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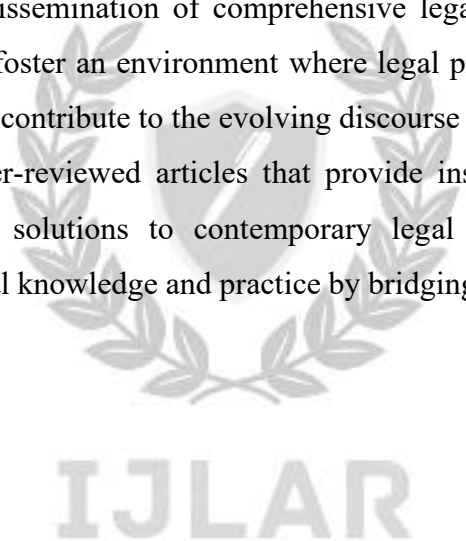
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Preface

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**THE RAREST OF RARE AND THE QUESTION OF
CONSTITUTIONAL MORALITY: A CRITICAL APPRAISAL
OF THE DEATH PENALTY UNDER THE BHARATIYA
NYAYA SANHITA, 2023 AND INDIA'S EVOLVING
FUNDAMENTAL RIGHTS JURISPRUDENCE**

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Abstract:

Capital punishment occupies a singular and contested space in India's criminal jurisprudence. Upheld as constitutionally valid by a five-judge Constitution Bench in Bachan Singh v. State of Punjab (1980), disciplined by the 'rarest of rare' doctrine, struck down in its mandatory form in Mithu v. State of Punjab (1983), and further refined through sentencing guidelines in Manoj v. State of Madhya Pradesh (2022), the death penalty's constitutional standing is settled in form but perpetually unstable in practice. This paper undertakes a comprehensive critical appraisal of capital punishment in India against the backdrop of the Bharatiya Nyaya Sanhita, 2023, which came into force on 1 July 2024. It examines the statutory provisions of the BNS that retain or expand the death penalty, traces the constitutional jurisprudence from Bachan Singh through Manoj and the landmark 2025 decision in Vasanta Sampat Dupare v. Union of India, and critically analyses the structural failings of the 'rarest of rare' doctrine: its arbitrariness, its inaccessibility to the poor and marginalised, its inadequate engagement with mental illness and wrongful conviction, and its unresolved tension with the constitutional morality of human dignity. The paper concludes that the BNS's retention of capital punishment is constitutionally maintainable under existing precedent but normatively indefensible given the documented systemic failures of its administration, and that meaningful reform requires adoption of robust sentencing guidelines, a moratorium on execution pending unresolved constitutional challenges, and serious legislative engagement with the 262nd Law Commission Report's recommendation for abolition.

Keywords: Death Penalty, BNS § 103, Rarest of Rare, Bachan Singh, Mithu v. State of Punjab, Manoj Guidelines, Constitutional Morality, Article 21, Capital Punishment, BNS 2023, BNSS 2023.

I. INTRODUCTION

There are few questions of criminal law that speak more directly to the constitutional character of a state than whether it may kill its own citizens as punishment. Capital punishment is not merely a sentencing option — it is a declaration about the relationship between the state and the individual, about whether the state holds life as a non-negotiable value or as a conditional entitlement that may be forfeited through crime. In India, that question has been asked and answered in courts for over seven decades, yielding a jurisprudence simultaneously principled in its aspiration and inconsistent in its application.

The Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force on 1 July 2024 replacing the Indian Penal Code, 1860, retained and in significant respects expanded the death penalty. Section 103 of the BNS, prescribing the punishment for murder,¹ and Section 104, governing murder by life convicts,² together constitute the core capital punishment provisions of the new criminal code. The BNS could have marked a decisive legislative choice to restrict or abolish capital punishment, in line with the 262nd Law Commission Report's recommendation.³ It did not. India thus enters a new era of codified criminal law carrying forward the most irreversible of all state sanctions.

