

EVOLUTION OF THE “RAREST OF THE RARE” DOCTRINE IN INDIAN JUDICIAL SYSTEM

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What was the primary purpose of the formation of law? to maintain peace and order within a society. The beauty of the art of justice is its sole motive and desire to promote the welfare of society and individuals. To ensure its implication and regulation, 'punishments were necessary because without obligation people of the society would not follow the laws. A fear of retribution, a fear of suffering the consequences of their wrong actions was required for the people of the society to follow the laws. But we should not forget that law was made for human beings it was not vice-versa, the motive is the betterment of humans, so the motive is the soul of the formation of any law, and that motive should be in consideration during the process of implication and execution of any law and also during the judgment. The purpose behind the order of punishment is not only to make the guilty suffer but also to set an example in the eyes and minds of society and sometimes also to make that person realize his mistake and give him a chance to be better, to reform his mindset, to improve.

When we talk about Indian law, the 'Indian Penal Code' (1862) is the official code of crimes and their punishments in India. It deals with the different types of crime, criminal-related concepts, and punishments for the same, under this code limitations, requirements, duration, and exceptions of the punishment are also prescribed. Chapter III of IPC deals with the "Punishments." Now as per its section 53, enlists various types of punishments for which a person who committed the crime is liable.¹ Various categories of punishment are, "death; Imprisonment for life; Imprisonment, which is of two descriptions, namely: - Rigorous, that is with hard labour; Simple; Forfeiture of property; Fine".

In the Mann Singh Case² the court held that it is the court's duty to prescribe an adequate sentence or punishment keeping into consideration the nature, manner, and all other circumstances in every case. In "R. Chakravarty v. State of Madhya Pradesh"³ it was stated

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¹ Prof. S.N.Mishra : Indian Penal Code (23rd Edition, Central Law Publications)

² State of Punjab v. Mann Singh, [1983] Cr LJ 229[SC]

³ R. Chakravarty v. State of Madhya Pradesh [1976] Cr LJ 334

that the imposition of sentences is subject to judicial discretion to any mandatory punishment minimum prescribed by law.

The strictest and harshest punishment in the Legal System is Capital punishment or we can say the Death Penalty. The implementation of punishment, while intended to protect society, can ironically result in the destruction of life, questioning its effectiveness in preserving human dignity.⁴ Generally, it is prescribed in serious offences like Murder. Barnes & Teeters in their book⁵ said “The life of the Individual who wilfully wronged the social group or brought serious loss to any of its members, therefore, deserved to be forfeited. In cases where the death penalty is to be given, the court is required to give reasons to justify imposing it against life imprisonment.⁶

In the case of Jagmohan Singh⁷, it was argued that Capital punishment is unconstitutional and hence is not valid as a punishment. In Deena’s case⁸, the court stated that prescribing hanging as a mode of execution was a fair, just, and reasonable procedure adhering to the meaning of Article 21 of the Indian Constitution and so it is constitutional. In the case of Sher Singh⁹ the Supreme Court held that the death sentence is constitutionally valid and permissible within the constraints of the rule in Bachan Singh.¹⁰

In the case of Rameshwar v. State of Uttar Pradesh,¹¹ the importance of the continuation of the Death penalty was emphasized, only in those cases in which the prohibition of misconduct like murder is challenged thoughtlessly. In Rajendra Prasad v. State of UP¹², the Supreme Court observed that the death penalty can be awarded where the survival of the society is in danger.

After this comes the landmark case of Bachan Singh¹³, in which the Supreme Court pronounced the Rarest of the Rare doctrine. The Court stated, " It is vital to impose the death penalty when the crime is so brutal and heinous that society as a whole is so shocked and shaken by the crime that it'll expect the death penalty to be induced by the people who hold the judicial power

⁴ John Bright quoted in Arthur, Koestler, Reflection on Hanging (1957)

⁵ Barnes, Harry Elmer: New Horizons in Criminology (3rd Edition)

⁶ Balwant Singh v. State of Punjab [1976], Cr LJ 291

⁷ Jagmohan Singh v. State of Uttar Pradesh (1973), Cr LJ 370

⁸ Deena vs. Union of India [1983] 4 SSC 645

⁹ Sher Singh vs. State of Punjab [1983] A.I.R. 1983 (SC) 365

¹⁰ Bachan Singh vs. State of Punjab [1980] A.I.R. 1980 (SC) 898

¹¹ Rameshwar v. State of Uttar Pradesh [1973] Cr LJ 940

¹² Rajendra Prasad v. state of Uttar Pradesh [1979] Cr LJ 792

¹³ Bachan Singh vs. State of Punjab [1980] A.I.R. 1980 (SC) 898

regardless of their personal opinion is."¹⁴ There is no such specific or statutory definition of rarest of the rare doctrine, nor an official description for its application but generally a case's facts, circumstances, the level of brutality involved, and conduct of the accused, before including it under rarest of the rare and convict the offender.

