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THE "RAREST OF RARE" DOCTRINE REVISITED: JUDICIAL DISCRETION AND SENTENCING UNCERTAINTY IN INDIAN DEATH PENALTY JURISPRUDENCE

AUTHORED BY - ROSEMOL SEBY

Abstract

The capital punishment in India is based on the doctrine of 'the rarest of rare' cases. The Death penalty is one of the harshest punishments that are provided under the criminal law which includes capital punishment to the accused for his wrongdoing. Here the question arises whether a state has right to take a life of a person, however he crosses any limit of barouseness. First is moralists who feel that this penalty is necessary to deter the other like-minded person, Second is progressive, who argue that is only a judicial taking of life Which court mandated. An analysis of criminal jurisprudence will find that the death penalty is only given in the extreme or "rarest of rare cases" that involve a high level of crime, which poses a great danger to society. In deciding whether he deserves the death penalty, not only is the culpability of the act dangerously taken in to account, but also the individual characteristics and circumstances and the gravity of the offence, must be taken into consideration. So the punishment should depend on the seriousness of the offender's act and the social response to it. The "rarest of rare Doctrine' can be divided into two sub-parts. Aggravating circumstances and mitigating circumstances - in case of aggravating conditions, the judge may on his will force capital punishment yet for mitigating, the bench will not grant capital punishment under rarest of rare cases.

The Rarest of the Rare Doctrine

In 1980, in the Bachan Singh v. State of Punjab[1], the apex court proposed the rarest of rare doctrine and since then life imprisonment is the rule and death penalty the exception as in India it is awarded only in the gravest of cases.

[1] Bachan Singh v. State of Punjab, (1980)2 SCC 684, AIR 1980 SC 898

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In the Machhi Singh & Ors v State of Punjab[2], the court laid down certain criteria for assessing when a case could fall within the purview of rarest to rarest. The criteria are analyzed below:

1. Manner of committing murder - When the murder is committed in an extremely cruel, ridiculous, diabolical rebellious or reprehensible manner so as to arouse intense and extreme outrage of the community; For example,
    a. When the victim's house is set on fire with the intention of baking her alive.
    b. When the victim is tortured for inhuman acts leading to her death.
    c. When the victim's body is mercilessly mutilated or cut into pieces.
2. Motive for Murder - When a murder is intended to be a total depravity and cruelty; For example:
    a. A hired killer is killing just for the reward of money.
    b. A cold-blooded murder involving a thoughtful design to gain control of property or some other selfish gain.
3. Socially heinous nature of crime - When a Person belonging to a backward class is murdered. Cases of burning of the bride, popularly known as dowry death are also included in this.
4. Magnitude of the crime - when the proportion of crime is very high, for example, in cases of multiple murders.
5. Personality of the victim of the murder- When the victim of the murder is an innocent child, a helpless woman or person (due to old age or infirmity, a public figure, etc.

The Scope of the principle of rarest of rare

In Jagmohan Singh v. State of UP[3], the Supreme court upheld the constitutionality of the death Penalty, holding that it is not merely a deterrent but marks the rejection of the crime on the part of the society. The court also felt that Indians could not afford to experiment with abolishing the death penalty. Again constitutionalism was upheld in the case of Bachchan Singh. Thus, the following propositions emerged from the case of Bachchan Singh:

1. The extreme step of imposing the death penalty need not be applied except in cases of extreme conviction.
2. Before opting for the death penalty, the circumstances of the offender Should be kept in mind (increasing and decreasing conditions).

[2] Machhi Singh & Ors v. state of Punjab, (1983)3 SCC 470, 1983 AIR 957, 1983 SCR (3) 413
[3] Jagmohan Singh v. State of UP, 1973 AIR 147, 1973 SCR (2) 541, (1973)1 SCC 20

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3. Life imprisonment is the rule and the death penalty is the exception. In other words, the death penalty should be imposed only in cases where life imprisonment proves to be a wholly insufficient punishment in relation to the exact circumstances of the offence.
4. There is a need to prepare a balance sheet do all the stimulating and mitigating conditions and the mitigating conditions should be given full importance so that a balance can be struck between the two.

