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ARBITRARINESS IN CAPITAL SENTENCING: REVISITING THE "RAREST OF RARE" DOCTRINE

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ABSTRACT

The "rarest of rare" doctrine, established in *Bachan Singh v. State of Punjab*, was intended to constrain judicial discretion and ensure structured proportionality in imposing capital punishment. However, the absence of a concrete statutory definition has resulted in a judge-centric jurisprudence marked by arbitrary over-imposition on one hand and the unjust under-enforcement of capital sentences for heinous crimes on the other. This paper evaluates the constitutional, statutory, and operational inconsistencies in Indian capital sentencing jurisprudence from the Code of Criminal Procedure, 1898 to contemporary precedents. Through a critical examination of statutory transitions, Supreme Court rulings, and key judicial classifications, the study highlights how perfunctory mitigation inquiries and subjective bench compositions compromise both retributive justice and constitutional due process. The paper argues for the preservation of capital punishment grounded in retributive justice, deterrence, and societal protection, proposing a rigid statutory framework of mandatory bifurcated hearings and objective mitigation standards to eliminate arbitrary outcomes.

1. Introduction

The administration of capital punishment in India is anchored in statutory enactments and governed by constitutional parameters. Historically, the legal framework traces its roots to the Code of Criminal Procedure, 1898, enacted during the British colonial period. Under Section 367(5) of the 1898 Code, capital punishment was designated as the preferred sentence for murder, obligating sentencing courts to record written justifications if they opted for life imprisonment instead. This statutory construction reflected a legislative posture wherein the death penalty was treated as the norm rather than the exception.

Following India's independence and the adoption of the Constitution, the intersection of capital punishment with fundamental rights became a central subject of constitutional law. Article 21

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of the Constitution guarantees that no person shall be deprived of life or personal liberty except according to "procedure established by law." Through subsequent jurisprudence—most notably starting with *Maneka Gandhi v. Union of India* (1978)[1]—the Supreme Court established that any procedure depriving an individual of life or liberty under Article 21 must be just, fair, and reasonable, rather than arbitrary, oppressive, or fanciful. Consequently, statutory provisions authorizing the ultimate penalty of death can survive constitutional scrutiny only when surrounded by rigorous, non-arbitrary procedural mechanisms.

A significant legislative shift occurred with the enactment of the Code of Criminal Procedure, 1973, which repealed the 1898 Code. Section 354(3) of the 1973 Code introduced a profound inversion by mandating that sentencing judges record "special reasons" when choosing to impose the death penalty over life imprisonment or a term of years. This statutory amendment established life imprisonment as the general baseline for murder, reserving capital punishment as an extraordinary exception.

This structural inversion was further reinforced by the introduction of Section 235(2) CrPC, which created a bifurcated trial procedure requiring a separate evidentiary hearing on sentencing post-conviction. Through these statutory provisions, Parliament formally replaced automatic or default capital outcomes with structured judicial discretion, obligating courts to conduct an individualized inquiry into the circumstances of each case before awarding the ultimate sanction.

2. Conceptualizing the "Rarest of Rare" Doctrine

2.1 From *Jagmohan Singh* to *Bachan Singh*: Doctrinal Evolution

The judicial framework governing capital sentencing evolved through a series of key constitutional Bench rulings. The constitutional validity of the death penalty was first formally challenged in *Jagmohan Singh v. State of U.P.* (1973)[2]. In upholding Section 302 of the Indian Penal Code, the Supreme Court relied heavily on the Law Commission of India's 35th Report on Capital Punishment (1967)[3]. Commissioned in the 1960s following parliamentary debates regarding whether India was prepared for abolition, the 35th Report recommended the retention of the death penalty, concluding that India's vast socio-economic conditions, diverse populace, and prevailing law-and-order challenges necessitated a powerful deterrent. The Commission reasoned that society was not yet positioned for abolition and that the state required the ultimate

[1] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
[2] *Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947.
[3] Law Commission of India, *35th Report on Capital Punishment* (1967).

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penal sanction to safeguard public order.

