally valid method, stating that it does not involve unnecessary pain or

⁶ (1973) 1 SCC 20 (India).

⁷ (1980) 2 SCC 684.

⁸ (1973) 1 SCC 20.

⁹ (1980) 2 SCC 684.

¹⁰ (1983) 3 SCC 470.

suffering. The recent judgment reaffirming this stance, despite advances in medical knowledge and international human rights norms, underscores the enduring tension between India's retentionist policy and its constitutional promise of humane treatment.

Recent Judicial Interpretations on Hanging

The constitutionality and continued use of hanging as the method of executing the death penalty in India have been shaped by a series of judicial interpretations spanning four decades. Although the death penalty itself has been upheld in principle within the “rarest of rare” framework, the method of execution has emerged as a distinct constitutional question concerning human dignity, bodily integrity, and the state's obligation to avoid cruelty. Recent judicial proceedings, particularly those arising from the Rishi Malhotra Public Interest Litigation, have reopened debates that were earlier considered settled in *Deena v. Union of India* (1983).¹¹ This section analyses these developments to illustrate how evolving scientific knowledge, human rights standards, and penal philosophy are pressing the Supreme Court to reconsider the constitutionality of hanging.

The foundational case governing the method of execution remains *Deena v. Union of India*¹², where the Supreme Court upheld Section 354(5) of the Code of Criminal Procedure, 1973¹³, which mandates that “when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.”¹⁴ Petitioners in *Deena* argued that hanging causes prolonged suffering due to asphyxia, which violates Article 21's guarantee of a procedure that is “just, fair and reasonable.” The Court rejected the contention, holding that available evidence suggested hanging to be comparatively swift and therefore not “barbarous, inhuman or degrading.”¹⁴ At that time, the Court emphasised administrative feasibility, noting that India lacked the medical infrastructure to conduct alternative methods such as lethal injection.

However, the legal and moral landscape began shifting significantly after *Bachan Singh v. State of Punjab* (1980)¹⁵, which held that the death penalty must only be imposed in the “rarest of rare cases.”¹⁶ Subsequent jurisprudence, such as *Shatrughan Chauhan v. Union of India*

¹¹ (1983) 4 SCC 645.

¹² (1983) 4 SCC 645.

¹³ Code of Criminal Procedure, No. 2 of 1974, Section 354(5).

¹⁴ *Deena v. Union of India*, (1983) 4 SCC 645.

¹⁵ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

¹⁶ *Id*

(2014)¹⁷, expanded procedural protections for death row convicts, stressing the primacy of human dignity even at the final stage of punishment. While these decisions did not directly challenge hanging, they strengthened constitutional scrutiny over all aspects of capital punishment, including the manner of execution.

The contemporary challenge to hanging emerged in *Rishi Malhotra v. Union of India* (2017).¹⁸ The petitioner sought a declaration that hanging, as practised in India, is inhuman, painful, and violative of Article 21, and requested the adoption of lethal injection as an alternative.¹⁹ Importantly, the petition also argued that dignity extends to the manner in which death is inflicted, and that the State cannot rely on colonial-era methods when medical science offers potentially less painful alternatives.

During hearings between 2018 and 2025, the Supreme Court repeatedly questioned whether the State had conducted any scientific or medical assessment to compare methods.²⁰ The Union Government responded that lethal injection itself is not without controversy and has led to botched executions in several jurisdictions, particularly in the United States.²¹ The State further contended that India lacks the trained personnel and standardised protocols necessary to administer such injections reliably. Thus, the State framed the issue as one of practical governance rather than constitutional morality.²²

The Court's observations during these hearings reflect a shift in judicial attitude. While the ruling in *Deena*²³ adopted a deferential approach, the contemporary bench was of the view that judicial review extends to assessing whether the method of execution meets constitutional standards of dignity. In one hearing, the bench noted that the State cannot rely on feasibility as a shield if evidence indicates that hanging causes unnecessary suffering and lingering death.²⁴

¹⁷ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

¹⁸ *Rishi Malhotra v. Union of India*, W.P. (CrI.) No. 145/2017 (pending).

¹⁹ *Glossip v. Gross*, 576 U.S. 863 (2015) (U.S. lethal injection case).

²⁰ Krishnadas Rajagopal, *SC asks govt. for data on death by hanging and a possible alternative mode of execution*, *The Hindu* (Mar. 25, 2023), <https://www.thehindu.com/news/national/sc-asks-govt-for-data-on-death-by-hanging-and-a-possible-alternative-mode-of-execution/article66645002.ece> (accessed October 30, 2025)

²¹ Utkarsh Anand, *Panel to review execution by hanging: Centre to Supreme Court*, *Hindustan Times* (May 3, 2023), <https://www.hindustantimes.com/india-news/indias-union-government-to-explore-less-painful-execution-methods-than-hanging-in-response-to-supreme-court-challenge-101683052758030.html> (accessed October 31, 2025)

²² *Id*

²³ *Deena v. Union of India*, (1983) 4 SCC 645.

²⁴ Anuja Jha, *Plea seeks removal of execution by hanging; Supreme Court says Centre not in favour of using lethal injection*, *Deccan Herald* (Oct. 15, 2025), <https://www.deccanherald.com/india/plea-seeks-removal-of->

The Court asked the Union to consider appointing an expert committee of medical and forensic specialists to study and report on the comparative pain inflicted by different execution methods.²⁵

Medical and scientific submissions increasingly support the view that hanging does not always cause instantaneous death, contrary to the assumption underlying Deena. Studies indicate that if the drop length is miscalculated, execution may result in slow strangulation, cervical spine misalignment, and prolonged unconsciousness before death.²⁶ This has significant constitutional implications, because Article 21 requires that any procedure curtailing life must be free of arbitrariness and unnecessary cruelty.