The constitutional architecture governing capital punishment has evolved significantly since *Bachan Singh v. State of Punjab* (1980),⁴ which remains the foundational precedent. The 'rarest of rare' doctrine was elaborated in *Machhi Singh v. State of Punjab* (1983)⁵ and subjected to withering empirical critique in the decades since. In 2025, the Supreme Court in *Vasanta Sampat Dupare v. Union of India* held that Article 32 empowers the Court to reopen a finalised death sentence where the sentencing guidelines laid down in *Manoj* (2022) were not followed⁶ — a development that speaks to the Court's recognition that the existing framework is procedurally inadequate for the gravity of the punishment it governs.

This paper proceeds through eight parts. Part II examines the statutory framework of the BNS and BNSS on capital punishment. Part III traces the constitutional journey from *Bachan Singh* through *Mithu* and *Machhi Singh*. Part IV analyses the *Manoj* sentencing guidelines and the *Dupare* development. Part V critically examines the doctrine's structural failures. Part VI addresses the international dimension. Part VII evaluates the constitutional morality argument. Part VIII concludes with reform recommendations.

II. THE STATUTORY FRAMEWORK: BNS AND BNSS, 2023

A. Section 103 BNS: Murder and the Death Penalty

Section 103 of the Bharatiya Nyaya Sanhita, 2023 prescribes the punishment for murder: death, or imprisonment for life — meaning imprisonment for the remainder of a person's natural life — and liability to fine.⁷ This provision directly replaces Section 302 IPC, preserving its core structure. For offences committed before 1 July 2024, the IPC continues to govern; for those committed on or after that date, the BNS applies.

Section 103(2) introduces a significant addition absent from the IPC: it prescribes death or life imprisonment where murder is committed by a group of five or more persons on grounds of race, caste or community, sex, place of birth, language, personal belief, or any other ground.⁸ This provision is a direct legislative response to the Supreme Court's directions in *Tehseen S. Poonawalla v. Union of India* (2018),⁹ where the Court urged Parliament to legislate specifically against mob lynching. The criminalisation of identity-based group murder as a capital offence reflects a constitutionally significant recognition of organised communal violence as among the gravest of crimes against social order.

B. Section 104 BNS: Murder by Life Convicts

Section 104 of the BNS governs murder committed by a person undergoing imprisonment for life, replacing Section 303 IPC, which had imposed a **mandatory** death sentence in such cases. Section 303 IPC was struck down as unconstitutional by a Constitution Bench in *Mithu v. State of Punjab* (1983)¹⁰ on the ground that mandatory capital punishment removes all judicial discretion and violates both Article 14 and Article 21. Section 104 BNS remedies this by prescribing death or life imprisonment at the court's discretion, bringing the provision into constitutional compliance with *Mithu's* mandate.

C. Other Capital Offences and Confirmation Under BNSS

Beyond murder, the BNS retains capital punishment for rape of a woman below twelve years of age and for repeat rape offenders under Sections 65 and 70, and for dacoity resulting in murder under Section 310(3).¹¹ Section 476 of the Bharatiya Nagrik Suraksha Sanhita, 2023 retains the mandatory death reference procedure: every death sentence imposed by a Sessions Court must be confirmed by the High Court before execution.¹² Section 392(3) BNSS inherits the requirement from Section 354(3) CrPC that the court must state 'special reasons' when imposing death over life imprisonment.¹³

III. CONSTITUTIONAL JURISPRUDENCE: BACHAN SINGH, MACHHI SINGH, AND MITHU

A. Bachan Singh (1980): Constitutionality and the Rarest of Rare

The foundational constitutional challenge to the death penalty in India was adjudicated by a five-judge Constitution Bench in *Bachan Singh v. State of Punjab* (1980).¹⁴ The petitioner contended that capital punishment violated Articles 14, 19, and 21 of the Constitution.¹⁵ By a majority of 4:1, the Bench rejected the challenge. The majority, per Justice Sarkaria, reasoned that Article 21 permits deprivation of life in accordance with procedure established by law. Since Section 302 IPC was a valid law, and since the procedure under the CrPC satisfied constitutional requirements, the death penalty did not *per se* violate the right to life.

The Court gave its acceptance of capital punishment a compelling internal qualification: 'A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That resistance is fundamental to life and must be respected in every case.'¹⁶ From this acknowledgment was born the 'rarest of rare' doctrine: capital punishment is constitutionally valid, but its imposition is permissible only where life imprisonment is unquestionably foreclosed — in cases of such extraordinary culpability and depravity that no lesser sentence can meet the justice of the case.