Integrating this rationale, the Court in *Jagmohan Singh* affirmed that capital punishment served a legitimate state interest in deterrence and retribution under Article 21, holding that statutory judicial discretion in choosing between life imprisonment and execution was neither unguided under Article 14 nor an unreasonable restriction under Article 19.

Following the statutory shift under the 1973 Code, judicial philosophy regarding sentencing became deeply divided. In *Rajendra Prasad v. State of U.P.* (1979)[4], Justice Krishna Iyer advocated a narrow, near-abolitionist stance, contending that the death penalty should be restricted almost exclusively to white-collar crimes or cases where an offender poses an uncontrollable threat to society.

However, this narrow interpretation was categorically rejected by the Constitution Bench in *Bachan Singh v. State of Punjab* (1980)[5], which overruled *Rajendra Prasad* and reaffirmed the core holding of *Jagmohan Singh* that capital punishment per se is constitutionally valid. Nevertheless, to prevent judicial discretion from degenerating into arbitrary execution, *Bachan Singh* instituted the "rarest of rare" doctrine. The Supreme Court held that the death penalty must be restricted strictly to exceptional cases where the alternative option of life imprisonment is unquestionably foreclosed as inadequate. Writing for the majority, Justice Sarkaria emphasized that sentencing discretion cannot be governed by subjective judicial "wish," but must instead rest strictly on objective "justifiability." By establishing this high threshold, the Court reconciled the statutory retention of capital punishment with the constitutional guarantees of fairness and non-arbitrariness under Article 21.

2.2 Balancing Aggravating and Mitigating Circumstances

To operationalize the "rarest of rare" doctrine and prevent arbitrary decision-making in capital cases, the Supreme Court established a key framework in *Bachan Singh v. State of Punjab* whereby sentencing courts are required to construct a thorough balance sheet of aggravating and mitigating factors. This two-part inquiry ensures that the death penalty is not imposed based solely on the severity of the crime; instead, it demands a complete evaluation of both the offense and the offender.

At the centre of this approach is the principle of proportionality. Under this framework, judges must weigh circumstances surrounding the crime—such as pre-planned design, extreme violence, or unusual cruelty—against mitigating factors related to the defendant, including their

[4] *Rajendra Prasad v. State of U.P.*, AIR 1979 SC 916.
[5] *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

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age, mental state, background, and potential for reform. The underlying logic dictates that life imprisonment must be clearly ruled out as insufficient before a sentence of death can be legally justified. By establishing this structured balancing test, the judiciary seeks to align capital punishment with the constitutional protection against arbitrary state action under Article 21, ensuring that sentencing relies on objective standards rather than personal judicial discretion.

3. The Macchi Singh Framework and its Judicial Application

3.1 The Fivefold Classification under *Macchi Singh v. State of Punjab*

To operationalize the parameters of the rarest of rare doctrine established in *Bachan Singh v. State of Punjab*, the Supreme Court of India in *Macchi Singh v. State of Punjab*[6] formulated a structured, fivefold categorization of circumstances to guide courts in identifying cases that warrant the imposition of the death penalty. This classification addresses the societal demand for proportionality when the collective conscience of the community is intensely shocked. The five specific categories are delineated as follows:

1. **Manner of Commission of Offence:** This category applies when a murder or heinous crime is committed in an extremely brutal, diabolical, revolting, or dastardly manner calculated to arouse intense and extreme indignation in the community. Illustrative instances include setting a victim's house on fire with the objective of roasting them alive, subjecting a victim to prolonged and inhuman acts of torture or cruelty to bring about death, or mercilessly dismembering and cutting the victim's body into pieces.
2. **Motive for Commission of Murder:** This encompasses cases where the execution of the murder evinces total depravity, meanness, and cold-blooded calculation. Examples include a hired assassin executing a killing purely for monetary reward, premeditated murders committed with the object of inheriting property or gaining control over the estate of a ward, or betrayals of the worst order.
3. **Social Impact and Public Outcry:** This category targets socially abhorrent crimes where offenses—such as the murder of a member of a Scheduled Caste or a minority community—are perpetrated not merely for personal grievances, but with the specific intent to arouse social wrath, invoke community terror, or instantiate extreme dowry-related atrocities like bride-burning for remarriage.
4. **Magnitude of the Crime:** This applies when the scale of the crime is enormous in proportion, specifically involving mass killings, the systematic elimination of multiple

[6] *Macchi Singh v. State of Punjab*, AIR 1983 SC 957.