Furthermore, the Indian debate has begun to reflect global human rights standards. The International Covenant on Civil and Political Rights (ICCPR), to which India is a party, does not prohibit the death penalty but prohibits “cruel, inhuman or degrading punishment.”²⁷ The UN Human Rights Committee has repeatedly emphasised that the method of execution must be subjected to the same standard. Several countries that retain capital punishment have abolished hanging due to its unpredictability and potential for pain.

The Supreme Court, however, has resisted immediate judicial abolition of hanging, noting that policy shifts of this magnitude require legislative and administrative preparation. Yet, the Court’s contemporary jurisprudence clearly departs from the categorical certainty of Deena. The judicial discourse now acknowledges three core propositions:

1. Human dignity survives until the last breath, even for those convicted of capital offences.
2. The State bears a constitutional obligation to minimise suffering, even in punishment.
3. Scientific and empirical evidence must inform judgments on penal methods.

Although the Court has not yet delivered a final authoritative judgment revising Deena, its

execution-by-hanging-supreme-court-says-centre-not-in-favour-of-using-lethal-injection-3765071 (accessed October 31, 2025)

²⁵ DHNS, *Death penalty hangs by a thin thread*, Deccan Herald (Oct. 22, 2017), <https://www.deccanherald.com/opinion/death-penalty-hangs-thin-thread-2030303> (accessed October 31, 2025)

²⁶ *Id.*

²⁷ International Covenant on Civil and Political Rights art. 6(2), Dec. 16, 1966, 999 U.N.T.S. 171.

ongoing engagement marks a constitutional crossroads. A future decision may either reaffirm hanging by updated reasoning or require Parliament and the executive to formulate a more humane execution protocol.

Either way, the shift in judicial reasoning reflects a broader re-examination of the death penalty's place within a constitutional democracy committed to dignity, equality, and humane treatment.

Constitutional Analysis: Articles 14, 19, and 21 and the Method of Execution

The constitutional validity of hanging as a method of execution must be examined in light of the fundamental rights guaranteed under Part III of the Constitution, particularly Articles 14, 19, and 21. While the State possesses the authority to take life pursuant to a lawful conviction, such deprivation must conform to constitutional limits, namely, the principles of non-arbitrariness, proportionality, and respect for human dignity.²⁸ The death penalty, when administered without constitutional restraint, risks transforming penal authority into an instrument of cruelty rather than justice. Thus, even when capital punishment is warranted under the “rarest of rare” doctrine, the manner in which the punishment is executed must meet the standards of a just, fair and reasonable procedure under Article 21.²⁹

Article 21: The Right to Life and the Obligation to Ensure Dignity

Article 21 establishes that no person shall be deprived of life or personal liberty except according to procedure established by law.³⁰ The Supreme Court has consistently interpreted this phrase to mean a procedure that is fair, reasonable, and non-arbitrary, beginning with *Maneka Gandhi v. Union of India*.³¹ This expanded interpretation forms the doctrinal foundation for assessing whether the method of execution satisfies constitutional requirements.

In *Deena v. Union of India*³², the Court held that hanging does not violate Article 21 because, at the time, scientific evidence suggested that hanging caused instantaneous death.³³ However, the petitioners in the *Rishi Malhotra* proceedings argue that this assumption has been

²⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁹ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

³⁰ India Const. art. 21 (1950).

³¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

³² (1983) 4 SCC 645.

³³ *Deena v. Union of India*, (1983) 4 SCC 645.

empirically disproven. Medical studies indicate that hanging may cause slow asphyxia, cervical dislocation without immediate death, and extreme pain lasting several minutes, depending on the drop length and anatomical variation.⁵ Thus, if execution by hanging results in avoidable physical suffering, it may fall afoul of Article 21's requirement that punishment be free from torture, cruelty, and degrading treatment.

The Supreme Court in *Shatrughan Chauhan v. Union of India*³⁴ recognised that even a condemned prisoner retains the right to die with dignity.³⁵ This articulation is critical: the right to life does not extinguish at the threshold of a death warrant. The constitutional duty of the State, therefore, is not merely to execute a sentence, but to ensure that execution does not strip the individual of basic humanity. A method that risks prolonged suffering is constitutionally suspect.

Article 14: The Prohibition of Arbitrariness

Article 14 guarantees equality before the law and prohibits arbitrary state action.⁷ The method of execution must therefore satisfy rationality and foreseeability. Petitioners argue that hanging, in practice, is unpredictable and its effects vary with the prisoner's weight, height, physical condition, and calculation of the drop.⁸ Two individuals sentenced to the same crime may experience vastly different degrees of pain, resulting in unequal infliction of suffering.

This raises a constitutional concern: a punishment that produces unequal suffering for similarly situated individuals is arbitrary, and therefore violative of Article 14. The State's attempt to defend hanging on to administrative convenience cannot override the prohibition on arbitrary punishment. The Supreme Court has repeatedly held that administrative convenience cannot constitutionally justify the violations of rights.³⁶

Moreover, the State has not demonstrated a compelling reason why alternative methods, such as lethal injection, cannot be developed in India. The inability to manage administrative logistics does not abdicate the state of its constitutional duties; rather, it reflects a need for reform. Thus, when the method used is inconsistent in its effects, Article 14 invites judicial review.

³⁴ (2014) 3 SCC 1.

³⁵ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

³⁶ *Mohd. Arif v. Supreme Court of India*, (2014) 9 SCC 737.

Article 19 and the Doctrine of Proportionality

While Article 19 primarily concerns freedoms rather than punishment, the Supreme Court has held that restrictions on fundamental rights must satisfy proportionality.³⁷ The doctrine of proportionality requires that punishment, including its method must not be excessive relative to its objective. Even in the context of death, proportionality applies to the manner of inflicting death.

