
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**BALANCING PUNITIVE MEASURES AND HUMAN RIGHTS IN THE
INDIAN CRIMINAL JUSTICE SYSTEM**

- Sanjeev Kumar*

INTRODUCTION

The conflict between utilitarianism and natural rights, the two moral theories that have influenced modern Western philosophy, is fundamental to the notion of criminal justice.¹The writings of *Immanuel Kant* and *Jeremy Bentham* serve as examples of their opposing viewpoints. According to Bentham, the only way for a criminal legislation to be just is if it follows the utilitarian ideal of maximising the happiness of all those who are subject to it.²However, *Kant* evaluated criminal justice according to a non-teleological deontological standard that asks whether it creates rules that free and rational people would impose upon themselves as equals rather than using the teleological goal of maximising good outcomes.³

Punitive measures are necessary to safeguard the interests of society and the victims, but the question arises to what extent these punitive measures should be taken into account. There are several punitive approaches that violate the human rights of the accused. Even punishments that do not intrinsically breach human rights in practice. This applies most obviously to the most severe punishments such as the death penalty and life imprisonment, but lesser terms of imprisonment and other punishments also restrict human rights. It is thus an important part of the human rights agenda to see that in the imposition of punishments human rights standards are respected and conditions for limitations are met.

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¹David A. J. Richards & Nigel Walker, *Human Rights and Criminal Punishment*, 49 THE UNIVERSITY OF CHICAGO LAW REVIEW 235 (1982).

²Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, HISTORY OF ECONOMIC THOUGHT BOOKS (1781).

³*Id.*

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Fundamental rights are inherent to all people, including those who are incarcerated. However, in many countries, the rights of prisoners are often disregarded during their confinement, which is unacceptable. Regardless of a person's criminal status, their basic human rights should be respected and upheld.⁴

This project aims to take a modest step towards starting a conversation on prisoners' rights. The goal of this project is to promote the recognition and advancement of different groups that are knowledgeable about and actively engaged in a variety of criminal concerns. Making sure that prisoners' rights are back on the political agenda is the aim.⁵It facilitates the expression of diverse voices and ensures that both these voices and their supporting organizations are heard, with their identities and concerns acknowledged in all their variety.

Indian Constitution is silent on the right of the accused but in the case of *State of Andhra Pradesh v. Challa Ramkrishnan Reddy*,⁶ Supreme court held that "*the prisoners are also a person and they will not lose their basic constitutional rights.*"

The Supreme Case stated that a "*prisoners whether a convict, under- trial or detenu, does not cease to be a being human being and while lodged in jail, he enjoys all his FRs as mentioned by the constitution including Article 21-right to life.*"

It is very difficult to understand why there is lawlessness in the State, even though the constitution guarantees several rights and there are strong advocates of human rights, such as *Justice Krishna Iyer* and *Justice P.N. Bhagwati*, who support the rights of detainees and prisoners. Yet, there are numerous cases of human rights violations. The answer to this question remains hidden behind bars.

PUNITIVE APPROACHES

In the *Soman v. Kerala*⁷ case, the Supreme Court of India referenced various principles governing the Court's exercise of discretionary powers. "*The general principles are proportionality, deterrence, and rehabilitation. In the proportionality principle aggravating*

⁴DAVID BROWN & MEREDITH WILKIE, PRISONERS AS CITIZENS: HUMAN RIGHTS IN AUSTRALIAN PRISONS (2002).

⁵*Id.*

⁶ *State of Andhra Pradesh v. Challa Ramkrishnan Reddy*, AIR 2000 SC 2083.

⁷ *Soman vs State of Kerala*, 2012.

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and mitigating factors should be considered. Mitigating circumstances are related to the criminal and aggravating circumstances are related to the crime.”

Additionally, the Supreme Court further held that *“Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out just punishment to the accused facing trial before it after he is held guilty of the charges.”* Furthermore, the court recognized and expressed its agreement with the observation made in the case of *State of Punjab v. Prem Sagar*⁸, where the Court stated that *“In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender have not issued any guidelines.”* That is why we need the sentencing policy so that the every time judge should not use their discretionary power arbitrarily.

The different types of punitive measures given according to the Sec 53⁹ of Indian Penal Code, where the types of punishment are defined; *“Death, Imprisonment for life, Imprisonment, forfeiture of property and fine”*.

