

PENOLOGY & VICTIMOLOGY

**UNIT – II**

Kinds of Punishment · Sentencing Policy  
The Riddle of Capital Punishment

20 explanatory slides · Cases, BNS/IPC & CrPC/BNSS

## ROADMAP

# What this unit covers

1. Kinds of punishment

2. Death sentence

3. Life imprisonment

4. Rigorous & simple

5. Fine & forfeiture

6. Community service

7. Sentencing process

8. Hearing on sentence

9. Aggravating factors

10. Mitigating factors

11. Guideline judgments

12. Capital punishment debate

13. Rarest of rare

14. Constitutional challenges

15. Clemency Arts. 72/161

16. Key cases I

17. Key cases II

18. Statutory map

19. Takeaways

20. Close

# Kinds of punishment – statutory list

BNS s.4 (old IPC s.53) lists the punishments a court may award. Community service is the notable BNS addition.

## Death

Highest punishment. Available only where the statute expressly allows it.

## Imprisonment for life

Means imprisonment for the remainder of natural life, subject to remission unless the court restricts it.

## Imprisonment

Rigorous (hard labour) or simple. Term is fixed by the statute and the court.

## Fine, forfeiture, community service

Fine is almost universal. Forfeiture of property is rare. Community service is a new non-custodial option.

## Death sentence – legal frame

### When available

Only for offences that specify death as a possible punishment (murder, certain terror and war offences, etc.).

### Special reasons

CrPC 354(3) / BNSS 393(3) – judgment must record special reasons if death is awarded.

### Confirmation

Death sentence of a Sessions Court needs High Court confirmation.

### Rarest of rare

Bachan Singh: life is the rule; death the exception.

### Delay & health

Inordinate delay on death row and severe mental illness can bar execution.

### Executive clemency

Arts. 72 and 161 – President / Governor may pardon, commute or remit.

# Imprisonment for life

Life imprisonment is not a coded '14 years' in every case. The legal default is the whole of the remaining natural life, subject to the remission system.

## Maru Ram

Explained the relationship between life sentence, remission and s.433A CrPC.

## Swamy Shraddananda (2)

Court may direct that life means life without remission, as an alternative to death.

## Sriharan

Constitution Bench on who may restrict remission and in which cases.

## Practice

Many 'life' convicts are released after a long term under remission rules – unless the court has barred it.

## Imprisonment, fine and community service

### Rigorous

With hard labour. Used for more serious offending.

### Simple

Without hard labour. Used for milder offences or special classes of offenders.

### Solitary confinement

IPC 73–74; tightly capped; courts treat it as exceptional.

### Fine

May be in addition to or in lieu of imprisonment. Default of fine can lead to further imprisonment.

### Forfeiture

Property of the offender may be forfeited in specified offences.

### Community service

BNS s.4 – a non-custodial, reparative option for appropriate cases.

## Sentencing policies and process

Conviction answers 'guilty or not'. Sentencing answers 'what follows'. Indian law now treats them as two stages.

### Stage 1 – Conviction

Court finds the charge proved. No sentence yet.

### Stage 2 – Hearing

Accused is heard on sentence (Santa Singh; CrPC 235(2) / BNSS 258).

### Reasons

Judgment must give reasons. Death needs special reasons.

### Appeal

Sentence can be reduced or enhanced on appeal / revision within legal limits.

# What the court weighs

## Gravity of offence

Harm caused, weapon, cruelty, vulnerability of the victim.

## Culpability

Intention, planning, role as principal or mere participant.

## Antecedents

First offender versus habitual or professional criminal.

## Age and health

Youth, old age, mental illness, pregnancy.

## Chance of reform

Bachan Singh requires this to be considered, especially before death.

## Societal impact

But 'collective conscience' cannot swallow individualised justice.



## Aggravating circumstances

These push the sentence up. They must be proved or clearly emerge from the record – not assumed.

### **Crime**

Extreme brutality, sexual violence with murder, terrorism, killing of a child or public servant on duty.

### **Offender**

Premeditation, prior convictions, leading role, abuse of official position.

### **Victim**

Special vulnerability, breach of trust, multiple victims.

### **Conduct after**

Destroying evidence, threatening witnesses, no remorse where relevant.

# Mitigating circumstances

These pull the sentence down. Manoj (2022) insists that mitigation material be gathered, not guessed.

## Personal

Young age, clean record, mental disorder, coercion, sudden provocation.

## Social

Poverty, lack of education, family dependants – relevant but not a licence.

## Process

Long delay in trial or on death row; co-accused already given life.

## Reform signs

Conduct in prison, education, restitution to the victim.

