

Why India must do away with capital punishment

Abhinav Mehrotra and Amit Upadhyay — September 10, 2026



A recent Supreme Court decision on execution methods highlights the urgent need for an evidence-led review of legal hanging in India. The higher judiciary's reluctance to review hanging shifts the focus toward establishing an expert body for evidence-led capital punishment reform.

A question mark over capital punishment: The debate over the death penalty in India has usually turned on the larger constitutional question of whether the State should possess the power to take a life at all. A related but distinct question has received far less attention: if the state retains that power, how should it be exercised?

That question has returned to the centre of constitutional debate. In January 2026, a Supreme Court bench of Justices Vikram Nath and Sandeep Mehta declined to refer for reconsideration the constitutional validity of execution by hanging under erstwhile [Section 354\(5\) of the Code of Criminal Procedure](#) and its successor, [Section 393\(5\) of the Bharatiya Nagarik Suraksha Sanhita, 2023 \(BNSS\)](#).

The petition, filed by senior advocate Rishi Malhotra, sought a shift to what it described as less painful methods, including lethal injection, shooting, electrocution or the gas chamber.

The Court held that no case had been made out to send the matter to a larger bench, while leaving the door open to future reconsideration if compelling scientific or medical evidence demonstrates that another method would cause less pain and better protect human dignity under Article 21. Importantly, the Court also clarified that its judgment would not preclude the Union Government from constituting an expert body to independently review the question. This is not the first time the issue has reached the Court. In [Deena v. Union of India](#), the Supreme Court upheld the constitutionality of execution by hanging, holding that the method did not offend Article 21. The persistence of the challenge across more than four decades suggests that the question cannot simply be dismissed as an attempt to relitigate the broader case against capital punishment.

Under the BNSS, the law continues to prescribe death by hanging. Section 393(5) provides that where a sentence of death is passed, the order shall direct that the convict be hanged by the neck until death, mirroring the language that previously appeared in Section 354(5) of the CrPC. The provision has not changed in substance in the new Act. The more difficult question, then, is not whether hanging is presently authorised, which plainly is. The question is whether a method devised in a very different era continues to satisfy contemporary understandings of dignity, forensic science and humane punishment.

Institutional history of capital punishment

This concern has a documented institutional history. The Law Commission of India examined the question in its [187th Report \(2003\)](#), which considered the mode of execution of death sentences and concluded that hanging was not free of physical suffering, while stopping short of recommending its outright abolition in favour of a specific alternative.

That a Law Commission report on this narrow question has sat unresolved for over two decades is itself saying that the issue has never been a proxy for the abolition debate. It has persisted on its own terms.

In its landmark [262nd Report](#) in 2015, the Law Commission went a step further and opposed the death penalty itself. It stated that capital punishment violates the right to life and dignity, fails as a deterrent, and is applied arbitrarily across cases, and on that basis, it recommended the swift abolition of the death penalty for all ordinary crimes, while proposing that it be retained, for now, only for terrorism-related offences and for waging war against the state.

This is a materially different intervention from the 187th Report discussed above, as the 262nd Report reopened the more fundamental question of whether the sentence should exist at all. [Article 21](#) provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Since [Maneka Gandhi v. Union of India](#), the Supreme Court has read into that guarantee a requirement that any procedure depriving a person of life or liberty be fair, just and reasonable, and not merely procedurally enacted. Article 21 has since evolved into a broad textual anchor for the constitutional protection of dignity.

The relevant question is therefore not whether a person under sentence of death holds a constitutional right to a painless death. It is whether the State bears a continuing obligation to minimise unnecessary pain, cruelty and degradation in carrying out a sentence it has lawfully imposed.

Lethal injection is often presented as the most clinically sophisticated alternative, and the petitioner before the Supreme Court pointed to its adoption across most death penalty cases in various states in the United States. That comparative practice, however, does not by itself establish that lethal injection causes less suffering.

Painful methods of death sentence

During earlier hearings in this litigation, the Court had itself noted research from the United States suggesting that botched or prolonged lethal injections have, in some documented cases, taken tens of minutes and involved visible distress, undercutting the assumption that a clinical-looking procedure is necessarily a painless one.

The Union government's own affidavit in the proceedings took the position that alternative methods, if administered improperly, could produce outcomes at least as troubling as hanging. Electrocution and shooting raise different concerns. Shooting can produce rapid death in some circumstances, but carries its own risks of a mismanaged execution and raises separate questions about bodily violence and dignity in the manner of dying. Each method requires assessment against actual clinical and forensic evidence rather than an intuition that a more technologically mediated death is automatically a more dignified one.

India does not need to replace hanging simply because another method appears more modern, but what the moment calls for is a rigorous, evidence-led inquiry. The Union government would be well placed to constitute an independent, multidisciplinary expert body, comprising forensic pathologists, anaesthesiologists, constitutional lawyers, prison

administrators and human rights specialists, to undertake a transparent comparative assessment of methods of execution against a single metric as to which method, if any, minimises pain and preserves dignity in the process of dying.

The Supreme Court has indicated that such a review by the executive is not precluded by its recent order. The Attorney General had, in earlier hearings in this very litigation, told the Court that the government was considering constituting such a panel.

That undertaking should now be treated as a matter of institutional record rather than a hearing-room statement without consequence. The answer to this question should not be determined by public sentiment, political convenience or the emotional character of the underlying offence. It should be built on evidence, openly gathered and openly tested.

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