Establishment of the doctrine

The doctrine of 'the rarest of rare' case was established in the landmark case of Bachan Singh v. State of Punjab[4],where the constitutional bench raised question is regard to the constitutional validity of death penalty for murder under section 302 of IPC, 1860. The doctrine of Rarest of Rare in capital sentencing was evolved by the Indian supreme court in this case[5], to restrict the imposition of the death penalty and to ensure it is awarded only in exceptional circumstances. It is intended as a safeguard against arbitrary executions. Death penalty continues to be one of the most debated and emotionally charged aspects of criminal justice in lndia. In Bachan Singh,[6] it laid down that death penalty should be imposed only when alternative punishment is unquestionably foreclosed. The majority opinion emphasized that Article 21 is not violated if capital punishment is applied under strict scrutiny, careful reasoning and proportionality[7]. But several case law analysis reveals disparities in sentencing even for similar offences, reflecting structural and procedural flaws. It reflects ongoing tensions between retributive justice and judicial restraint. The doctrine of rarest of rare is established to guide the discretion of sentencing judges in the choice of life-or-death sentences. But it did not provide guidelines for exercising this discretion, leading to more confusion and contradictions in decisions. Ultimately, It is in the case of machi Singh, the court Provided a classification of cases from rarest to rarest. The death penalty does not violate the provisions of Article 21 of the Indian constitution as it states that the right to life and personal liberty shall be given to any person so much as not to violate the rights of other people and it says it can be curtailed as per the procedure established by law. India only carries out death penalty in the rarest of rare cases, the implementation is very low.

[4] Bachan Singh V. State of Punjab, (1980)2 SCC 684, AIR 1980 SC 898
[5] Ibid
[6] Bachan Singh V. State of Punjab, (1980)2 SCC 684, AIR 1980 SC 898
[7] Ibid

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Capital punishment in the light of Constitutional Morality and human rights jurisprudence

As the concept of human rights was articulated in the form of fundamental rights in the constitution of India, and as India became a signatory to various international treaties, the question of capital punishment became an issue of public debate. Certain International conventions claims to abolish the death sentence because the death sentence violates the basic right to life. For Instance, UDHR states in Article-3, Everybody should have the right to dignity and life[8], Article -5 states, 'nobody will be tortured or exposed to cruel, inhuman or degrading treatment or punishment[9]. India has not abolished death penalty, yet nation has shifted to restrictive system of capital punishment which is established in Bachan Singh[10].

Philosophical Underpinnings: Retributive Vs. Reformative justice

In Rajendra prasad v. State of UP[11], justice Krishna Iyer introduced a human rights lens. He held that capital punishment could only be justified if it was necessary to prevent crime. He warned that the death penalty must not be based on the crime alone but must consider the criminal's character and reformative possibility. He emphasized Article 21 and the need for fair, just and reasonable sentencing according to the procedure established by law.

Justice P.N Bhagwati stressed that sentencing must be free from personal bias. He declared that the state must not take life if there is a possibility of reform. He believed death penalty served no penological purpose. His opinion reminded the judiciary that procedural fairness alone cannot justify death.

Retributive justice holds that the offender deserves punishment. It sees crime as a personal choice made with awareness of the consequences, punishment therefore must reflect the severity of crime, Bachan Singh was a turning point where majority opinion rejected pure retributivism. It held that capital punishment must be based on a careful evaluation of aggravating and mitigating circumstances.

[8] UDHR, G.A. Res. 217 A (111) art. 3 (1948)
[9] UDHR, G.A. Res. 217 A (111), Art.5 (1948)
[10] Bachan Singh V. State of Punjab, (1980)2 SCC 684, AIR 1980 SC 898
[11] Rajendra prasad v. State of UP, 1979 AIR 916, 1979 SCR (3) 78, 1979 SCC (3) 646.

