INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 6 AND ISSUE 7 OF 2026

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 6 and Issue 7 of 2026 (Access Full Issue on - https://ijlr.iledu.in/volume-6-and-issue-7-of-2026/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 - info@iledu.in / Chairman@iledu.in

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 7 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

A COMPARITIVE ANALYSIS ON DEATH PENALTY IN INDIA, ICELAND AND DEMOCRATIC REPUBLIC OF CONGO

AUTHOR – JEGARAJ N* & V SREE LEKHA**

* STUDENT AT SCHOOL OF LAW, VELS INSTITUTE OF SCIENCE, TECHNOLOGY AND ADVANCED STUDIES (VISTAS)

** ASSISTANT PROFESSOR AT SCHOOL OF LAW, VELS INSTITUTE OF SCIENCE, TECHNOLOGY AND ADVANCED STUDIES (VISTAS)

BEST CITATION – JEGARAJ N & V SREE LEKHA**,** A COMPARITIVE ANALYSIS ON DEATH PENALTY IN INDIA, ICELAND AND DEMOCRATIC REPUBLIC OF CONGO, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR),* 6 (7) OF 2026, PG. 77-82, APIS – 3920 – 0001 & ISSN - 2583-2344. DOI - https://doi.org/10.65393/IJLRV6I79

Abstract

This paper undertakes a comprehensive comparative analysis of punishment systems especially death penalty in India, Iceland, and the Democratic Republic of Congo (DRC), representing three distinct penal paradigms: hybrid, rehabilitative, and retributive. Employing doctrinal and comparative methodologies, the study evaluates statutory frameworks, judicial doctrines, prison conditions, and implementation realities. It incorporates empirical data on prison populations, overcrowding, and human rights indicators to assess the effectiveness of punishment systems. The study finds that Iceland's criminal justice system, grounded in reformative theory, demonstrates superior outcomes in terms of humane prison conditions and reintegration. India's system reflects a complex hybrid model, constrained by systemic inefficiencies such as judicial delays and overcrowding, with approximately 76% of inmates being undertrials. In contrast, the DRC exhibits a predominantly retributive approach marked by harsh prison conditions and continued reliance on capital punishment. The paper argues that while punishment systems are shaped by socio-economic and political contexts, there is a discernible global shift toward rehabilitation and human rights compliance. It concludes by recommending structural reforms in developing jurisdictions to align punishment practices with principles of proportionality, dignity, and justice.

INTRODUCTION

Background and Significance of the Study

The idea of punishment is as old as organized society itself[116]. Across all civilization and all eras, the state has claimed the authority to visit suffering upon those who violate its norms.[117] Yet the nature, degree, and philosophy of that suffering have never been uniform[118]. Some societies have chosen to crush the offender; others have sought to heal them. Some systems treat punishment as the state's instrument of retribution; others have placed the victim, or the community, or even the offender's own future at the centre of their response to crime. Understanding these differences and what produces them is among the most illuminating inquiries that comparative legal scholarship can undertake.

This research paper undertakes a structured comparison of the systems of punishment operating in three jurisdictions that, on the surface, share very little: India, a densely populated federal republic and former British

[116] Émile Durkheim, The Division of Labour in Society (W.D. Halls tr, Macmillan 1984).
[117] Michel Foucault, Discipline and Punish: The Birth of the Prison (Alan Sheridan tr, Vintage 1995).
[118] Andrew Ashworth, Sentencing and Criminal Justice (6th edn, Cambridge University Press 2015).

colony navigating the replacement of its colonial-era criminal codes;[119] Iceland, a small Nordic island nation with one of the world's lowest crime rates and a well-regarded rehabilitative prison philosophy; and the Democratic Republic of Congo (DRC), a Central African nation ravaged by decades of civil conflict, systemic institutional failure, and a penal landscape that has oscillated between moratorium and mass execution within a single decade[120]. By placing these three systems side by side, this paper aims not merely to catalogue differences, but to ask what those differences reveal — about political will, about constitutional values, about the relationship between law and social context, and about what a just penal system might look like for a country such as India as it charts its post-colonial legal identity.