Justice Bhagwati's solitary dissent proved prescient. He argued that no judge-made guidelines could cure the inherent arbitrariness in capital sentencing — that the 'rarest of rare' test was subjective and susceptible to individual judicial temperament, producing results that would be 'freakish and arbitrary' rather than principled.¹⁷ Subsequent empirical research by Project 39A and Amnesty International has confirmed every element of this dissent, and it has been expressly acknowledged by serving Supreme Court justices as accurately mirroring the current state of capital punishment in India.¹⁸

B. Machhi Singh (1983): Operationalising the Doctrine

Three years after *Bachan Singh*, a three-judge bench in *Machhi Singh v. State of Punjab* (1983) sought to give the 'rarest of rare' test operational content.¹⁹ The bench identified five categories relevant to whether a case crosses the threshold: the manner of commission (extreme brutality), the motive (depravity), the anti-social or abhorrent nature of the crime (multiple murders, atrocity on a minor), its magnitude, and the personality of the victim (a socially defenceless person, a woman, or a child).

Machhi Singh formulated the balance-sheet method: the court must draw up an account of

aggravating and mitigating circumstances, giving full weight to mitigating factors. The Court stated that 'life imprisonment is the rule and death sentence is an exception' and that capital punishment 'must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime and the offender.'²⁰ This framework — aggravating versus mitigating — became the primary tool of Indian capital sentencing for over four decades.

C. Mithu (1983): The Constitutional Bar on Mandatory Death

In *Mithu v. State of Punjab* (1983), a Constitution Bench struck down Section 303 IPC — which mandated the death penalty for murder by a life convict — as unconstitutional under Articles 14 and 21.²¹ The Court held that any statutory provision imposing an irreversible penalty without permitting judicial consideration of the individual facts and circumstances of the accused is arbitrary and void. The removal of discretion — the ability to weigh the accused's background, mental state, and rehabilitative potential — was itself a constitutional infirmity.

The legacy of *Mithu* has been consistently extended. The Bombay High Court, relying on *Mithu*, struck down the mandatory death penalty under the NDPS Act. The Supreme Court in *State of Punjab v. Dalbir Singh* (2012)²² applied *Mithu* to invalidate the mandatory death penalty under Section 27(3) of the Arms Act, holding that any law depriving judges of sentencing discretion in an irreversible penalty matter is 'repugnant to the concepts of right and reason.' BNS Section 104's discretionary framework is the direct legislative heir of *Mithu*'s constitutional command.

IV. THE MANOJ GUIDELINES (2022) AND VASANTA SAMPAT DUPARE (2025)

A. Manoj v. State of Madhya Pradesh (2022)

By 2022, the systemic failure of capital sentencing in India had become impossible to defer. A three-judge bench in *Manoj & Ors. v. State of Madhya Pradesh* (2022)²³ confronted the evidence that the 'rarest of rare' framework was routinely applied without genuine consideration of the accused's background, mental health, or socioeconomic circumstances. The Court laid down comprehensive guidelines requiring trial courts to: obtain psychiatric and psychological evaluations; gather socioeconomic background and family history; elicit jail conduct reports; and provide a meaningful, separate sentencing hearing, distinct from the hearing on conviction.

The *Manoj* guidelines did not stop at trial courts. The Court held that the State must also actively place mitigating material before the Sessions Judge, and that public opinion is not a valid sentencing consideration.²⁴ This last point — the explicit exclusion of public sentiment from capital sentencing — is a statement about constitutional morality: the Court acknowledged that popular retribution and constitutional principle can diverge, and that courts must follow the latter.

Research published after *Manoj* confirms that compliance has been minimal. In 2024, trial courts gathered personal information about prisoners in only 7% of capital cases.²⁵ Mental health information was relied upon in only 4 out of 80 capital cases reported.²⁶ Guidelines without institutional infrastructure — without forensic psychiatric services, trained probation officers, and functioning legal aid — are aspirational rather than operative.