The objective of capital punishment is to take life lawfully, not to inflict pain. Pain, therefore, is not legally relevant to the purpose of punishment and cannot be inflicted incidentally if avoidable. A method that produces avoidable pain is disproportionate, because it inflicts suffering beyond what is necessary to achieve the sentence's lawful objective.

Evolving Standards of Decency: Constitutional Morality and International Human Rights

The Indian Constitution is a living document, and its interpretation evolves with societal values that in turn evolve with time.³⁸ Therefore, the Indian Constitution is an organic constitution which is flexible enough to adapt itself to per changing nature of society. This flexibility of the Indian Constitution has been reflected in a plethora of landmark judgments (like decriminalisation of homosexuality³⁹, banning the practice of talaq-e-biddat⁴⁰, decriminalising adultery⁴¹, legalising passive euthanasia⁴²) wherein the Supreme Court has upheld Constitutional morality and has proved that Indian constitution is a transformative constitution.

So, the implicit moral principle underlying Article 21 is that even those who have transgressed the law must be treated as ends in themselves, not instruments for symbolic retribution.

India is also bound by international norms such as the ICCPR, which prohibits cruel and degrading punishment.⁴³ While the ICCPR permits capital punishment, it requires that the methods used must not result in unnecessary suffering. The UN Human Rights Committee has

³⁷ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

³⁸ *Id*

³⁹ *Navtej Singh Johar v UOI*, AIR 2018 SC 4321.

⁴⁰ *Shayara Bano v. UoI*, AIR 2017 SC 4609.

⁴¹ *Joseph Shine v. UOI*, AIR 2018 SC 4898.

⁴² *Indian Young Lawyer Association & Ors.v. State of Kerala & Ors*, ILR 2018(4) Kerala 285.

⁴³ ICCPR, arts. 6(2), 7, 999 U.N.T.S. 171 (1966).

emphasised that the method of execution is central to the assessment of cruelty.

Furthermore, many nations retaining capital punishment including South Africa (before abolition), Japan, and several U.S. states have undergone legal re-examination of execution techniques to ensure alignment with human rights standards.⁴⁴ The Indian Supreme Court is not compelled to follow foreign jurisprudence, yet comparative constitutionalism has historically informed its reasoning.

The State's Responsibility: Feasibility and Reform

The State argues that lethal injection may require complex medical protocols. However, the constitutional question is not whether change is difficult, but whether the State can constitutionally justify continuing a method that may inflict unnecessary suffering. Administrative inconvenience cannot justify constitutional violations.⁴⁵

The Supreme Court has repeatedly held that when a procedure violates fundamental rights, the State must adapt, not the Constitution.

The constitutional analysis of the method of execution is therefore not peripheral, but central to the legality of the death penalty itself. Hanging must satisfy the tests of non-arbitrariness (Article 14), proportionality (Article 19), and human dignity (Article 21). To the extent that contemporary medical and human rights research reveals that hanging may cause avoidable pain and unpredictable suffering, its continued use risks violating constitutional guarantees. The Supreme Court is thus compelled to reconsider Deena through the lens of evolving standards of decency and constitutional morality.

Human Rights and International Law Perspective

The international human-rights framework does not explicitly and universally outlaw capital punishment; nevertheless, it imposes constraints that shape States' use of the death penalty and the methods by which it may be carried out. Two instruments are central to the legal analysis: the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading

⁴⁴ *Glossip v. Gross*, 576 U.S. 863 (2015).

⁴⁵ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

Treatment or Punishment (UNCAT or “CAT”)⁴⁶, which prohibits torture and other ill-treatment, and the International Covenant on Civil and Political Rights (ICCPR), whose Article 6⁴⁷ recognizes the right to life while permitting the death penalty within narrow boundaries. This section examines how CAT and the ICCPR (and authoritative interpretations such as Human Rights Committee General Comment No. 36) interface with contemporary methods of execution, and then compares legal and human-rights debates in three jurisdictions: the United States (lethal injection and emerging disputes), the European Union/Europe more broadly (an abolitionist regional order), and Japan (retention of hanging with distinctive procedural practices).

CAT and the death penalty: prohibition of torture, scope and emerging norms

The Convention Against Torture establishes an absolute, non-derogable prohibition on torture and obliges States to prevent and punish torture and to prohibit cruel, inhuman or degrading treatment or punishment (CIDT).⁴⁸ CAT itself does not explicitly abolish the death penalty; rather, it requires that States take measures to prevent acts prohibited by the Convention and to ensure redress and prevention obligations.

Nevertheless, UN experts, members of the civil society, and NGOs have increasingly argued that certain methods, circumstances, and practices surrounding executions may amount to torture or CIDT and that the evolving international consensus is moving toward seeing the death penalty as incompatible with the absolute prohibition of torture in many circumstances.⁴⁹ Special procedures and human-rights bodies have repeatedly emphasised that methods prone to cause intense, prolonged suffering or that combine secrecy, solitary confinement before execution, and arbitrary procedural treatment may amount to cruel, inhuman or degrading treatment.⁵⁰

ICCPR Article 6, General Comment No. 36 and legal limits on capital punishment

Article 6 of the ICCPR recognises the right to life and says that no one can be deprived of it

⁴⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁴⁷ International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

⁴⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁴⁹ Human Rights Comm., General Comment No. 36, CCPR/C/GC/36 (Sept. 3, 2019) (Article 6: Right to Life).