Death Penalty

The death sentence conflicts with a key tenet of widely accepted human rights law, which compels nations to recognise the right to life, and denies the most basic human rights.¹⁰ The death penalty has been called for to be abolished by the UN General Assembly. Human rights organisations claim that imposing it is against basic human rights principles. A worldwide movement and growing consensus are in favour of its universal eradication.¹¹

Under *Article 3 of the UDHR*¹², life is a fundamental human right. Therefore, the death penalty constitutes the most basic violation of human rights. Governments can refuse access to any of the other rights listed in the Declaration of Independence as long as they have the

⁸ State Of Punjab vs Prem Sagar & Ors, 2008.

⁹Section 53, Indian Penal Code, 1860.

¹⁰Center for Constitutional Rights, *The Death Penalty: An Overview Factsheet* (2021). <https://ccrjustice.org/files/CCR%20Death%20Penalty%20Factsheet.pdf> (last visited May 16, 2024)

¹¹*Id.*

¹²Universal Declaration of Human Rights, 1948

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capacity to take lives. The foundation upon which all other rights are based is the fundamental right to life.¹³

The subject matter of death sentence is always been the controversial. While recognizing the Constitution as the supreme authority, the issue of the death penalty versus fundamental rights consistently emerges in debates. However, death sentences are infrequently imposed by Indian criminal courts.¹⁴ In the case of *Bachan Singh vs State of Punjab*,¹⁵ The Supreme Court ruled that capital punishment should be imposed only in the “rarest of the rare” cases.

The Supreme Court stressed a balanced approach to the death penalty in *Jagmohan Singh v. State of Uttar Pradesh*¹⁶, taking into account both mitigating and aggravating circumstances of the offence. Nevertheless, this strategy was contested in the *Bachan Singh*¹⁷ case that followed after the Criminal Procedure Code (CrPC) was changed. The revised clause indicated that a murder conviction would result in life in prison. The Court subsequently decided that only exceptional circumstances should result in the death punishment.

The court noted that the principles set forth in the *Bachan Singh*¹⁸ judgement were not entirely followed in *Sangeet & Anr. v. State of Haryana*¹⁹, When deciding on a sentence, the courts still weigh the seriousness of the offence against the offender’s circumstances. The importance of striking a balance between aggravating and mitigating circumstances in sentencing has somewhat diminished.²⁰

Justice Krishna Iyer vehemently argued that the death sentence is unconstitutional under Articles 14, 19, and 21 of the Constitution in the case of *Rajendra Prasad v. State of U.P.*²¹, He went on to suggest two other circumstances in which the death sentence would be appropriate²²:

¹³*Id.*

¹⁴Center for Constitutional Rights, *The Death Penalty: An Overview Factsheet* (2021). <https://ccrjustice.org/files/CCR%20Death%20Penalty%20Factsheet.pdf> (last visited May 16, 2024)

¹⁵*Bachan Singh vs State of Punjab*, AIR 1982 SC 898

¹⁶*Jagmohan Singh vs The State Of UP*, 1973 AIR 947.

¹⁷*Supra* note 15.

¹⁸*Supra* note 15.

¹⁹*Sangeet & Anr. v. State of Haryana*, 2012.

²⁰*Id.*

²¹ *Rajendra Prasad v. State of U.P.*, 1979 AIR 916

²²*Id.*

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1. The court must note any unique justifications before applying the death sentence.²³
2. Only extreme circumstances should warrant the application of the death penalty.

However, in the case of *Bachan Singh vs. State of Punjab*,²⁴ a five-judge bench (with a 4:1 majority, Justice Bhagwati dissenting) overturned the decision in the Rajendra Prasad case. The judgment affirmed that the death penalty is not in violation of Article 14, 19, and 21 of the Constitution of India and pronounced that in the “*rare of the rarest case*”²⁵ i.e. “*those cases in which the collective conscience of the community is so shocked that it will expect the judiciary to deliver the death penalty on the accused the death penalty can be ordered.*” Although Justice Bhagwati gave a dissenting opinion, he held that the death penalty not only violates Articles 14, 19, and 21, but also cited several other reasons against it.

In the case of *Mithu v. State of Punjab*,²⁶ the Supreme Court held that “*the mandatory death penalty is invalid and unconstitutional*”. However, there has been no mention of subsequent legislation for drug and criminal offences that prescribe the death penalty as a mandatory consequence. Despite this, Indian courts have imposed the death penalty as a mandatory punishment for many offenses.