B. Vasanta Sampat Dupare v. Union of India (2025)

The 2025 decision in *Vasanta Sampat Dupare v. Union of India* is the most recent and perhaps the most consequential development in India's capital punishment jurisprudence.²⁷ Dupare had been convicted for the rape and murder of a four-year-old child and sentenced to death; his sentence was confirmed through all appellate stages and his mercy petitions were rejected by both the Governor and the President. At the final stage before execution, he filed a petition under Article 32 contending that the *Manoj* guidelines had not been followed at his sentencing. A three-judge bench held that Article 32 of the Constitution empowers the Supreme Court in capital punishment cases to reopen the sentencing stage where the guidelines in *Manoj* were not followed, even after the sentence has attained finality through review and mercy processes.²⁸ The Court reasoned that death sentences are categorically exceptional because they are irreversible, and that Article 32's extraordinary remedy is specifically available where a fundamental rights violation — here, the right to a meaningful sentencing hearing under Article 21 — has occurred and no other remedy remains.

Dupare constitutionalises what had previously been a procedural aspiration. By permitting retrospective application of the *Manoj* framework — opening finalised sentences to fresh sentencing hearings — the Court implicitly acknowledges that the system has for years been constitutionally deficient in the very cases where constitutional compliance is most urgent.

V. STRUCTURAL FAILURES OF THE 'RAREST OF RARE' DOCTRINE

A. Arbitrariness and Inconsistency

The most persistent and empirically documented critique of the 'rarest of rare' doctrine is its arbitrariness. Project 39A's study of the Supreme Court's capital decisions from 2007 to 2021 found 'sustained inconsistency and judge-centric reasoning' and 'significant principled divergence' in the reasoning of individual benches.²⁹ Two cases with materially similar facts and accused profiles result in different outcomes depending on the composition of the bench. Amnesty International and the PUCL's study of cases from 1950 to 2006 reached identical conclusions.³⁰ A doctrine whose application correlates with the identity of the deciding judge rather than the objective characteristics of the crime fails the most basic requirement of the rule of law: equal treatment of equals.

Project 39A's opinion study of 60 former Supreme Court judges confirmed that the 'rarest of rare' test is understood differently by different jurists, with most gravitating toward a retributive instinct triggered by perceived brutality rather than a principled weighing of aggravating and mitigating factors.³¹ Justice Kurian Joseph's dissent in *Chhannu Lal Verma v. State of Chhattisgarh* (2019) made this explicit, stating that the death penalty continues to be 'arbitrarily and freakishly imposed' and calling for re-examination of the 'purpose and practice' of capital punishment.³²

B. Systematic Neglect of Mitigating Circumstances

The *Bachan Singh* framework requires that mitigating circumstances be given full weight. In practice, they are routinely ignored. Project 39A's trial court study found that 36% of death sentences between 2018 and 2020 were imposed on the same day as conviction, without any separate sentencing hearing and therefore without consideration of mitigating factors.³³ Section 235(2) CrPC — now Section 392(3) BNSS³⁴ — requires a distinct sentencing hearing; it was rendered meaningless in more than one-third of capital cases over the study period.

Mental illness, intellectual disability, childhood trauma, and extreme socioeconomic deprivation — widely documented among India's death row population by Project 39A's *Deathworthy* report³⁵ — are factors that should routinely commute death sentences. They are routinely absent from the sentencing record. The *Manoj* guidelines addressed this directly, yet post-2022 compliance rates remain in single digits, exposing the gap between judicial aspiration and institutional capacity.

C. Wrongful Conviction and the Irreversibility Problem

The irreversibility of the death penalty makes wrongful conviction categorically different from any other sentencing error. Anokhilal — a deaf and mute man tried without effective legal representation — was sentenced to death three times and ultimately acquitted by the Supreme Court after his entire prosecution was found to be constitutionally vitiated.³⁶ Narayan Chetanram Chaudhary was imprisoned for 28 years — 25 on death row — before the Supreme Court found him to have been a juvenile at the time of the offence, releasing him in 2023.³⁷ Each of these cases illustrates a systemic risk that no appellate process can fully eliminate. Execution would have made these errors permanent.