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members of a single family, caste, or community, or widespread devastation.

5. **Vulnerability of the Victim:** This category is invoked when the target of the crime is a helpless, defenceless person incapable of offering resistance, such as an innocent minor child, a woman subjected to brutal atrocities, an aged or infirm individual, or a public figure in a position of trust and dominance.

3.2 Disparity in the Judicial Application of the Framework

The practical application of these judicial parameters reveals both the enforcement of capital punishment in extreme circumstances and the inherent disparities in judicial determinations.

In *State v. Jasbir Singh and Kuljeet Singh* (the Ranga and Billa case)[7], the accused were convicted for the brutal abduction, rape, and murder of a sixteen-year-old girl and her fourteen-year-old brother as they travelled toward All India Radio in Delhi. The Supreme Court and the High Court confirmed the death sentence under the rarest of rare doctrine, observing that professional criminals who constitute an extreme menace to social order and security deserve no sympathy, leading to the execution of the sentence on January 31, 1982.

In *Kehar Singh v. Delhi Administration*[8], the Supreme Court upheld the capital punishment awarded to the conspirators and assassins of Smt. Indira Gandhi, the then Prime Minister of India. The Court affirmed that the offense constituted one of the rarest of rare cases, marked by a betrayal of the worst order since the assassins were security guards on duty sworn to protect the victim, thereby subverting the foundational security and constitutional order of the State.

Conversely, the judiciary has maintained strict boundaries to prevent the overextension of the doctrine to cases where specific intent or procedural thresholds are lacking. In *Amrit Singh v. State of Punjab* (2007)[9], the accused was convicted for the aggravated sexual assault of a seven-year-old minor girl, which resulted in her death due to massive internal haemorrhaging. Despite the grave vulnerability of the victim and the inherent brutality of the act, the Supreme Court commuted the trial court's capital sentence to life imprisonment. The Court reasoned that because the death was caused by excessive bleeding rather than a specific overt act intended to kill, the prosecution had not conclusively established a premeditated intention to murder under Section 302 IPC, thereby removing the case from the "rarest of rare" category.

These divergent precedents underscore that while the fivefold classification under *Macchi Singh* provides structural guidance, the ultimate application of the death penalty remains

[7] *State of Punjab v. Jasbir Singh*, AIR 1982 SC 98.
[8] *Kehar Singh v. Delhi Administration*, AIR 1988 SC 1883.
[9] *Amrit Singh v. State of Punjab*, AIR 2007 SC 136.

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intensely sensitive to individual judicial interpretations of intent and the specific factual matrix of each case.

4. Current Challenges and Systemic Flaws in Doctrine Application

4.1 Defining "Rarest of Rare": The Statutory Vacuum

Despite the establishment of structured sentencing guidelines, the administration of capital punishment continues to suffer from deep-seated conceptual and operational vulnerabilities. A primary flaw lies in the complete absence of a concrete statutory definition for what constitutes the "rarest of rare" category. When the Supreme Court formulated this threshold, it deliberately avoided providing a rigid definition, instead leaving the determination entirely open to the facts and circumstances of individual cases.

This structural ambiguity has directly enabled unfettered and unguided judicial discretion. Without precise legislative boundaries, the selection process depends heavily on subjective interpretations, creating a profound state of uncertainty in capital sentencing that sits in direct tension with constitutional due process and the principle of equality.

4.2 Arbitrary Non-Application in Heinous Offenses

The inherent subjectivity of the "rarest of rare" doctrine manifests starkly in its erratic and non-uniform application, particularly in cases involving exceptionally heinous crimes where the doctrine ought to be invoked. In practice, courts frequently fail to impose the death penalty even when faced with brutal, premeditated, or horrific offenses that severely shock the collective conscience of society. Because the balancing test relies heavily on individual judicial perspectives, courts often grant undue weight to speculative mitigating factors—such as the mere possibility of reform or background hardship—without requiring robust evidentiary proof.