Viewing the death penalty through a human rights lens illustrates the profound impact of denying the most fundamental right on all other rights, highlighting why complete abolition is the only viable solution. Even if the injustices and practical issues surrounding capital punishment could be addressed—such as reducing costs, eliminating biases, and preventing errors—the fundamental violation of human rights would remain. A human rights-based approach does not simply critique the accuracy, methods, or timing of executions; it sets a rigorous standard that unequivocally declares the death penalty as morally unjustifiable.²⁷

A human rights strategy, besides providing clear categorization, also involves accountability and global access. It requires duty-bearers (typically states) to respect, protect, and fulfill human rights. When applied to the death penalty, this entails safeguarding fundamental human rights like the right to life for those facing death sentences, taking proactive measures

²³ *Id.*

²⁴ *Supra* note 15.

²⁵ *Id.*

²⁶ *Mithu v. State of Punjab*, 1983, 1983 SCR (2) 690.

²⁷ *Supra* note 8.

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to protect the rights of the accused and sentenced individuals, and enacting national laws to fully realize these rights.²⁸

Life Imprisonment

A life sentence means that a prisoner will be imprisoned for the rest of their life. To put it simply, it's a type of punishment meted out by the government for heinous crimes including terrorism, murder, and rape. It has become popular as a substitute for the death penalty. Human rights law allows for life in prison, which is why many nations use it as a harsh punishment for the most serious crimes. But even with its extensive application around the world, life in prison comes with a lot of drawbacks and debates.²⁹

Since its inception into the Indian penal system, the Supreme Court has given life imprisonment a great deal of thought in determining its exact meaning and consequences.³⁰ The issue was raised by the Supreme Court in the *Gopal Vinayak Godse v. State of Maharashtra and Others* case in 1961.³¹ It was held that “*unless the sentence of life imprisonment was commuted or remitted by appropriate authorities as per relevant penal provisions of IPC or CrPC, it was to be considered that a prisoner sentenced to imprisonment for life is bound in law to serve the life time in prison.*”

Human rights legislation allows for life in prison, and many nations use it as a capital sentence for some of the most serious offences. Nevertheless, the means by which this judgement is carried out may differ depending on the jurisdiction. Certain globally applicable boundaries are established by international human rights rules.³² Life in prison is a common punishment used worldwide, although it is not without problems and debates. Critics point out that many nations that have substituted life in prison for the death penalty have done so because of its implementation. Moreover, it is crucial to remember that within the European

²⁸*Id.*

²⁹Himangshu Kalita & Ananya Pathak, Life Imprisonment in India from a Human Rights Perspective: Issues and Challenges Law. 33 J.L. Info. & Sci. 1 (2022) https://law.unimelb.edu.au/__data/assets/pdf_file/0011/3919241/Kalita_Himangshu-and-Pathak_Ananya.pdf (last visited May 7, 2024).

³⁰Jordan Anderson, *Dirk van Zyl Smit and Catherine Appleton (Eds.), Life Imprisonment and Human Rights* (2018).

³¹ *Gopal Vinayak Godse v. State of Maharashtra and Others*, 1961 SCR (3) 440.

³²Natasa V Mrvic Petrovic, *How to Make More Humane Life Imprisonment (“ Lock up and Throw Away the Key” Concept)-On the Examples of Italy and the Netherlands*, STRANI PRAVNI ZIVOT 403 (2022).

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system, life imprisonment is forbidden by Protocol 13 of the *European Convention on Human Rights (ECHR)*.³³

No legal instrument is fundamentally violated by life in prison. Nevertheless, its scope and applicability are specifically limited. *The UN Human Rights Committee and the European Court of Human Rights (ECtHR)* have both stressed how crucial it is that inmates given life sentences have the option of being released. This ought to be conceivable both in theory (de jure) and in actuality (de facto).³⁴

Through Article 1, the *Universal Declaration of Human Rights (UDHR)* of 1946 affirmed the importance of human dignity and rights.³⁵ Comparably, torture and cruel, inhumane, or humiliating treatment or punishment are forbidden by Article 5 of the UDHR.³⁶ Similar guidelines were also established by a number of regional conventions, such as the African Charter on Human and Peoples' Rights (Article 3), the American Convention on Human Rights (Article 5), and the European Convention on Human Rights (Article 3).³⁷

The right to family, privacy, and the ability to lead a social life are just a few of the liberties that are typically taken away from prisoners serving life sentences. However, there are some fundamental rights that are unalienable to any person or entity.³⁸ Just by virtue of being human, every person has the right to certain liberties, regardless of their nationality, race, sex, social, political, or economic background. These rights, collectively referred to as human rights, include, among other things, the freedom from torture and other cruel treatment, the freedom from slavery, the right to a fair trial, the right to seek asylum, the right to life, dignity, education, fair treatment by courts, equality before the law, and freedom of thought and religion.³⁹ Therefore, regardless of how heinous their offences were, no one, including prisoners, can have their human rights violated. Even in prison environments, all inmates should be treated with respect and dignity. They ought to have access to sufficient food, clean

³³Aleksandra Gruevska Drakulevski, *CURRENT CHALLENGES IN CONFORMING LIFE IMPRISONMENT TO THE INTERNATIONAL AND EUROPEAN STANDARDS.*, IUSTINIANUS PRIMUS LAW REVIEW (2019).