The 262nd Law Commission Report identified wrongful conviction as a central argument for abolition,³⁸ noting that India's criminal justice system — characterised by widespread custodial torture, fabrication of evidence, abysmal legal aid, and overburdened courts — generates wrongful convictions at a rate that makes irreversible punishment constitutionally precarious. The same former judges interviewed by Project 39A overwhelmingly acknowledged this crisis without allowing it to affect their retentionist position, a compartmentalisation that reveals the instinctive rather than principled basis of the retentionist consensus.³⁹

D. Caste, Class, and the Discriminatory Pattern

India's death row is not a random sample of those who commit the most heinous crimes. Project 39A's empirical research documented that death row prisoners are disproportionately drawn from lower castes, religious minorities, and the extreme poor.⁴⁰ This pattern — replicated in capital systems worldwide — raises a direct Article 14 concern: the death penalty is effectively administered on the basis of social vulnerability rather than objective criminal culpability. The poor receive worse legal representation, are more vulnerable to coerced confessions, and are less able to generate the social capital that generates mitigating evidence. The 'rarest of rare' doctrine is constitutionally neutral in its text but structurally discriminatory in its application.

VI. THE INTERNATIONAL HUMAN RIGHTS DIMENSION

India is a party to the International Covenant on Civil and Political Rights (ICCPR), Article 6(2) of which restricts the death penalty to 'the most serious crimes' and identifies abolition as an explicit goal. The United Nations General Assembly has, in biennial resolutions beginning with Resolution 62/149 of 18 December 2007, called upon all states to establish a moratorium on executions as a step towards abolition.⁴¹ India has consistently voted against

these resolutions, placing itself among a small and declining group of retentionist democracies. The BNS's extension of capital punishment to rape without homicide — Sections 65 and 70 — potentially conflicts with the ICCPR's 'most serious crimes' standard, which the UN Human Rights Committee has interpreted as limited to intentional killing.⁴² India has not ratified the First Optional Protocol to the ICCPR and is not subject to individual complaint mechanisms, limiting the direct international legal consequence of this divergence. The normative significance of the global abolitionist trend, however, is not contingent on treaty obligations: as of 2025, over two-thirds of the world's countries have abolished the death penalty in law or practice, leaving India among a diminishing group of retentionist democracies.

VII. CONSTITUTIONAL MORALITY, DIGNITY, AND THE DEATH PENALTY

The concept of 'constitutional morality' — the set of values embedded in the Constitution against which all legal practices must be measured — has emerged as a powerful interpretive tool in the Supreme Court's post-*Puttaswamy* jurisprudence.⁴³ At its core, constitutional morality requires the state to treat every person as an end in themselves — to recognise the inherent and inalienable dignity of every human being, including those who have committed the most terrible acts. The question for capital punishment is whether the intentional, premeditated killing of a person by the state is compatible with this dignity-centred constitutional morality.

The majority in *Bachan Singh* answered this affirmatively, reasoning that a procedure established by law satisfies Article 21.⁴⁴ But the *Puttaswamy* framework has since deepened Article 21 beyond procedural compliance to include substantive dignity.⁴⁵ The state's obligation is not merely to follow procedure before it kills but to ask whether killing is constitutionally permissible at all. Justice Bhagwati's dissent — that the death penalty is inherently incompatible with dignity — has acquired renewed constitutional resonance in this post-*Puttaswamy* landscape.

Constitutional morality demands that legal practice reflect evolving constitutional understanding rather than popular sentiment. The *Manoj* Court's explicit exclusion of 'public opinion' from capital sentencing considerations is an acknowledgment that constitutional morality and popular morality diverge — and that in a constitutional democracy, the former must prevail.⁴⁶ Retaining capital punishment to satisfy retributive public sentiment, while

knowingly applying it in an arbitrary and discriminatory manner, is precisely what constitutional morality requires courts to resist.

VIII. REFORM RECOMMENDATIONS AND CONCLUSION

India stands at a crossroads in its relationship with capital punishment. The BNS makes a legislative choice to retain the death penalty, extending it in significant directions while complying with the constitutional requirement of discretion. The judiciary has refined its administration through the *Manoj* guidelines and deepened its retrospective reach through *Dupare*. And the empirical record — assembled painstakingly by Project 39A over more than a decade — demonstrates unambiguously that the current system is arbitrary, discriminatory, under-resourced, and constitutionally precarious.