This non-application is acutely illustrated in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009)[10], where despite the cold-blooded kidnapping, murder, and brutal decapitation of the victim with a hacksaw, the Supreme Court commuted the capital sentence to life imprisonment on the ground that the State had not conclusively disproved the possibility of reform. Similarly, in *Swami Shraddhananda v. State of Karnataka* (2008)[11], the Court declined to confirm the execution of an offender who buried his wife alive for pecuniary gain, opting instead to devise a modified sentence of life imprisonment without remission.

[10] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, AIR 2009 SC (Supp) 2234.
[11] *Swami Shraddhananda (2) v. State of Karnataka*, AIR 2008 SC 3040.

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Due to the lack of concrete yardsticks in the form of statutory provisions, capital sentencing had become "judge-centric," leading to arbitrary under-enforcement. As a result, brutal offenses of comparable gravity receive wildly divergent punishments, where one bench classifies an act as "rarest of rare", another commutes a virtually identical heinous crime to life imprisonment, resulting in a failure of retributive justice.

4.3 Judge-Centric Jurisprudence and Systemic Arbitrariness

The absence of objective statutory benchmarks has given rise to widespread asymmetric reasoning and highly disparate judicial outcomes across both trial and appellate tiers. Empirical research and judicial self-assessments reveal that capital sentencing has become intensely judge-centric, where personal predilections, socio-cultural backgrounds, class perspectives, and institutional philosophies dictate whether an offender lives or dies. While certain judges prioritize mitigating factors and reformative prospects, others adopt a blanket dismissal of mitigation in the face of heinous crimes, citing public outcry and collective conscience as overriding justifications.

This systemic susceptibility to individual judicial disposition is vividly illustrated at the trial level. For instance, Additional District and Sessions Judge Ravi Kumar Diwakar drew national attention after awarding 23 death sentences across 11 cases within a span of just six months (between April and September 2026) while presiding over a fast-track court in Muzaffarnagar, Uttar Pradesh, before being transferred to a family court by order of the Allahabad High Court[12]. Such stark anomalies in sentencing rates across different benches underscore how capital outcomes frequently hinge on the personal penal philosophy of the presiding judge rather than uniform statutory metrics.

This divergence leads to a scenario where similarly situated defendants receive diametrically opposed sentences depending entirely on the composition of the bench—a phenomenon that directly infringes upon the constitutional guarantee of equality before the law under Article 14. Under established constitutional principles, any penal regime that produces wildly inconsistent outcomes for comparable offenses operates arbitrarily, thereby violating Article 14's prohibition against unguided judicial discretion. Furthermore, such unguided penal discretion places unreasonable constraints on fundamental freedoms guaranteed under Article 19, which mandates that any procedure restricting personal liberty must satisfy the test of reasonableness and non-arbitrariness. This systemic failure breaches the "just, fair, and reasonable" standard

[12] "Judge Who Gave 23 Death Sentences in 6 Months Transferred to Family Court in UP," *Deccan Herald*, 25 October 2026.

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mandated under Article 21, turning the decision over life and death into a outcome of judicial chance rather than a principled legal process.

4.4 The Problem of Irrevocability: The Risk of Judicial Error and Finality of Capital Punishment

Compounding these systemic inconsistencies is the absolute irrevocability intrinsic to capital punishment. Unlike custodial sentences which can be mitigated, reviewed, or compensated upon the discovery of a judicial error, the execution of an individual represents an irreversible termination of life for which no corrective mechanism exists. The criminal justice framework relies heavily on oral testimony, which remains acutely vulnerable to perjury, factional biases, false police framing, mistaken eyewitness identification, and investigative lapses.