³⁴*Id.*

³⁵Universal Declaration of Human Rights, 1948.

³⁶Anderson, *supra* note 30.

³⁷*Id.*

³⁸Kalita and Pathak, *Supra* note 29.

³⁹ *Id.*

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drinking water, medical care, and education. The rehabilitation of prisoners and the defence of society are the two main goals of prisons.⁴⁰

Fine and forfeiture of property are not the kind of punitive measure due to which great human right violation takes place that is why we will not discuss both of them.

Human Right and Court

In *Charles Shobraj v. Superintendent, Tihar Jail*, the Supreme Court held that “*except for the fact that the compulsion to live in a prison requires by its own force the lack of certain rights, like the right to move freely or to practice a profession of one’s choice, a prisoner is otherwise eligible to the basic freedoms guaranteed by the Constitution.*” And, “*the convicted persons go to prisons as punishment and not for punishment.*”⁴¹

Article 14⁴² of the Constitution of India prohibits any form of inequality. The principle of “*equal should be treated equally*” and the grounds for reasonable classification provided under Article 14 are crucial for distinguishing between criminals or prisoners based on relevant criteria.

The residents of our country are granted six freedoms under Article 19⁴³ of the Constitution. Certain liberties, such as “*freedom of movement,*” “*freedom to reside and settle,*” and “*freedom of profession, occupation, trade, or businesses,*” are inalienable to convicts due to a number of legitimate restrictions imposed by this article.

The Indian Constitution’s Article 20⁴⁴ shields citizens from ex post facto legislation. The concept of “*Double Jeopardy,*” which specifically stipulates that no one may be tried and punished for the same offence more than once, is embodied in Article 20(2)⁴⁵. The common law dictum “*Nemo debet bis vexari pro una et eadem causa,*” which states that no one should be persecuted twice for the same cause, is upheld by this principle.

⁴⁰*Id.*

⁴¹Charles Shobraj vs. Superintendent, Tihar Jail, A.I.R. 1978 S.C. 1514.

⁴² Article 14, Constitution of India.

⁴³ Article 19, Constitution of India.

⁴⁴ Article 20, Constitution of India.

⁴⁵*Id.*

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Article 20(3)⁴⁶ of the Indian Constitution mentions one of the crucial protections offered for detainees and those awaiting trial. This provision forbids jail and police authorities from pressuring inmates to testify against their own interests.

Every individual is guaranteed the right to life and personal liberty under Article 21⁴⁷ of the Indian Constitution. This fundamental right covers all facets of human life, such as the freedom from arbitrary detention and imprisonment, the right to live in dignity, and personal autonomy. The liberty idea is one of them. After Maneka Gandhi⁴⁸ case, *“the Supreme Court gave a wide interpretation and provides a right that has been used against any action taken arbitrarily by the executive authorities including the police and prison authority. After that judgment concept of fair and reasonable procedure for the deprivation of the life and personal liberty of the individuals has been established.”*

In A.K.Gopalan’s case⁴⁹, the court mentioned, *“the ambit of Personal Liberty by Article 21 of the Constitution is wide and complete. It includes both substantive rights to Personal Liberty and the procedure prescribed for their deprivation.”*⁵⁰

COMMITTEE REPORTS FOR PROVIDING RIGHTS TO PRISONERS

1. PRISON ACT, 1894

The Prisons Act of 1894 governs the administration of jails in India and dates back to the British era. This Act has seen minimal significant amendments over time. However, the assessment and audit of prison issues in India continued beyond its enactment. In 1919-20, the Indian Jail Committee published a report emphasizing the primary goal of prison administration as the reformation and rehabilitation of offenders.⁵¹ There has been a

⁴⁶ Article 20, Constitution of India.

⁴⁷ Article 21, Constitution of India.

⁴⁸Maneka Gandhi v Union of India, AIR 1978 SC 579.

⁴⁹ A.K. Gopalan vs U.O.I., AIR 1950 SC 27.

⁵⁰*Id.*

⁵¹Prison Act, 1894.