Till the year 1983, our legal system neither had a consistent view on the death penalty nor outright prohibited the same. In 1983 came the case of Machhi Singh¹⁵, in which the Supreme Court established the regulation for the doctrine of "rarest of the rare" and specified categories of crimes to be treated as "rarest of rare" cases.

In India's Judicial system, the Machhi Singh case plays an important role. According to the court, it framed broadly outlined the situations for when a death sentence can be imposed. Justice Thakkar during the judgement of this case held five types of cases, which may be considered as "rarest of rare" cases to be punished with extreme penalty.

The concept of "rarest of rare" cases was thoroughly examined and elucidated in this particular case. It involved an instance of exceptional brutality. Fuelled by a longstanding family feud, Machhi Singh, the primary defendant in this case, accompanied by eleven others, carried out a series of murders in five villages over a single night (between August 12 and 13) which resulted in the deaths of seventeen individuals, including men, women, and children, while three others sustained injuries. The sole reason for this massacre was the victims' relation to Amar Singh and his sister Piaro Bai.

- At approximately 8:30 PM, Machhi Singh and Mohinde, armed with rifles, and three others, each with a kirpan (a curved sword), attacked Amar Singh's residence. They killed Amar Singh's wife, Biran Bai, and his three sons. Amar Singh and his daughter managed to escape the brutal incident.
- At approximately 9:00 PM, a group of nine armed men attacked the residence of Kahar Singh. They opened fire, killing members of the house, and leaving one individual, Smt. Nanko Bai was severely wounded from gunshot injuries.
- Continuing the series of murders, they reached Kho Konjuka village, where they violently entered Bishan Singh's home and murdered Bishan Singh, his wife Paro Bai, and their

¹⁴ "Why capital punishment must stay" (deccan chronicle, 26 March, 2017)

<<https://www.deccanchronicle.com/opinion/op-ed/260317/why-capital-punishment-must-stay>>

¹⁵ Machhi Singh And Others vs State of Punjab [1983] AIR 957, [1983] SCR (3) 413

young child Balbir Singh. Hakam Singh, their eldest son, escaped, severely injured by gunshot wounds.

- Around 11 PM at Mamujou village, Machhi Singh and his two brothers killed Wanjar Singh and his grandson. Wanjar Singh's wife Smt. Sabhan managed to escape.
- Around 1:00 AM at Kamrewala village, Mohinder Singh (the brother of Amar Singh and husband of Piaro Bai) was killed.
- Next in the early hours of the morning, around 3:30 AM, a group of five armed men reached the Dandi Khur village, where they forcefully entered the residence of Ujagar Singh, and killed his sister Paro Bai and four of his relatives.

Issues of the case were:

- Whether the death penalty should be imposed upon Machhi Singh and Others in accordance with the doctrine of "rarest of rare" cases as established in the landmark judgement of Bachan Singh's case.
- What criteria should be used to determine when a case will fall under the category of "rarest of rare" and which justifies imposing the death penalty?¹⁶

The court in this case observed and stated that when the collective conscience of the society is so much shaken then society will expect the delivery of justice through the punishment of the death penalty to the offenders irrespective of personal opinions of the Judiciary.

Thus, the Court framed the following guidelines –

1. The Manner in which murder is committed:

When a person is murdered in such a way that is extremely heinous, brutal, revolting, or dastardly manner to inflame public outrage, for example-

- set a house on flames with the purpose of burning the victim alive in the house.
- death is caused because of inhuman acts like torture or cruelty to the victim.
- The victim's body is cut up into pieces after the victim's death or there are signs of aggression on the victim's body after the murder.