Given the inherent imperfections of the investigative and trial machinery, the risk of judicial error ceases to be a theoretical abstraction and emerges as an alarming reality. When combined with unguided judicial discretion and the collapse of rigorous mitigation scrutiny, the finality of the death penalty transforms the judicial administration of capital punishment into an inherently hazardous lottery. From a constitutional standpoint, when an irreversible sentence is inflicted through a mechanism plagued by subjective reasoning, evidentiary vulnerabilities, and bench-dependent variance, the state fails to satisfy the substantive procedural standards required under Article 21. An execution resulting from a flawed or arbitrary process constitutes an unconstitutional deprivation of the right to life, rendering the retention of capital punishment legally fragile under the tripartite mandate of the Golden Triangle—Articles 14, 19, and 21.

5. Conclusion and Recommendations

5.1 Synthesis of Findings: Systemic Subjectivity and the Dual Injustice of Arbitrary Sentencing

The examination of the "rarest of rare" doctrine reveals a fundamental dichotomy between the theoretical parameters established by constitutional jurisprudence and the realities of judicial administration. While landmark precedents structured the death sentencing framework to prevent unbridled caprice, the absence of a concrete statutory definition has left the doctrine vulnerable to profound subjectivity. Sentencing outcomes remain deeply disparate, fluctuating across trial and appellate tiers based on judge-centric discretion rather than uniform statutory standards. Furthermore, perfunctory sentencing hearings fail to conduct genuine inquiries into the background and reformative potential of the accused, reducing the balancing of aggravating and mitigating factors to an illusory safeguard.

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Crucially, this pervasive judicial discretion generates a profound structural injustice in both directions: while arbitrary imposition risks wrongful executions, the inverse flaw of under-enforcement proves equally detrimental to the administration of justice. In numerous instances involving exceptionally brutal and heinous crimes where capital punishment ought to be doled out to satisfy the demands of proportional retribution and public conscience, courts fail to invoke the death penalty. Due to unguided subjective evaluations and the uncritical acceptance of speculative mitigating factors, perpetrators of horrific offenses escape the gallows, resulting in an arbitrary failure of retributive justice that leaves heinous crimes inadequately punished. Compounding these structural flaws is the absolute irrevocability of capital punishment, which transforms the inherent risks of judicial error and investigative bias into an intolerable hazard within the administration of criminal justice.

5.2 Preserving Capital Punishment Through Strict Objective Safeguards

To address these pervasive systemic deficiencies—including both arbitrary over-imposition and the unwarranted escape of offenders who justly deserve capital punishment—the retention of the death penalty remains imperative. A significant milestone in this discourse is the Law Commission of India's 262nd Report on *The Death Penalty* (2015)[13], which recommended the ultimate abolition of capital punishment for all ordinary crimes, retaining it solely for terror-related offenses and waging war against the State. The Commission premised its abolitionist stance on the inherent risk of judicial error, the lack of demonstrable empirical deterrence, and the systemic arbitrariness plaguing sentencing discretion across trial and appellate forums.

However, while the 262nd Report correctly identified profound procedural defects in capital jurisprudence, its recommendation for blanket statutory repeal overlooks the vital constitutional and social functions fulfilled by the death penalty. The foundational penological imperatives of retributive justice, deterrence, societal protection, the affirmation of the collective conscience, and the incapacitation of dangerous offenders necessitate that the ultimate penal sanction continue to exist within India's legal architecture. When exceptionally heinous, diabolical crimes are committed, capital punishment serves as an indispensable instrument of state authority to affirm public morality and satisfy the proportional demands of justice.

Rather than abolishing a penal necessity due to administrative flaws, the legal apparatus must reform the operational mechanics of capital sentencing. To eliminate judge-centric subjectivity

[13] Law Commission of India, *262nd Report on The Death Penalty* (2015).

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and arbitrary under-enforcement, capital punishment must operate within a rigid, standardized legal framework. This requires establishing strict objective safeguards, such as statutorily mandated, independent mitigation investigations prior to sentencing hearings, strict evidentiary thresholds for proving unreformability, and binding statutory guidelines defining aggravating parameters. By getting such a rigorous system in place, the legal process gains the necessary predictability and precision to ensure that individuals who genuinely warrant capital punishment do not get away with lesser sentences, thereby balancing penal necessity with rigorous constitutional protection.

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