First, Parliament should give legislative force to the *Manoj* sentencing guidelines by incorporating them into the BNSS as mandatory pre-conditions for any death sentence, with specified appellate consequences for non-compliance. Judicial guidelines without enforcement mechanisms remain inoperative, as the post-2022 compliance data confirms.⁴⁷

Second, the 262nd Law Commission Report's recommendation to abolish the death penalty for all offences except terrorism and waging war against the State should receive formal parliamentary consideration.⁴⁸ The BNS's silent rejection of this recommendation, without debate or reasoned response, is a legislative evasion of a question of the greatest constitutional and moral significance.

Third, a moratorium on executions should be declared pending the Supreme Court's resolution of the pending constitutional challenge to hanging as the mode of execution, and pending the retrospective application of the *Manoj* framework to all unexecuted death sentences. Executions carried out before these challenges are resolved carry the risk of irreversible injustice.

Fourth, the State must invest in the institutional infrastructure required for genuine compliance with the *Manoj* guidelines: forensic psychiatric expertise accessible to trial courts, trained probation officers, functioning legal aid, and jail authorities capable of producing meaningful conduct and behavioural reports. Without such infrastructure, sentencing guidelines are

theatrical.

Fifth, the Supreme Court should constitute a larger bench to reconsider *Bachan Singh's* holding that the death penalty is compatible with the constitutional morality of human dignity, in light of the post-*Puttaswamy* deepening of Article 21's substantive content.⁴⁹ The 'rarest of rare' doctrine, as Justice Bhagwati foresaw in 1980⁵⁰ and as five decades of empirical research have confirmed, has failed to prevent arbitrary or discriminatory capital sentencing. If the doctrine cannot be made to work, the principled response is to abolish the punishment it seeks to discipline.

The BNS has been enacted carrying a punishment that the state of India's criminal justice system cannot administer with the consistency, accuracy, and dignity that an irreversible sentence demands. That is not merely a practical problem. It is a constitutional one — and one that only the Supreme Court or Parliament, acting with genuine moral and institutional seriousness, can resolve.

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²⁰*Id.*

²¹*Mithu v. State of Punjab*, (1983) 2 SCC 277, ¶ 6 (India) (striking down section 303 of the Indian Penal Code as a violation of the guarantees of equality and life under articles 14 and 21).

²²*State of Punjab v. Dalbir Singh*, (2012) 3 SCC 346 (India).

²³*Manoj v. State of Madhya Pradesh*, (2023) 2 SCC 353 (India).

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²⁷*Vasanta Sampat Dupare v. Union of India*, (2025) SCC OnLine SC 3142, ¶¶ 13–15 (India) (holding that the absence of a meaningful, individualized sentencing inquiry containing a comprehensive mitigation framework violates the guarantees of life and equal protection under articles 14 and 21, and establishing that Article 32 serves

as an active constitutional conduit to revisit death sentences that have otherwise attained finality).

²⁸SC: *Article 32 of the Constitution Empowers the Court to Reconsider Capital Sentences*, SCC OnLine Blog (Aug. 28, 2025), <https://www.sconline.com/blog/post/2025/08/28/supreme-court-reconsideration-of-death-sentence-under-art-32/>.

²⁹Project 39A, *Death Penalty and the Indian Supreme Court (2007–2021)* 6 (Nat'l L. Univ. Delhi 2022).

³⁰Amnesty Int'l & People's Union for Civil Liberties, *Lethal Lottery: The Death Penalty in India* (2008).

³¹Project 39A, *Matters of Judgement: An Opinion Study of the Supreme Court of India on the Death Penalty 22* (Nat'l L. Univ. Delhi 2017).

³²*Chhannu Lal Verma v. State of Chhattisgarh*, (2019) 12 SCC 438, 450 (India) (Joseph, J., dissenting).

³³Project 39A, *Death Penalty Sentencing in India's Trial Courts (2018–2020)* 14 (Nat'l L. Univ. Delhi 2020).

³⁴The Code of Criminal Procedure, 1973, § 235(2), No. 2, Acts of Parliament, 1974 (India); *corresponding to The Bharatiya Nagarik Suraksha Sanhita*, 2023, § 268(2), No. 46, Acts of Parliament, 2023 (India).