¹⁶ Rajkumari, "ANALYSIS OF BACHAN SINGH AND MACHHI SINGH AND ITS IMPLICATION", <<https://ijirl.com/wp-content/uploads/2022/08/THE-DOCTRINE-OF-RAREST-OF-RARE-A-CRITICAL-ANALYSIS.pdf>>

2. Motive behind the murder:

- When the motive of murder reflects utter wickedness and cruelty or demonstrates the absence of any moral decency, for example-
- a killer hired to do murders for money or for some reward.
- a deliberate cold-blooded murder, driven by greed or a desire for property or power.

3. Anti-Social or Socially abhorrent nature of crimes:

It may include such instances -

- A scheduled caste or minority community-related murder is enacted not for any personal cause but in such circumstances, which inflame public sentiment and evoke a strong negative reaction.
- cases related to 'dowry deaths' also known as “bride burning,” etc.

4. Magnitude of crime:

When the scale and scope of crime are extensive and alarming.

For instance, when multiple or all the members of a family are murdered or many people belonging to a specific, community, caste, or locality are murdered.

5. The personality of the victim of murder:

When a murderer holds a dominant position or position of trust where the victim is a public figure or a helpless woman, an innocent child, an old or sick person, etc.¹⁷

According to the session court, it was clear by the facts and events of this case that, it was an emotionless and cold-blooded series of murders of those 17 people, with no such reasonable motive. Machhi Singh, and three other culprits, Kashmir Singh, Jagir Singh and Mohinder Singh should be punished with the extreme punishment of death. This matter was appealed in the Punjab and Haryana High Court, and the court's decision finalized the death penalty.

Mahinder Singh got the benefit of the reasonable doubt, as no such evidence proved that his rifle was in possession of him. All the appellants were punished with imprisonment for life and other sentences.

¹⁷ Palak Singh, “Macchi Singh v. State of Punjab (1983) Identifying 'Rarest of Rare' Cases” (Lawyers Club India, 19 October 2020) <<https://www.lawyersclubindia.com/judiciary/macchi-singh-v-state-of-punjab-1983-identifying-rarest-of-rare-cases-4832.asp>>

Thus, in the case of Bachan Singh¹⁸ the principle of the rarest of rare cases was laid down and in the case of Machhi Singh¹⁹ the principle was further categorized into five specific categories and it also broadened the scope of capital punishment. But unfortunately, in reality, none of the later decisions followed the guidelines given in the cases mentioned above consistently, and uniformly.²⁰

The judgment of this case was an attempt to provide guidelines for the determination of "rarest of rare" cases, but the guidelines remain vague and open to interpretations. This led to inconsistent imposition of capital punishment, with judges exercising a significant degree of discretion in determining whether to impose the death sentence or not.

1. The judgment strongly emphasized aggravating factors, like the brutality of the crime, giving less importance to mitigating factors, such as the defendant's mental state or the circumstances of the crime, which led to concerns that the doctrine could fail to adequately consider the full range of factors that may be relevant and important in the determination of the appropriate punishment.
2. The concept of "rarest of rare" cases was initially developed in the context of India's social and crime patterns in the early 1980s. With time the nature of crime has evolved since then, with new and complex forms of criminal activity emerging every then and now. The doctrine, may not adequately address the challenges faced because of these evolving forms of crime.
3. The death penalty is often applied disproportionately against marginalized groups, such as minorities and the poor. This raises concerns related to equality and fairness in justice.
4. The death penalty remains a controversial issue, with strong arguments for ethical and human rights against its use. People in favour of its abolition argue that the death sentence is cruel and unusual punishment that violates the fundamental right to life of the people, also they point out the risk of irreversible errors and the potential for discrimination in the application.
5. The Machhi Singh case judgment did not address these criticisms of the death sentence. Instead, it focused on just providing guidelines for the application of the "rarest of rare" doctrine within the existing frame of capital punishment.