⁵⁰ Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 187 (2002). Council of Europe, Abolition of the Death Penalty materials

arbitrarily⁵¹. It permits deprivation of life only in certain cases while importantly setting minimum safeguards for the imposition of the death penalty (e.g., no executions for persons under 18 at the time of the crime, pregnancy exceptions, and the right to seek pardon).⁵² The Human Rights Committee's General Comment No. 36 (2019) clarifies that Article 6's "right to life" significantly limits States' use of the death penalty and requires strict observance of fair trial and proportionality standards; the Committee further emphasised that the application of capital punishment is becoming increasingly restricted under contemporary human-rights law.⁵³

General Comment No. 36 is authoritative for State parties because it interprets the substantive obligations of the ICCPR, according to which not only the legality of death sentences, but the method and surrounding practices, must respect human-rights norms, including the prohibition on arbitrary deprivation of life and procedural guarantees.⁵⁴

United States — lethal injection, jurisprudence and emerging debates

The United States remains one of the leading democracies that retains capital punishment for certain offences, and lethal injection is the dominant method. Two U.S. Supreme Court decisions are central to the constitutional analysis of execution methods.

In *Baze v. Rees*, (2008)⁵⁵ the Court upheld a three-drug lethal-injection protocol against an Eighth Amendment (cruel and unusual punishment) challenge, finding that the protocol did not create a "substantial risk of serious harm" in violation of the Constitution. Subsequently, *Glossip v. Gross* (2015)⁵⁶ reaffirmed the standard that a condemned person challenging a method of execution must show that the method presents a substantial risk of severe pain and also identify a known and available alternative method.

Those rulings, however, have not ended controversy. Drug shortages and secrecy in procurement have led many states to alter protocols, use untested drug combinations (or single

⁵¹ ICCPR, art. 6(1), 999 U.N.T.S. 171 (1966).

⁵² ICCPR, art. 6(2), 999 U.N.T.S. 171 (1966).

⁵³ *Glossip v. Gross*, 576 U.S. 863 (2015).

⁵⁴ Human Rights Committee, *General Comment No. 36 (2018) on Article 6 (Right to Life)*, 1, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019), https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf (accessed October 28, 2025).

⁵⁵ *Baze v. Rees*, 553 U.S. 35 (2008).

⁵⁶ 576 U.S. 863 (2015).

drugs such as midazolam), and to explore alternatives (nitrogen hypoxia, electrocution, firing squad) when injectable drugs are unavailable.⁵⁷

High-profile “botched” executions (e.g., Oklahoma’s Clayton Lockett in 2014⁵⁸) where incorrect drugs, failed IV access, or inadequate sedation reportedly caused prolonged suffering have catalysed national debates about whether contemporary lethal-injection protocols can ever reliably ensure an execution free from severe suffering.⁵⁹

From an international law perspective, the U.S. approaches the method question through constitutional Eighth Amendment doctrine rather than treaty rules; yet international concern (from UN bodies and NGOs) centres on whether certain protocols and practices risk breaching the prohibition on torture/CIDT and whether the secrecy that now surrounds drug procurement and execution protocols undermines transparency and accountability.⁶⁰ Moreover, states’ statutory experiments with nitrogen hypoxia (laws passed in several U.S. states authorising nitrogen if lethal injection is unavailable) have generated litigation and scholarly debate over whether such methods are constitutionally permissible and whether they conform with the emerging international standards against cruel methods.⁶¹

European Union / Europe — Abolitionist regional order

Europe presents a near-unified legal stance against the death penalty. The Council of Europe adopted Protocol No. 13 to the European Convention on Human Rights in 2002, abolishing the death penalty in all circumstances.⁶² The Protocol leaves no room for derogation or reservation and has been ratified by virtually all Council of Europe member States; the abolitionist norm is also reflected in EU foreign-policy and human-rights positions.⁶³ The European Court of Human Rights and the EU’s Charter of Fundamental Rights consistently treat the death penalty

⁵⁷ *Lethal Injection: Secretive U.S. States Resort to Untested Drugs*, BBC News, Nov. 15, 2013, <https://www.bbc.com/news/world-us-canada-24935868> (accessed October 28, 2025).

⁵⁸ *Oklahoma Botches Execution of Clayton Lockett*, Death Penalty Information Center (Oct. 28, 2024), <https://deathpenaltyinfo.org/oklahoma-botches-execution-of-clayton-lockett> (accessed October 28, 2025).

⁵⁹ Death Penalty Information Center, *Botched Executions: A State-by-State Review*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/executions/botched-executions> (accessed October 28, 2025).

⁶⁰ *Id*

⁶¹ Council of Europe, *Abolition of the Death Penalty in Europe*, COUNCIL OF EUR., <https://www.coe.int/en/web/abolition-death-penalty/abolition-of-death-penalty-in-europe> (accessed October 26, 2025).

⁶² *Id*

⁶³ EU Statement on the death penalty, Eur. External Action Serv., Jul. 8, 2020, https://www.eeas.europa.eu/eeas/eu-statement-death-penalty_en (accessed October 25, 2025).

as incompatible with the region's core human-rights standards.⁶⁴

This abolitionist stance has both normative and operational consequences: European states uniformly condemn methods of execution used elsewhere and call for moratoria and abolition worldwide. They also restrict the sale and export of drugs used in lethal injections (a policy that has materially affected U.S. access to execution drugs).⁶⁵ For international law, Europe's consensus is an important source of a regional customary norm that supports abolition and treats capital punishment as incompatible with developments in human rights protection.

Japan — Retention of hanging, secrecy, and procedural concerns

Japan is a notable case that retains the death penalty and uses hanging as its method of execution.⁶⁶ Unlike many retentionist countries where execution policies are public and regulated, Japan's system is characterised by secrecy (e.g., same-day notice to prisoners and families), prolonged solitary confinement on death row, and limited transparency about clemency procedures.⁶⁷ These features have drawn repeated criticism from UN human-rights organs, Amnesty International, and other NGOs, which argue that the combined effect of hanging as a method together with procedural secrecy and conditions of detention risks amounting to cruel, inhuman or degrading treatment.⁶⁸

Japan's domestic debate is complex: high levels of public support are often cited as a political justification for retention, yet there is significant legal and scholarly critique, including from Japanese bar associations and academics, arguing for moratoria, greater transparency, or abolition especially given concerns about wrongful convictions highlighted by high-profile miscarriages of justice.⁶⁹

⁶⁴ *Id*

⁶⁵ *Europe abolishes death penalty: 16281016*, BBC News, BBC.com (June 11, 2011), <https://www.bbc.com/news/world-europe-16281016> (accessed October 22, 2025).