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consistent call to overhaul and strengthen laws pertaining to prisons in response to ongoing needs and challenges.⁵²

2. **MODEL PRISON MANUAL**

The Model Prison Manual (MPM) of 1960 serves as the foundational framework for the current governance of Indian prison management.⁵³ Following the guidelines of the MPM, the Ministry of Home Affairs, Government of India, constituted a committee in 1972 to examine prison conditions. This committee produced a report emphasizing the necessity for a national policy on prisons. It also addressed critical aspects such as the organization and rehabilitation of offenders, and established principles for their treatment.⁵⁴

Here are the guidelines provided by the committee regarding prisoners' meetings with their families and lawyers:

1. The quantity of letters a prisoner may write in a month is subject to restrictions as per government regulations, although there is no limit on the number of letters a prisoner may receive.⁵⁵
2. Each prisoner is entitled to meetings with their families, relatives, friends, and lawyers once a month. However, the number of individuals permitted to interview a prisoner at one time is typically limited.⁵⁶
3. Adequate waiting rooms may be installed in every prison to accommodate visitors, enabling them to await their turn for meetings.⁵⁷
4. The maximum duration for an interview is 30 minutes, with the possibility of extension upon approval from the superintendent of prisons.⁵⁸

3. **THE KRISHNA IYER COMMITTEE:**

This committee was set up to commence an analysis of the current condition of women prisoners in India⁵⁹. The committee also suggested that there should be more women officers

⁵²Anita Yadav, *Prisoners' Rights in India: An Analysis of Legal Framework*, 6 INDIAN JL & JUST. 131 (2015).

⁵³ The Committee prepared the Model Prison Manual (MPM) and presented it to the Government of India in 1960 for implementation.

⁵⁴*Id.*

⁵⁵Dr Kiran R Naik et al., *The Problems of Prisoners: An Analysis*, 6 INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS 267 (2019).

⁵⁶*Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

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appointed as to manage the women and child offender. *“Women spend their punishments in rigorous conditions than men because of their small numbers. They have faced greater family dislocation than men because there are so fewer prisons to choose as an option for the imprisonment of women. They have been over-classified or, in any situation, they have been imprisoned in a facility that does not match to their classification. For similar reasons, they have been offered lesser programs than male prisoners, particularly in the situation of women imprisoned under protective custody arrangements, of which there is only a handful. They had no substantial seasonal training opportunities.”*

CORRECTIVE MEASURES

1. **Parole:**

Parole is the temporary release of a prisoner under specific conditions before the completion of their maximum sentence. It is granted to individuals who have served a portion of their sentence and have demonstrated adherence to strict rules. Violations of parole conditions can result in the return to custody with additional penalties. Parole also aims to facilitate the reintegration of offenders into society. The terms of probation or parole can be adjusted based on the nature of the offense and the probationer's circumstances.

2. **Probation:**

Probation refers to a period during which a person convicted of a crime can demonstrate their ability to reintegrate into society without being incarcerated immediately. Instead of receiving an immediate prison sentence, defendants are given an opportunity to prove their commitment to rehabilitation.

3. **Bail:**

Bail is a form of security, typically money or property, deposited with the court to secure the release of a suspect who has been arrested. It ensures the suspect's return for trial and court appearances. Bail allows individuals charged with a crime to be released from jail pending their trial. The amount of bail is determined by the judge, and usually, a 10% deposit is required. Bail bondsmen can negotiate the terms, and full payment may be required depending on the circumstances.

⁵⁹Justice Krishna Iyer Committee, 1987.

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CONCLUSION

Let's face it - our criminal justice system is caught in a tough spot. We want to protect society and get justice for victims, but at what cost? The Bhagalpur blinding case shows just how badly things can go wrong when the state thinks it can do whatever it wants to prisoners. It's a chilling reminder that we need to keep a close eye on how punishments are carried out.

Now, the death penalty - that's a whole other can of worms. No matter how you slice it, killing someone as punishment just doesn't sit right from a human rights perspective. It doesn't matter how awful the crime was; taking a life is taking a life.

Life imprisonment might seem less extreme, but let's think about it for a second. Locking someone up for their entire life? That's pretty harsh too. Sure, some folks argue it's not a human rights violation, but imagine spending decades behind bars with no hope of ever getting out. That's got to do something to a person's basic dignity.

But it's not all doom and gloom. We've got tools like parole, bail, and probation that can help balance things out. These options give us ways to punish people without completely trampling on their rights.

So, what's the bottom line? Our current system of punishment often crosses the line when it comes to human rights. We need to do better. It's time for India to rethink how we handle justice. We need to focus more on reforming people rather than just punishing them. It's a tricky balance, sure, but if we want a truly fair and humane society, we've got to figure it out. After all, even people who've broken the law are still human beings with basic rights. Let's not forget that.

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