Death Penalty in India:

India's sentencing jurisprudence cannot be understood through statute alone. The constitutional and judicial architecture built by the Supreme Court over seven decades has been equally and in some respects more determinative of how punishment actually operates in practice. This chapter examines the principal doctrines and landmark judgments that have shaped India's approach to punishment, with particular attention to the death penalty.

THE 'RAREST OF RARE' DOCTRINE:

Bachan Singh v State of Punjab (1980) 2 SCC 684: AIR 1980 SC 898

The most consequential judgment in the history of Indian penal law is undoubtedly Bachan Singh v State of Punjab, decided by a five-judge Constitution Bench of the Supreme Court on 9 May 1980[121]. The case arose from a brutal set of facts: Bachan Singh, who had previously served a life sentence for murdering his wife, committed three more murders after his release — killing Desa Singh, Durga Bai, and Veeran Bai with an axe. The Sessions Judge awarded death, and the Punjab and Haryana High Court confirmed the sentence. Before the Supreme Court, Bachan Singh challenged not merely his own sentence but the constitutional validity of the death penalty itself, contending that it violated Articles 14, 19, and 21 of the Constitution.The Bench, by a majority of 4:1 (Justice Bhagwati dissenting), upheld both the constitutionalityof the death penalty under Section 302 of the IPC and the sentencing procedure in Section 354(3) of the Code of Criminal Procedure. Justice R.S. Sarkaria, writing for the majority, held that Article 21 — which protects the right to life — does not prohibit capital punishment provided it is imposed through a procedure that is fair, just, and reasonable. The death penalty does not fail the test of Articles 14, 19, or 21, the Court held, provided it is not applied arbitrarily or excessively. The enduring contribution of Bachan Singh is the 'rarest of rare' doctrine. The Court held that life imprisonment is the rule and the death penalty the exception — an exception to be reserved for those cases where 'the alternative of imprisonment for life cannot be said to be unquestionably foreclosed.' The Court directed sentencing judges to construct a 'balance sheet' of aggravating and mitigating circumstances — both of the crime and of the criminal — before determining whether the extreme penalty is warranted. Aggravating circumstances might include the extreme brutality of the offence, the helplessness of the victim, or the deliberate and premeditated nature of the killing. Mitigating circumstances must include the accused's age, mental condition, background, the possibility of reform, and whether the crime arose from sudden provocation or long-standing social deprivation. Crucially, the Court held that the mitigating circumstances must be given their due weight — the doctrine is not merely a checklist of horrors that, once satisfied, automatically triggers the death penalty. Justice Bhagwati's powerful dissent argued that

[119] Bharatiya Nyaya Sanhita, 2023; see also K.D. Gaur, Textbook on the Indian Penal Code (6th edn, Universal 2016).
[120] Amnesty International, Democratic Republic of Congo: Justice System in Crisis (2024); UN Office of the High Commissioner for Human Rights reports on DRC.
[121] Bachan Singh v State of Punjab (1980) 2 SCC 684 (SC).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 7 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

the death penalty is inherently arbitrary because the decision to impose it depends, in practice, on the subjective assessment of individual judges, the quality of legal representation available to the accused, and the social and political context of the crime — factors that the law has no means of controlling. This critique has proved prescient. Subsequent research by Project 39A, National Law University Delhi, has demonstrated that there is no uniform judicial understanding of what the 'rarest of rare' doctrine requires, resulting in what the researchers characterised as 'judge-centric sentencing' — outcomes that vary not with the facts of the case but with the identity of the bench[122].

Machhi Singh v State of Punjab AIR 1983 SC 957:

Three years after Bachan Singh, the Supreme Court elaborated on the doctrine in Machhi Singh v State of Punjab[123]. The Court identified five categories of murder that might, depending on the overall balance of circumstances, qualify as 'rarest of rare': cases involving extreme brutality; cases in which the crime was committed in an exceptionally depraved or anti-social manner; cases involving multiple murders; cases in which the victim was a person of particular vulnerability (such as a small child or an elderly person); and cases involving the murder of a public servant in the course of official duty. The Court also formulated two interrogatories to guide judges: first, whether the offence is so exceptional that no sentence short of death would be adequate; and second, whether, even after weighing all mitigating circumstances, the death penalty is still warranted. Machhi Singh remains an important elaboration of the doctrine, but its category-based approach was later partially questioned in Bariyar, on the ground that it risked converting the individualised assessment required by Bachan Singh into a type-based automatism[124].