³⁵Project 39A, *Deathworthy: A Mental Health Perspective on the Death Penalty* ch. 3 (Nat'l L. Univ. Delhi 2021).

³⁶*Anokhilal v. State of Madhya Pradesh*, Criminal Appeal No. 62 of 2014 (S.C. India Dec. 18, 2019).

³⁷*Narayan Chetanram Chaudhary v. State of Maharashtra*, Criminal Miscellaneous Petition No. 157334 of 2018 (S.C. India Mar. 27, 2023).

³⁸Law Commission of India, Report No. 262 on The Death Penalty 155–156 (2015).

³⁹Project 39A, *Matters of Judgement: An Opinion Study of the Supreme Court of India on the Death Penalty 22–24* (Nat'l L. Univ. Delhi 2017) (revealing that while a significant majority of interviewed former Supreme Court judges acknowledged the prevalence of torture and systemic rot, their belief in the retention of the death penalty remained largely unguided by these operational realities).

⁴⁰Project 39A, *Death Penalty India Report: Volume One* 30–33 (Nat'l L. Univ. Delhi 2016) (documenting that nearly three-quarters of death row convicts are economically vulnerable, with over seventy-nine percent belonging to backward classes, scheduled castes, scheduled tribes, or religious minorities, thereby underscoring the disproportionate impact of systemic structural marginalization).

⁴¹G.A. Res. 62/149, U.N. Doc. A/RES/62/149 (Dec. 18, 2007) (noting that India voted against the moratorium resolution on the use of the death penalty).

⁴²The Bharatiya Nyaya Sanhita, 2023, §§ 65, 70, No. 45, Acts of Parliament, 2023 (India); *see also* International Covenant on Civil and Political Rights art. 6(2), Dec. 16, 1966, 999 U.N.T.S. 171 (restricting the application of the death penalty solely to the "most serious crimes"); Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights: Right to Life, ¶ 35, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018) (explicitly defining "most serious crimes" as those involving intentional killing, and clarifying that non-fatal offences, including rape, do not meet this threshold).

⁴³*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

⁴⁴*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, ¶¶ 150–152 (India) (holding that the phrase "procedure established by law" under Article 21 post-*Maneka Gandhi* requires a procedure that is just, fair, and reasonable, which the judicial safeguards in capital sentencing adequately provide).

⁴⁵*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, ¶¶ 297–300 (India) (Chandrachud, J.) (holding that dignity is an inseparable element of the right to life and liberty under Article 21, asserting that constitutional adjudication must look beyond formal procedural adherence to ensure that the substantive core of human dignity is never compromised by state action).

⁴⁶*Manoj v. State of Madhya Pradesh*, (2023) 2 SCC 353, ¶¶ 111–112 (India) (affirming that the sentencing inquiry must be strictly individualized, focusing on the institutional duty to collect mitigating data, and explicitly isolating the judicial determination from public opinion or majoritarian sentiment to uphold the integrity of the constitutional process).

⁴⁷*Struggles in Death Penalty Sentencing: Guidelines in Manoj vs State of Madhya Pradesh (2022) and Their Non-Compliance*, 5 Indian J.L. & Legal Res. 1, 5 (2023).

⁴⁸Law Commission of India, Report No. 262 on The Death Penalty ¶ 7.1.1, at 217 (2015) (concluding that while there is no principled basis to distinguish between terror and non-terror cases regarding capital punishment, an incremental approach is recommended, wherein the death penalty be swiftly abolished for all offenses other than terrorism-related offenses and waging war against the State).

⁴⁹*See Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India); *reconsideration demanded in light of Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, ¶¶ 297–300 (India) (holding that human dignity is an immutable, substantive core value animating the Right to Life under Article 21); *see also Chhannu Lal Verma v. State of Chhattisgarh*, (2019) 12 SCC 438, ¶¶ 60–62 (India) (Kurian Joseph, J.) (explicitly noting, post-*Puttaswamy*, that the time has come to review the constitutional validity of the death penalty and its compatibility with modern understandings of dignity and the absolute fallibility of execution).

⁵⁰*Bachan Singh*, (1982) 3 SCC 24, at 81 (Bhagwati, J., dissenting).