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In Dhananjoy Chatterjee v. State of West Bengal[12], the court stressed societal need for retribution as death sentence stating it satisfied the collective conscience. In contrast, Santhosh Kumar Satishbushan Bariyar v. State of Maharashtra[13], stressed on mitigating circumstances and the reformative possibility. The doctrine remained philosophical ground for both sides but lacked precision in application. India continues to have capital punishments in certain situations, but in order to Stop the arbitrariness, it introduced the 'Rarest of Rare doctrine and subjected it to stringent judicial review. Instances of wrongful convictions in many circumstances have highlighted the same concerns seen elsewhere. The president of India has constitutional discretion in granting mercy, pardoning, or commuting death sentences. Yet, this is not unlimited, courts can scrutinize mercies granted to Verify that they are in conformance with constitutional Principles[14], and do not void justice. Indian law precludes execution in certain circumstances, such as for pregnant women, undue delays on death row invalidate the execution. These restrictions illustrate the balancing that the Country attempts to reach between retributive justice and value of life and human dignity.

Whether the Doctrine of the Rarest of Rare ensures reliable judicial safeguards against arbitrary imposition of the death penalty or it's subjective element cause ambiguity and disparity in outcomes

Judges have to consider both the aggravating and mitigating factors, assess the gravity of the offence and consider society's 'collective conscience'- inherently subjective factors. In consequence, different benches may reach different conclusions even when presented with similar facts, leading to criticism on grounds of inconsistency, unpredictability, and potential arbitrariness in capital sentencing.

In Machi Singh v State of Punjab[15], the court ordered that judges must consider whether to impose the death penalty, pre-emptively regarding two basic questions: "Whether the crime is so uniquely serious and terrible that no punishment would serve the ends of justice other than the death penalty; and even after the court has weighed all the mitigating factors, whether the case is severe enough to justify the death penalty[16].

[12] Dhananjoy Chatterjee v. State of West Bengal, 1994 SCR (1) 37 1994 SCC (2)220 JT
[13] Santhosh Kumar Satishbushan Bariyar v. State of Maharashtra, (2009)6 SCC 498, 2009 (7) SCALE 341
[1414] Ind. Constitution Art. 72
[15] Machi Singh v State of Punjab, 1983 SCC (3) 9572
[16] Anushka Martis, Macchhi Singh v. State of Punjab legal service India

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Principle of proportionality, aggravating and mitigating factors and other relevant circumstances are important for guiding the judiciary. The punishment must be proportionate to the seriousness of the offence[17].

Aggravating circumstances are factors that increase the seriousness of the crime and justify a harsher penalty.[18] Therefore, if two people commit similar offences but have different penalties, it is likely that this is because of various aggravating circumstances.

Examples of aggravating circumstances are premeditated crime; murder committed in a particularly atrocious manner; a vulnerable victim (like a child).

Mitigating Circumstances are factors that diminish the culpability of the accused and may warrant a lesser sentence.[19] For example, if a person causes the death of another and does so in self-defence, this mitigating factor may warrant a lower punishment.

In the famous case of Shabnam Ali v. Union of India[20], after the aggravating and mitigating circumstances were weighed, the only appropriate punishment that delivered justice to the victims was capital punishment, for upholding the morality and social conscience of society.

But in the case of Sambhubhai Raisangbhai padhiyar V. The State of Gujarat,[21] the court considered his mental health, accused's lack of a previous criminal history, and his Potential for reform,[22] the supreme court stated that the case did not meet the 'rarest of rare' standard described in Macchi Singh, 1983. As a result, the court reduced the death sentence to a term of rigorous imprisonment of 25 years; striking a deliberate balance between the concepts of justice and mercy and reform.