Mithu v State of Punjab AIR 1983 SC 473

In the same period, a two-judge bench of the Supreme Court struck down Section 303 of the IPC in Mithu v State of Punjab[125]. Section 303 had provided for a mandatory death sentence for offenders serving a life term who committed further murders in prison[126]. The Court held that a mandatory death sentence — one that removes all judicial discretion and compels execution without allowing for the consideration of individual circumstances — violates Articles 14 and 21. The judgment is significant because it establishes that judicial discretion in sentencing is not merely procedurally desirable but constitutionally required. A legislature cannot foreclose the possibility of a lesser sentence by making the death penalty mandatory, because to do so would strip the sentencing process of the individualised assessment that constitutional fairness demands.

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

This Supreme Court judgment of 2009 constitutes perhaps the most sophisticated post-Bachan Singh analysis of capital sentencing. The Court, sitting before a two-judge bench, reconsidered the doctrine with unusual rigour and arrived at conclusions that significantly constrained the use of the death penalty. The judgment was prompted by concerns about the per incuriam decision in Ravji v State of Rajasthan (1995)[127], in which the Court had based a death sentence exclusively on the nature of the crime, ignoring the characteristics of the criminal. The Bariyar Court held that Ravji was wrongly decided and declared it per incuriam not to be followed[128]. More importantly, Bariyar insisted that the crime-criminal balance must be a genuine weighing exercise, not a formality. The Court expressed concern that courts were too readily reaching the conclusion that reformation was impossible without properly examining

[122] Project 39A, *Death Penalty India Report* (National Law University Delhi, 2016); see also subsequent Project 39A sentencing analyses.
[123] Machhi Singh v State of Punjab (1983) 3 SCC 470 (SC).
[124] Santosh Kumar Bariyar v State of Maharashtra (2009) 6 SCC 498 (SC)
[125] Mithu v State of Punjab AIR 1983 SC 473 (SC).
[126] Indian Penal Code 1860, s 303 (since struck down)
[127] Ravji v State of Rajasthan (1996) 2 SCC 175 (SC).
[128] Santosh Kumar Bariyar v State of Maharashtra (2009) 6 SCC 498 (SC)

evidence of the offender's reformative potential. It held that the state, in a death penalty case, carries a burden to demonstrate not merely assert that no lesser punishment would be sufficient. This placed a significantly higher threshold on capital sentences than many courts had previously applied.

Swamy Shraddananda v State of Karnataka (2008) 13 SCC 767

This case introduced a significant intermediate category of punishment between ordinary life imprisonment and the death penalty[129]. The Supreme Court held that in cases where the court is hesitant to impose the death penalty but finds that ordinary life imprisonment would be insufficient cases involving particularly heinous crimes where the offender's danger to society is manifest the court may impose imprisonment for life with the specific direction that the offender shall not be released before serving a fixed minimum term (typically twenty-five or thirty years). This 'special category' life sentence has been increasingly used by the Supreme Court in commuting death sentences confirmed by High Courts, reflecting a gradual judicial preference for the most extreme form of life imprisonment over capital punishment wherever the facts permit[130].

Furhan v State of UP (2024) — Recent Supreme Court Judgment

Recent years have seen the Supreme Court continue to refine and occasionally tighten the application of the 'rarest of rare' doctrine[131]. In 2024, the Court suo motu took cognizance of the alarming inconsistency in death penalty sentencing driven by data showing that trial courts across India were awarding death sentences at a rate vastly disproportionate to confirmations at the High Court and Supreme Court level[132]. The Court constituted a Constitution Bench to revisit the sentencing framework, reflecting judicial concern that the gap between the trial court's application of the doctrine and the Supreme Court's application is too wide to be consistent with any principle system of justice. This ongoing suo motu reference underscores that the 'rarest of rare' doctrine,while foundational, remains a work in progress.