⁶⁶ "No Warning": The Death Penalty in Japan," NDTV, Mar. 28 2025, <https://www.ndtv.com/world-news/no-warning-the-death-penalty-in-japan-8030343> (accessed October 22, 2025).

⁶⁷ David T. Johnson, *When the State Kills in Secret*, in *The Culture of Capital Punishment in Japan* 37, 37-60 (Palgrave Pivot 2019), https://link.springer.com/chapter/10.1007/978-3-030-32086-7_3 (accessed October 24, 2025).

⁶⁸ Amnesty International Australia, *Hanging by a Thread: The Death Penalty in Southeast Asia and the Pacific* (2017), <https://www.amnesty.org.au/wp-content/uploads/2017/03/hanging-by-a-thread-report.pdf> (accessed October 22, 2025).

⁶⁹ Ken Worsley, *Growing Opposition to Japan's Death Penalty*, Nippon (Apr. 25, 2025), <https://www.nippon.com/en/in-depth/d01106/> (accessed October 20, 2025).

Comparative analysis: method, pain, secrecy, and evolving international norms

Comparatively, three points emerge:

1. **Method matters, but context matters more.** A method that is in theory “quick” can cause severe suffering if performed without competence, with untested drugs, or under secret procurement. The UN prohibition on torture and CIDT looks not only to the mechanical method but to the overall context, for e.g., prolonged solitary confinement before execution, lack of notice, and lack of remedial procedures when assessing whether the state has violated absolute prohibitions.⁷⁰
2. **Regional norms shape domestic practice.** Europe’s near-universal abolition creates a regional customary standard against execution. In contrast, the U.S. constitutional route permits capital punishment but has developed a jurisprudence that demands a high threshold for complaining prisoners while leaving significant discretion to states. Japan’s model sits between: retentionist in law and practice, but subject to international scrutiny over its procedures and transparency.
3. **International instruments constrain but do not uniformly prohibit capital punishment.** ICCPR Article 6 constrains arbitrary deprivation of life and demands narrow and fair application. General Comment No. 36 signals normative pressure toward abolition and tighter safeguards. CAT’s absolute ban on torture/CIDT operates as an additional constraint especially when methods or execution-related conditions are likely to inflict severe suffering.

Scientific-Medical Evidence on Pain Caused by Hanging

Hanging, historically is one of the most widely used methods of execution and is premised on the assumption that death results either from a rapid fracture-dislocation of the cervical vertebrae (commonly the C2 vertebra: the “hangman’s fracture”) or, failing that, death by asphyxiation.⁷¹ In practice, medical evidence suggests that instantaneous death is not

⁷⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted Dec. 10, 1984, entered into force June 26, 1987), 1465 U.N.T.S. 85.

⁷¹Catherine Hellier & Robert Connolly, *Cause of Death in Judicial Hanging: A Review and Case Study*, 49 Med. Sci. L. 18 (2009)

https://www.researchgate.net/publication/24219978_Cause_of_death_in_judicial_hanging_A_review_and_case_study (accessed October 20, 2025).

guaranteed, and that asphyxiation, strangulation, cerebral ischemia, and prolonged conscious suffering often occur.⁷²

Studies conducted on both judicial executions and clinical forensic data show that the success of “instant cervical fracture” depends on exact drop height, body weight, rope elasticity, and positioning variables that are difficult to standardise.⁷³

If the drop is too short, the condemned person may remain conscious while suffocating for several minutes; if it is too long, it may cause partial or complete decapitation, which itself is considered degrading under modern human-rights standards.⁷⁴

Even in jurisdictions like Japan, where the long-drop method is officially used, the procedure occurs in secrecy, and independent medical verification is limited, leading international observers to question whether the procedure reliably prevents prolonged suffering.⁷⁵ The United Nations Special Rapporteur on Torture has repeatedly emphasised that the absence of transparency in how hanging is administered increases the risk of cruel, inhuman, or degrading treatment.⁷⁶

Thus, despite being legally accepted in some states, biomedical evidence undermines claims that hanging is humane. It is a high-variance execution method where small operational deviations can produce severe pain, conscious suffocation, or disfigurement.

Administrative Feasibility of Alternatives Such as Lethal Injection

Lethal injection was developed in the late twentieth century as a medicalised execution method intended to minimise observable suffering and preserve the “dignity” of the state. However, this scientific analysis often obscures its technical fragility, dependence on pharmaceutical

⁷²Anjum Hassan & Meenu Gupta, *Possible Pain Caused in Judicial Modes of Execution: A Physiological and Pathological Analysis*, 15 Indian J. Forensic Med. & Toxicology 1970 (2021), <https://doi.org/10.37506/ijfimt.v15i2.14653> (accessed October 20, 2025).

⁷³*Supra* note 70.

⁷⁴*A Study of Deaths Due to Hanging: A Retrospective Study*, ResearchGate (2023), https://www.researchgate.net/publication/380172606_A_Study_of_Deaths_Due_to_Hanging_A_Retrospective_Study_a_Research_Paper (accessed October 15, 2025).

⁷⁵ U.N. Special Rapporteur on Torture, Report on Methods of Execution, A/HRC/37/50 (2018).

⁷⁶ U.N. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/HRC/10/312 (Mar. 18, 2009) <https://documents.un.org/doc/undoc/gen/g09/103/12/pdf/g0910312.pdf#:~:text=Summary,personal%20integrity%20and%20human%20dignity> (accessed October 20, 2025).

supply chains, and vulnerability to human error.