The 'Rarest of Rare' Standard: Judicial Innovation or Ambiguity

Before Bachan Singh, Indian courts awarded death penalty with unchecked discretion. Judges were not required to provide any justification for awarding death over life imprisonment. Even

[17] Peter Dostal: proportionality, criminal law notebook/proportion.
[18] Sanjay Vashishtha, sentencing in Indian Penal system; aggravating& mitigating factor 2023 SCC
[19] Aggravating & Mitigating factors in criminal sentencing law, Justia
[20] Shabnam Ali v. Union of India & ors (2015) SCC online SC 784
[21] Sambhubhai Raisangbhai padhiyar v. The State of Gujarat, Crl A. No. 1744 of 2025
[22] Anup Surendranath & Maithreyi Misra, Interdisciplinary issues in capital sentencing, socio-legal Rev.2 (2024)

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though the doctrine of rarest of rare tried to limit judicial arbitrariness as death penalty is violative of Art.21, 14. Judges had no clear standard, imposed death based on subjective morality. It is pointed out that different judges gave different sentences for similar crimes.

In Macchi Singh v. State of Punjab, the court gave five illustrative categories - manner of crime, motive, vulnerability of victim, magnitude and public abhorrence. But these too were not exhaustive. They were moral guides, not Legal standards[23].

This ambiguity led to inconsistent application. In Swamy Shraddananda v. State of Karnataka[24], the court avoided death and introduced the special category of life imprisonment without remission.

In contrast, in Afsan Guru v. state NCT of Delhi,[25] the court awarded death citing collective conscience, even though the convict had no direct role in the Crime. These cases reflected divergence in how judges applied the doctrine. It allows judge's personal biases. The Law commission's 262nd Report (2015) acknowledged this ambiguity. It stated that the 'rarest of rare' formula has failed to limit the death penalty effectively, that capital punishment should be an exception, not the rule.

In Kehar Singh v. Union of India,[26] the court invoked the public sentiment factor to affirm death in a political assassination. In Shivaji Jaising Babar v. State of Maharashtra[27], the court avoided death despite brutal rape and murder, citing reformative possibility. This inconsistency stemmed from how judges interpreted the Macchi Singh principles. The doctrine remains discretionary. While Macchi Singh tried to streamline capital sentencing. It added another subjective layer. It reduced legal uncertainty only in theory. In practice, the categories provided room for narrative manipulation. what is brutal to one judge may be forgivable to another. The test of rarest of rare shifted from legal criteria to personal morality.

It left discretion to judiciary the sentencing judge must first determine whether life imprisonment is unquestionably foreclosed. It required a conclusion that the convict is beyond

[23] Macchi Singh v. State of Punjab, 1983 AIR 957, 1983 SCC (3) 470
[24] Swamy Shraddananda v. State of Karnataka, (2008)13 SCC 767; AIR 2008 SC 3040
[25] Afsan Guru v. state NCT of Delhi, (2005)11 SCC 600; AIR 2005 SC 3820
[26] Kehar Singh v. Union of India, 1989 AIR 653; 1988 SCR Supl. (3) 1102, (1989)1 SCC 204
[27] Shivaji Jaising Babar v. State of Maharashtra, (1991)4 SCC 375; AIR 1991 SC 2147.

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reformation. This conclusion must be drawn from the case facts. Not from social panic or public anger. In Nirbhaya case, the court upheld the death penalty by invoking the collective conscience. But it gave minimal weight to mitigating factors. This raised concerns that emotional response was replacing legal reasoning. Thus, the tension between individualized justice and retributive symbolism remained unresolved.[28]

In Birju v. state of M.P[29], the court commuted the death sentence of a man who killed two children. The court observed that the act was heinous, but the convict had no criminal background. He was young and had displayed remorse. Reformative possibility was not ruled out. The court criticised the High court for ignoring mitigating circumstances. It reiterated that mere brutality does not automatically warrant capital punishment.