Nirbhaya Gang Rape Case; State v Ram Singh:

The 2012 Delhi gang rape and murder case the Nirbhaya case represents perhaps the most publicly significant exercise of capital punishment in modern India[133]. Following the brutal gang rape and murder of a twenty-three-year-old physiotherapy intern on the night of 16 December 2012, four of the six accused were tried, convicted under Sections 376A and 302 of the IPC, and sentenced to death by the Sessions Court. The sentence was confirmed by the Delhi High Court and the Supreme Court, and all executive clemency petitions were rejected. On 20 March 2020, all four were executed by hanging at Tihar Jail — the most recent executions in India to date[134]. The case raised profound procedural questions that have not been fully resolved. The execution was delayed for over seven years through a series of successive mercy petitions and legal challenges, many of which were characterised by critics as dilatory tactics. The Supreme Court ultimately took the unusual step of consolidating future mercy petition processes to prevent indefinite delay. The case also highlighted the question of equity: the sixth accused, a juvenile at the time of the crime, received only three years in a reform facility and was released in 2015 — a sentence that many victims' advocates found profoundly unjust given the severity of his participation in the crime[135].

[129] Swamy Shraddananda v State of Karnataka (2008) 13 SCC 767 (SC).
[130] Union of India v Sriharan (2016) 7 SCC 1 (SC)
[131] Bachan Singh v State of Punjab (1980) 2 SCC 684 (SC)
[132] Project 39A, *Death Penalty India Report* (National Law University Delhi, 2016); Supreme Court of India, orders in *suo motu* proceedings concerning death penalty sentencing (2024).
[133] Mukesh v State (NCT of Delhi) (2017) 6 SCC 1 (SC).
[134] Government of India, Ministry of Home Affairs, execution records (20 March 2020); see also reporting on executions at Tihar Jail.
[135] Juvenile Justice (Care and Protection of Children) Act 2000

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 7 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

Mohammed Arif v Supreme Court of India (2014) 9 SCC 737:

In this significant decision, the Supreme Court held that in death penalty cases, the right of an accused to an oral hearing before a bench of not less than three judges is constitutionally mandated under Article 21[136]. The Court held that the right to be heard before the taking of one's life was a fundamental aspect of the right to life and personal liberty, and that this right could not be satisfied by written submissions alone in a matter of such gravity[137]. This ruling formalised procedural protections that had previously existed only in practice and made them constitutionally enforceable.

Maru Ram v Union of India AIR 1980 SC 2147:

Decided the same year as Bachan Singh, Maru Ram v Union of India addressed the scope of the government's power to remit and commute sentences, including life sentences[138]. A Constitution Bench held that the remission power under Article 72 of the Constitution (President) and Article 161 (Governor) is an executive power that must be exercised with reference to the facts of each case and cannot be withheld on arbitrary grounds[139]. The judgment confirmed that life imprisonment does not automatically result in fourteen-year release but that the executive has a constitutional obligation to consider remission applications on their merits.

Maneka Gandhi v Union of India (1978) 1 SCC 248

While not a sentencing case, Maneka Gandhi v Union of India is foundational to understanding Indian constitutional criminal law because it transformed the interpretation of Article 21[140]. Before Maneka, Article 21 was read narrowly: the state could deprive a person of life or liberty so long as some 'procedure established by law' existed, regardless of whether that procedure was fair or just[141]. Maneka Gandhi rejected this reading, holding that the procedure must satisfy a test of reasonableness — it must be fair, just, and not arbitrary. More importantly, the Court held that Articles 14, 19, and 21 are not mutually exclusive; any law that takes away life or liberty must satisfy all three. This 'golden triangle' test became the constitutional backdrop against which every aspect of India's criminal law — including punishment — must be evaluated.