# The riddle of capital punishment

The 'riddle' is this: can a constitutional State that affirms dignity take life as punishment? And if yes, in which cases, by which procedure, and with what safeguards?

## **Abolitionist view**

Irreversible, applied unevenly, no proven unique deterrent, offends dignity.

## **Retentionist view**

Some crimes are so grave that only death expresses just deserts and protects society.

## **Indian middle path**

Penalty retained in the statute book, but judicially confined to rarest of rare.

## **International trend**

Many States have abolished. India retains with narrowing judicial control.

## Constitutional map of the death penalty

### Art. 21

Life and personal liberty – procedure must be fair, just and reasonable (Maneka).

### Art. 14

Equality – arbitrary selection of who dies would be unconstitutional.

### Art. 72 / 161

Clemency is a constitutional safety valve after judicial process ends.

### Bachan Singh

Death penalty as such is not unconstitutional; its application is restricted.

### Mithu (1983)

Mandatory death under old s.303 IPC struck down – no discretion is arbitrary.

### Shatrughan Chauhan

Unexplained delay in disposing mercy petitions can commute death to life.

## Rarest of rare – how courts apply it

It is not a slogan. The court compares the crime and the criminal, asks whether life imprisonment is unquestionably foreclosed, and records special reasons.

### Crime test

Manner, motive, anti-social nature, magnitude, personality of the victim (Machhi Singh).

### Criminal test

Age, mental state, probability of reform, lack of antecedents.

### Balance

Even a horrific crime may not attract death if the offender can be reformed.

### Manoj (2022)

State must produce mitigation data; court cannot sentence in an informational vacuum.

## Pardon and commutation

### Art. 72

President – Union offences and death sentences.

### Art. 161

Governor – State offences.

### Scope

Pardon, reprieve, respite, remission, commutation.

### Judicial review

Limited: mala fide, irrelevant considerations, unexplained delay (Epuru Sudhakar; Shatrughan).

### Not an appeal

Clemency is executive, not a third judicial hearing on guilt.

### Death row

Mental health, delay and solitary conditions are now relevant facts.

## Capital punishment – core case chain

**Jagmohan Singh (1973)**

Death penalty upheld; sentencing discretion not arbitrary as such.

**Rajendra Prasad (1979)**

Special reasons; death not for ordinary murder.

**Bachan Singh (1980)**

Rarest of rare. Life is the rule.

**Machhi Singh (1983)**

Practical illustrations of rarest of rare.

**Mithu (1983)**

Mandatory death is unconstitutional.

**Triveniben (1989)**

Delay after death sentence is a relevant circumstance.

## Later cases on sentence and death

**Swamy Shraddananda (2) (2008)**

Life without remission as a substitute for death.

**Santosh Bariyar (2009)**

Rarest of rare must be principled, not impressionistic.

**Shatrughan Chauhan (2014)**

Guidelines on mercy petitions and delay.

**Mohd. Arif (2014)**

Review hearing in death cases to be in open court.

**Chhannu Lal Verma (2019)**

Possibility of reform must be considered with evidence.

**Manoj v. State of M.P. (2022)**

Structured mitigation before confirming death.



## Sentencing policy questions for answers

### Consistency

Similar cases should not produce wildly different sentences without reasons.

### Transparency

Reasons let the accused, victim and appellate court understand the choice.

### Victim voice

Victim impact is relevant but does not replace legal criteria.

### Prison reality

A long sentence is only as reformatory as the prison system allows.

### Mandatory minima

Reduce disparity but can produce injustice in unusual facts (Mithu logic).

### BNS change

Community service opens a non-custodial path – mention it in modern answers.

## Quick statutory map for UNIT-II

### **BNS 4 / IPC 53**

Kinds of punishment.

### **BNS 64–73 / IPC 302 etc.**

Offences that may carry death or life.

### **BNSS 258 / CrPC 235(2)**

Hearing on sentence.

### **BNSS 393 / CrPC 354**

Contents of judgment; special reasons for death.

### **BNSS confirmation**

High Court confirmation of death.

### **Arts. 72, 161, 21, 14**

Clemency and constitutional limits.

# Key takeaways

- 01** Know the statutory list in BNS 4 / IPC 53, including community service.
- 02** Sentencing is a separate reasoned stage after conviction.
- 03** Life usually means natural life, subject to remission unless the court bars it.
- 04** Death is constitutional but confined to rarest of rare with special reasons.
- 05** Mitigation evidence is now a requirement, not a courtesy (Manoj).
- 06** Bachan Singh – Machhi Singh – Mithu – Shraddananda – Shatrughan – Manoj is the case spine.

# End of UNIT – II

Next: UNIT-III • Prison reforms, alternatives, victimology introduction

20 slides • Light academic edition