Absence of Uniform Sentencing guidelines has led to inequality and violates Article 14 equality before law. Collective conscience was given importance in (Nirbhaya case) Mukesh v. State NCT of Delhi[30], framed public opinion as a legal standard and created a constitutional conflict. Courts are not mandated to reflect the will of the people. It weakens procedural safeguards.

The code of criminal procedure, 1973 section 354(3), in BNSS section - 392 tries to strike a constitutional balance. It says judges must record special reasons before imposing death. But courts often interpret this differently. some rely on nature of crime. Others on criminal's background. The lack of structure allows judges to bypass reformative considerations. This weakens Article 21 protections.

The death penalty also invites scrutiny under Article 32 and 226. These articles allow constitutional remedies. Many death convicts approach courts seeking clemency, commutation, or retrial. Delays in mercy petitions have been recognised as a ground to commute death to life.

The doctrine of rarest of rare was intended to restrict the arbitrary imposition of death penalty. But in practice, it's application lacks uniformity and clarity. What is rare for one judge may not be rare for another. In machi Singh v. state of Punjab, court tried to give structure. But some focus on manner of crime, public sentiment or some consider the reformative potential of the

[28] Ramnaresh v. state of MP; (2012)4 SCC 257
[29] Birju v. state of M.P; (2014)3 SCC 421
[30] Mukesh v. State NCT of Delhi, SLP (CRL)No. 3119- 3120/ 2014

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convict. There is no fixed benchmark. In Machi Singh, even though given categories to help identify cases, they were not exhaustive. They became loose indicators rather than strict tests. This led to further interpretive confusion. The subjective nature of the doctrine opens it to judicial bias. Judges bring their Personal morality, social conditioning and emotion into sentencing. The same doctrine has produced inconsistent outcomes. In Dhananjoy Chatterjee v. State of west Bengal[31], the court upheld death to " restore faith in justice. In Santosh Bariyar[32] the court said that faith must come from fairness not vengeance, both cited Bachan Singh, yet reached opposite conclusions.

The term “collective conscience" has also deepened the ambiguity. Courts invoke it to justify executions, but there is no objective measure for it. It shifts focus from legal reasoning to public perception. The court sometimes becomes vulnerable to media influence. The sentencing process becomes emotive rather than constitutional. Socio-economic bias Persists despite the doctrine. The poor, uneducated and marginalised convicts receive death more often. They lack quality defence, cannot present mitigating evidence effectively. The Law commission in its 262nd Report (2015) criticised the doctrines failure. It recommended abolition of death penalty for all crimes except terrorism. In Shankar Khade v. State of Maharashtra[33], justice Lokur said doctrine has not prevented miscarriage of justice. The doctrine fails to provide measurable standards. Courts do not specify what qualifies as unquestionably foreclosed. There is no procedural rule to examine reformation potential. The doctrine of rarest of rare introduced to ensure consistency in death sentencing, it has been inconsistently applied. Sentencing outcomes remain unpredictable, lacks objective metrics. Still no concrete reform has followed, courts continue to rely on vague parameters like 'collective conscience’.

Judicial innovation like life imprisonment without remission has emerged. This was introduced in Swamy Shraddananda[34] it is an attempt to balance justice and reform. But this is also not codified - It is dependent on individual judge’s preference. Without legislative backing, it lacks permanence. Sentencing continues to oscillate between retributive and reformative ideals. This duality is constitutionally unsettling. The doctrine also fails to integrate rehabilitation assessments. No structured evaluation of post- conviction conduct is undertaken. It compromises the reformative theory of punishment.

[31] Dhananjoy Chatterjee v. State of west Bengal, 1994 SCR (1) 37 1994; SCC (2)220. JT
[32] Crl. Appeal No. 1478 of 2005
[33] Shankar Khade v. State of Maharashtra, (2013)5 SCC 546
[34] Crl. Appeal No. 454 of 2006/ (2008) 13 SCC 767