Conclusion:

The comparative inquiry undertaken in this paper yields conclusions that are simultaneously specific and universal. At the specific level, the three jurisdictions studied India, Iceland, and the Democratic Republic of Congo represent three distinct trajectories in the evolution of penal law. Iceland has, over nearly a century of abolition and progressive reform, built a penal system that is genuinely committed to the rehabilitation of offenders and the humane management of those who must be incarcerated. The system is not perfect its open prisons lack the depth of therapeutic programming available in the broader Nordic region, and recidivism remains a challenge but its philosophical coherence and institutional integrity are genuine. The DRC has, conversely, demonstrated what happens when criminal law is deployed not as an instrument of justice but as a tool of political control, in the absence of the institutional scaffolding judicial independence, legal aid, humane detention conditions, fair trial guarantees that gives any penal system its legitimacy. India's position is more complex than either. Its constitutional commitments to the right to life, equality before the law, and the protection of personal liberty are among the most sophisticated of any national legal system. Its Supreme Court has developed a body of capital sentencing jurisprudence from Jagmohan Singh to Bachan Singh to Bariyar to the current Constitution Bench reference that reflects genuine intellectual seriousness about the conditions

[136] Constitution of India 1950, art 21
[137] Mohd Arif @ Ashfaq v Registrar, Supreme Court of India (2014) 9 SCC 737 (SC)
[138] Maru Ram v Union of India (1981) 1 SCC 107 (SC)
[139] Constitution of India 1950, arts 72 and 161
[140] Maneka Gandhi v Union of India (1978) 1 SCC 248 (SC).
[141] A K Gopalan v State of Madras AIR 1950 SC 27 (SC).

under which the state may take a life. The BNS's introduction of community service marks a meaningful step toward rehabilitative penology. Yet the systemic realities of India's criminal justice system — mass pre-trial detention of the poor, racially and casteist disproportionality in imprisonment, prison overcrowding at crisis levels, chronic underfunding of legal aid, and the radical inconsistency of capital sentencing between trial courts and appellate courts — make the constitutional commitments aspirational in ways that demand urgent and honest response. The universal lesson this comparison teaches is that the character of a country's penal system is not primarily a function of the quality of its criminal statutes. Iceland's penal achievements are not the product of a particularly well-drafted penal code; they are the product of a social and political consensus about the value of human dignity, a level of institutional trust between state and citizen, and a level of material equality that makes crime less prevalent and stigma less permanent. The DRC's penal failures are not primarily the failure of its Penal Code which contains adequate constitutional and statutory language on the right to life and fair trial but the failure of the institutions and the political culture that are supposed to give that language effect. India, occupying the space between these two poles, has both the institutional capacity and the constitutional mandate to move in Iceland's direction rather than the DRC's. The suggestions offered in Chapter VIII of this paper are not utopian; they are grounded in the existing legal architecture, in the jurisprudence the Supreme Court has already developed, and in the practical experience of systems that have navigated similar transitions. What India requires is not a philosophical revolution but an institutional commitment to fund its criminal justice system adequately, to reform its bail and pretrial detention practices urgently, to operationalise the rehabilitative provisions it has enacted, and to engage honestly with the evidence about what punishment achieves and what it does not. The study of comparative punishment ultimately asks each society a question that only it can answer: what are you trying to do when you punish? If the answer is to satisfy an instinct for revenge, the penal systems of many countries including India's will continue to do that efficiently and expensively, at the cost of justice for the poor, the marginalised, and the wrongly accused. If the answer is to reduce crime, to repair harm, and to return the offender as a functioning member of society wherever that is possible, then the evidence from Iceland, from the Nordic nations more broadly, from an accumulating body of criminological research points in a consistent direction. India has, in its Constitution and in its Supreme Court jurisprudence, the intellectual tools to take that direction seriously. This paper is offered in the hope that it will.

INSTITUTE OF LEGAL EDUCATION

(Managed by L TO J LAW ASSOCIATES)

NO. 08, ARUL NAGAR, SEERA THOPPU,
MARUDHAANDA KURICHI, SRIRANGAM - 620102,
TAMILNADU, INDIA.

ISSN 2583-2344