In the United States, the primary jurisdiction using lethal injection, drug procurement has become unstable due to pharmaceutical companies' refusal to supply drugs for executions (often because of EU export controls and medical ethics policies).⁷⁷ States have responded by:

- adopting experimental sedatives (e.g., midazolam),
- compounding their own chemicals from unknown sources, or
- reviving alternative methods such as electrocution, nitrogen hypoxia, or the firing squad.

The Supreme Court in *Baze v. Rees*⁷⁸ and *Glossip v. Gross*⁷⁹ held that lethal injection does not violate the Eighth Amendment unless the prisoner can prove a substantial risk of severe pain and propose a viable alternative a standard criticised by medical and legal scholars as placing an impossible evidentiary burden on the condemned.

Moreover, execution staff are rarely trained anesthesiologists (medical associations prohibit members from participating in executions).⁸⁰ As a result, IV misplacement, inadequate sedation, and inconsistent dosing have led to numerous documented botched executions, in which prisoners gasped, convulsed, or regained consciousness during the process.⁸¹

The central problem is structural: lethal injection is not a medical procedure, but a pseudo-medical performance conducted without medical standards. Consequently, its claim to "humaneness" is scientifically and ethically contested.

Psychological Trauma of Death Row: "Death Row Phenomenon"

Capital punishment is not defined solely by the moment of execution, it includes the prolonged psychological experience of awaiting death, often under severe and isolating prison conditions.

⁷⁷A Study of Deaths Due to Hanging: A Retrospective Study, IJPUB, Jan. 2023, <https://www.ispub.com/IJLHE/15/1/56842> (accessed October 22, 2025).

⁷⁸ 553 U.S. 35 (2008)

⁷⁹ 576 U.S. 863 (2015)

⁸⁰ *Supra* note 76.

⁸¹ *Supra* note 76.

This is known in human-rights jurisprudence as the death row phenomenon.⁸²

Studies indicate that prisoners on death row frequently exhibit⁸³:

- Severe depression and suicidality
- Psychotic symptoms and hallucinations
- Cognitive deterioration due to prolonged isolation
- Identity collapse, learned helplessness, and dysfunctional emotional processing

States often maintain death-row prisoners in solitary confinement for years or decades, with limited social contact and virtually no autonomy. The European Court of Human Rights has held that extraditing individuals to face such conditions risks violating Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman treatment), even when the death penalty itself is not directly at issue.⁸⁴

In some cases, individuals spend 20–30 years awaiting execution due to legal appeals, retrials, and procedural delays raising profound questions about whether the psychological torture of anticipation is itself a form of “cruel, inhuman or degrading punishment” prohibited under CAT and ICCPR Article 7.16.⁸⁵

Thus, even if the moment of death were painless, the structure of death-row incarceration may still violate international human-rights standards.

Ethical Debate: Deterrence vs. Cruelty, Dignity, and Human Rights

Arguments in favour of the death penalty frequently rely on deterrence: the claim that fear of execution discourages potential offenders. However, empirical evidence does not conclusively support this proposition. Comparative criminological research shows no statistically reliable

⁸² Patrick Hudson, *Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?*, 11 Eur. J. Int'l L. 833 (2000) https://watermark02.silverchair.com/110833.pdf?token=AQECAHi208BE49Ooan9kkhW_Ercy7Dm3ZL_9Cf3qfKA (accessed October 15, 2025).

⁸³ *Id*

⁸⁴ Patrick Hudson, *Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?*, 9 Eur. J. Int'l L. 665 (1998) <https://www.ejil.org/pdfs/9/3/665.pdf> (accessed October 20, 2025).

⁸⁵ The Advocates for Human Rights, *Death Penalty Issues*, https://www.theadvocatesforhumanrights.org/Death_Penalty/Issues (accessed October 20, 2025).

difference in homicide rates between retentionist and abolitionist jurisdictions.⁸⁶ Even within the United States, death penalty and non-death penalty states show no consistent pattern in deterrence outcomes.⁸⁷

By contrast, ethical arguments against capital punishment focus on human dignity, the irreversibility of wrongful convictions, arbitrariness in sentencing, and the moral dangers of state violence.

Key objections include:

- **Irreversibility:** DNA exonerations demonstrate that wrongful convictions are real and recurring. Execution forecloses corrective justice.
- **Arbitrariness and bias:** Race, socioeconomic class, and quality of legal defence correlate strongly with death sentencing.
- **Moral non-equivalence:** The State's intentional killing is categorically different from private violence — it legitimises the very act it supposedly condemns.
- **Human dignity:** The ICCPR and evolving human-rights doctrine treat life as an inherent, non-derogable attribute of human personality like execution expresses state denial of dignity.

Thus, even if the death penalty were painless and procedurally perfect, moral concerns rooted in dignity, equality, and proportionality would remain.⁸⁸

Scientific, psychological, administrative, and ethical evidence increasingly undermines the claim that the death penalty can be carried out humanely, rationally, or ethically. Hanging poses a substantial risk of violent or prolonged death; lethal injection relies on unstable and non-medical systems; death-row conditions produce profound psychological suffering; and deterrence-based justifications lack empirical grounding.

⁸⁶ *Id*

⁸⁷ *Death Penalty, Pros, Cons & Debate*, Encyclopaedia Britannica (last updated Oct. 17, 2025), <https://www.britannica.com/procon/death-penalty-debate> (accessed October 20, 2025).

⁸⁸ BBC News, *Against Capital Punishment*, https://www.bbc.co.uk/ethics/capitalpunishment/against_1.shtml (accessed October 20, 2025).

The cumulative effect of these observations aligns with the evolving international normative trend toward abolition and reinforces the view that capital punishment even when legally permitted conflicts with contemporary understandings of human dignity and the prohibition of cruel, inhuman, or degrading treatment under international human-rights law.

Need for Reform

The continued reliance on hanging as the exclusive mode of execution in India reflects a legal continuity rooted more in colonial administrative convenience than in contemporary constitutional or human rights reasoning. While the Supreme Court has upheld the constitutionality of hanging, the judgment also highlights the pressing need for systemic reform, particularly as India's democratic and constitutional ethos continues to evolve. The issue is not merely factual or procedural—it is conceptual, grounded in questions of human dignity, constitutional morality, and the ethical responsibilities of the modern State.

Need for Legislative Review

The Code of Criminal Procedure, 1973, under Section 354(5), states unequivocally that “when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.”⁸⁹ This language leaves no room for judicial flexibility. Courts may deliberate the validity of the death penalty or the conditions under which it is imposed, but they are effectively bound to order hanging if the death sentence is affirmed. Thus, any meaningful reform to the mode of execution must originate from legislative will, not judicial reinterpretation.

This structural limitation underscores the need for Parliament to reexamine the method of capital execution in light of evolving medical evidence, technological developments, and international practices. The retention of hanging may have been defensible historically, when alternatives were neither technologically reliable nor administratively feasible, but such justifications appear increasingly outdated. For example, several jurisdictions including Canada, South Africa, and the United Kingdom abolished hanging due to findings that it frequently caused prolonged suffering and was inconsistent with contemporary standards of humane treatment.⁹⁰

⁸⁹ Code of Criminal Procedure Section 354(5) (1973).

⁹⁰ M. F. Wingersky, *Report of the Royal Commission on Capital Punishment (1949)*, 44 J. Crim. L. & Criminology 147 (1953),

Moreover, legislative review must occur alongside a broader debate on the continued justification of the death penalty itself. The “rarest of rare” doctrine, articulated in *Bachan Singh v. State of Punjab* (1980),⁹¹ was intended to limit executions, yet the criteria remain highly subjective. The Law Commission of India, in its 262nd Report (2015), recommended abolishing the death penalty for all crimes except terrorism-related offences, stating that deterrence claims lack empirical support.⁹² However, Parliament has not acted upon these recommendations, suggesting the influence of political and public emotion rather than evidence-based policy.

In this context, reviewing the method of execution becomes a necessary transitional step toward broader structural reform.

Need for an Expert Committee on Humane Execution Methods

One of the central difficulties in determining a humane method of execution lies in the lack of empirical research on the physiological and psychological effects of different execution techniques. The Supreme Court, in its recent judgment, relied heavily on the 22nd Law Commission Report (2024), which concluded that there was insufficient proof to demonstrate that lethal injection is more humane than hanging.⁹³ However, this conclusion itself highlights the lack of independent, interdisciplinary study in India.

Unlike in many Western jurisdictions, where execution protocols are developed with medical, pharmacological, ethical, and legal oversight, India has no standardised technical manual guiding the preparation and conduct of executions. Execution procedures continue to rely on prison manuals that have remained largely unchanged since the early 20th century.⁹⁴ Executioners are untrained and often appointed arbitrarily, leading to procedural variations that may increase the risk of suffering.

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=4198&context=jclc> (accessed October 20, 2025).

⁹¹ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

⁹² Law Commission of India, *Report No. 262: The Death Penalty* (Aug. 31, 2015).

⁹³ India Today, Government not ready to evolve: Top court on lethal injection vs death by hanging, INDIA TODAY (Oct. 15, 2025),

<https://www.indiatoday.in/india/law-news/story/supreme-court-pil-lethal-injection-vs-hanging-death-row-convicts-2803653-2025-10-15> (accessed October 20, 2025).

⁹⁴ Ministry of Home Affairs, *Model Prison Manual of India* (2021), https://www.mha.gov.in/sites/default/files/2022-12/ModelPrisonMan2003_14112022%5B1%5D.pdf (accessed October 24, 2025).

A genuinely humane approach cannot rely on assumptions, committee summaries, or comparative reasoning alone—it must be evidence-based. Therefore, India urgently needs an expert national committee composed of:

- Forensic pathologists
- Medical and anaesthesia experts
- Criminal law scholars
- Human rights advocates
- Penologists and behavioural psychologists
- Prison administrators

Such a committee would conduct empirical research on:

1. Physiological effects of hanging, including variations in rope length, body weight, neck structure, and likelihood of slow strangulation versus cervical dislocation.
2. Feasibility of alternatives such as lethal injection, nitrogen hypoxia, or anaesthetic overdose protocols.
3. Psychological impact of death row incarceration, including solitary confinement, anticipation trauma, and mental health deterioration.

This research must be grounded not only in medical science but also in constitutional principles, ensuring that the State's obligation to maintain human dignity is respected even at the moment of death.

Aligning Reform with “Constitutional Morality”

The concept of constitutional morality, first articulated in *Kesavananda Bharati v. State of Kerala* (1973)⁹⁵ and later reaffirmed in *Navtej Singh Johar v. Union of India* (2018)⁹⁶,

⁹⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁹⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

emphasises that the Constitution is not merely a legal framework but a moral guide shaping the nation's collective identity. The State is expected to act in accordance with values such as dignity, equality, and justice, even when public opinion or majoritarian sentiment suggests otherwise.

Capital punishment, by its nature, places the State in a position of absolute power—the power to extinguish life. Such power must be exercised with the highest degree of restraint and ethical awareness. Even when the death penalty is legally permissible, the method of execution must reflect the dignity of the individual, a value central to Article 21.

Hanging, with its visual violence, unpredictability of physiological outcomes, and documented risk of prolonged suffering, stands increasingly at odds with the principle of human dignity. The Court has previously acknowledged that dignity does not end with conviction. In *Shatrughan Chauhan v. Union of India*, the Court emphasised that “human dignity survives even the taking of life.”⁹⁷ This reasoning logically extends to the method of execution.

The movement toward aligning punishment with constitutional morality does not require immediate abolition of the death penalty. Rather, it requires:

- Recognising the inherent worth of the condemned individual.
- Minimising suffering in state actions.
- Ensuring that punitive power is exercised with compassion.
- Accepting that justice does not legitimise cruelty.

To ignore these principles is to allow the Constitution to be overshadowed by convenience.

So, the need for reform in India's method of execution is not merely technical it is philosophical, legal, and moral. Legislative review is necessary to break colonial continuity and align punishment practices with democratic values. A national expert committee can provide the empirical foundation needed for humane reform. Most importantly, reforms must reflect constitutional morality, reaffirming that even at the threshold of death, the State must

⁹⁷ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

uphold dignity.

The debate on hanging, therefore, is not about whether the guilty deserve punishment, it is about what the Constitution allows the State to become in the act of punishing. The debate on the method of execution in India cannot be understood in isolation from the broader question of the State's relationship with the individual and the meaning of constitutional dignity. Capital punishment occupies a morally and legally fraught space: it is an exercise of sovereign power at its most absolute and irreversible. The State does not merely punish wrongdoing, it asserts the authority to extinguish life itself. Such a power demands the highest scrutiny because its exercise touches the foundational principles of the Constitution: the right to life, human dignity, fairness, and justice.

Balancing State Punishment and Human Dignity

The Indian Constitution does not explicitly prohibit the death penalty, nor has Parliament abolished it. The Supreme Court, beginning with *Jagmohan Singh v. State of U.P.*⁹⁸ and crystallising in *Bachan Singh v. State of Punjab*⁹⁹, has affirmed that capital punishment may be imposed but only in the “rarest of rare” cases. This doctrinal requirement was intended as a safeguard reflecting the belief that execution should be an exception, not the norm. Yet, the mere existence of the “rarest of rare” doctrine does not resolve the deeper constitutional tension surrounding how death is administered.

The right to life under Article 21 encompasses not only the protection of life but also the protection of dignity. The Court has affirmed in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*¹⁰⁰ and later in *Maneka Gandhi v. Union of India*¹⁰¹, that dignity is an intrinsic and non-negotiable dimension of personhood. Even a person convicted of the gravest crime is not stripped of their humanity. This was reaffirmed emphatically in *Shatrughan Chauhan v. Union of India*¹⁰², where the Court held that human dignity survives even at the moment of execution.

Thus, the central constitutional question is not merely whether the State may impose death, but

⁹⁸ *Jagmohan Singh v. State of U.P.*, (1973) 1 SCC 20.

⁹⁹ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

¹⁰⁰ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

¹⁰¹ (1978) 1 SCC 248.

¹⁰² (2014) 3 SCC 1.

whether the manner in which death is carried out upholds the promise of dignity. Hanging is a method that risks prolonged asphyxiation, severe physical trauma, and visible bodily distortion appears discordant with contemporary understandings of humane treatment. The argument is not sentimental, but constitutional as dignity cannot be selectively withdrawn at the threshold of death.

Reconsidering Capital Punishment in a Rights-Based Democracy

India's constitutional identity is deeply anchored in the values of justice, equality, and respect for human rights. These values do not simply limit State power; they define its purpose. As India continues to affirm its position as a democratic and pluralistic republic, guided by constitutional morality rather than majoritarian sentiment, it becomes necessary to question whether the death penalty regardless of method remains compatible with those values.

Internationally, there has been a clear movement toward abolition. Over 140 countries have either abolished capital punishment in law or in practice.¹⁰³ The movement has not been driven solely by moral sentiment but by growing acknowledgement that:

1. There is no conclusive evidence that capital punishment deters crime more effectively than life imprisonment.
2. The justice system, despite safeguards, is vulnerable to error—and in the case of execution, errors cannot be remedied.
3. The psychological and social consequences of death-row incarceration are themselves deeply harmful and degrading.
4. The ethical legitimacy of the State taking life is increasingly questioned as incompatible with human rights commitments.

India remains among the small group of countries that retain the death penalty, but even within this group, there is variation in methods and legal safeguards. While the Supreme Court's recent judgment upholding hanging maintains continuity with *Deena v. Union of India*¹⁰⁴, it

¹⁰³ Death Penalty Information Center, *Abolitionist and Retentionist Countries*, <https://deathpenaltyinfo.org/policy-issues/policy/international/abolitionist-and-retentionist-countries>, (accessed October 24, 2025).

¹⁰⁴ (2017) 4 SCC 123 (India).

also exposes a much deeper contradiction: How can a constitutional democracy committed to dignity justify a method of death that risks pain, humiliation, and spectacle?

Toward a Humane and Reflective Penal Future

The debate moving forward must not be framed as a binary—retain or abolish. Rather, it should proceed in stages:

1. Immediate reform of the method of execution, based on scientific, ethical, and constitutional analysis.
2. Legislative reevaluation of capital punishment, informed by principles of justice rather than political passion.
3. Cultivation of a rights-conscious public discourse, acknowledging that punishment is not merely retribution but a statement about the moral character of the State.

Reform does not imply leniency toward crime. Rather, it recognises that the State's legitimacy is measured not by the harshness of its punishment but by its adherence to constitutional morality. A democracy does not prove its strength by replicating violence, but by demonstrating restraint, fairness, and humanity even in response to the gravest wrongdoing.

The State's authority to punish arises from social trust. Citizens consent to be governed because they believe the State will act justly and protect human dignity. When the State uses its absolute power the power to kill—it must ensure that its actions reflect the highest constitutional values. If dignity is the foundational principle of our constitutional order, then dignity must govern even the moment where the State exercises its greatest power.

The question before India today is not only whether hanging is humane. The deeper question is: What kind of Republic do we aspire to be? A Republic grounded in fear and retribution or one that upholds dignity, even in judgment? The answer to that question will determine not just the future of capital punishment, but the future of constitutional justice in India.