¹⁸ Bachan Singh v. State of Punjab [1980] AIR 1980 (SC) 898

¹⁹ Machhi Singh And Others v. State of Punjab [1983] AIR 957, [1983] SCR (3) 413

²⁰ Vaidaihi Dixit, "Macchi Singh v. State of Punjab" (November 3, 2022) <
<https://legalstudymaterial.com/machhi-singh-and-others-vs-the-state-of-punjab/>>

In the case of Ravji²¹, the Court observed that “the crimes were committed without any provocation with cruelty, brutality and in a calculated manner. The nature and gravity of the crime but not the criminal, which is a relevant consideration of appropriate punishment in the trial.”²² The Ravji case precedent is directly at odds with Bachan Singh’s case ruling. The Supreme Court frequently cited Ravji’s precedent in capital punishment cases, narrowly focusing only on the crime’s circumstances and disregarding those pertaining to the criminal. This oversight was eventually identified by a bench of two judges of the Supreme Court in the Bariyar Case.²³ “It is clear that the Ravji case has not only been considered but also relied upon the statement that in heinous crimes, circumstances relating to crime is important relating to the criminal are not relevant.” Now it is generally said that Ravji’s case was carried out per incuriam.

In the case of Ramnaresh v. State of Chhattisgarh²⁴, the accused were convicted of gang rape and murder, the Court imposed a life sentence considering the young age of the convicts (all were between the age of 21-30), directed towards the possibility of reform.²⁵

In the Dhananjay Chatterjee case²⁶, the Supreme Court imposed the death sentence on Dhananjay Chatterjee for the heinous crime of raping and murdering an 18-year girl, who resided in the building where he worked as a security guard. Dhananjay was subsequently executed in 2004, 14 years after his conviction.²⁷

In the case of Bhagwan Das v. State²⁸, the appellant was too irritated with his daughter Seema, she left her husband Raju and was having a sexual relationship with Srinivas, her uncle. The appellant was enraged as he thought that the action of Seema dishonoured the family, so he strangulated her with an electric wire to death. The High Court upheld the judgment of convicting the appellant given by the trial court, but the appeal was dismissed by the Supreme

²¹ Ravji v. State of Rajasthan [1996] 2 SCC 175

²² Law Commission of India, The Death Penalty, Wrongful Executions and Failure of the Clemency Process, (Report No. 262)

²³ “[Santosh Bariyar v State of Maharashtra](https://frontline.thehindu.com/social-issues/general-issues/a-case-against-the-death-penalty/article), (2009): A case against death penalty” <<https://frontline.thehindu.com/social-issues/general-issues/a-case-against-the-death-penalty/article>>

²⁴ Ramnaresh v. State of Chhattisgarh [2012] 4 SCC 257

²⁵ “Merely because a crime is heinous per se may not be a sufficient reason for imposition of death penalty without reference to other factors and attended circumstances” <<https://sekarreporter.com/vinothpandian-2012-4-scc-257-ramnaresh-vs-state-of-chattisgarh-merely-because-a-crime-is-heinous-per-se-may-not-be-a-sufficient-reason-for-imposition-of-death-penalty-without-reference-to-other/>>

²⁶ Dhananjay Chatterjee v. State of West Bengal [1994] 2 SCC 220

²⁷ “The case of Dhananjay Chatterjee: A noteworthy lesson for the judiciary” (November 18, 2021)

<<https://blog.ipleaders.in/case-dhananjay-chatterjee-noteworthy-lesson-judiciary/>>

²⁸ Bhagwan Das v. State [2011] Criminal Appeal No. 1117 Of 2011 (SC)

Court and it was held that honour killings, no matter for what reason, are counted within the category of “rarest of the rare cases”, deserving death sentence.²⁹

In Dilip Premnarayan Tiwari’s case³⁰, Sushma, who was Dilip’s sister, fell in love with Prabhu (deceased) who was their neighbour. Ultimately, she got married to Prabhu on 29.10.2003 but their marriage was not approved by Shushma’s family because she belonged to a Brahmin family from Uttar Pradesh and Prabhu was a Keralite and belonged to the ‘Ezhava’ caste, her whole family was extremely against the marriage. on the night of 16/17th May 2004 The ghastly incident took place, around 1:15 a.m. at night the backside door of Prabhu’s house was knocked on by someone, and the accused accompanied by two others entered his house and killed him and hit Sushma who was in the advanced stage of her pregnancy. The court opted for life imprisonment instead of the death sentence. The judges acknowledged that the murders stemmed from a deep-seated social issue like inter-caste marriage. They emphasized the need to consider such social factors when determining capital punishment in similar cases. The pervasive influence of caste, community, and religion, though unjust, is a stark reality. While the offender's actions, motivated by inter-caste dynamics, are undeniably wrong, the court recognized the exceptional circumstances that led to the crime. Despite the brutality of the murders, the court determined that the death penalty was not warranted in light of Dilip's mindset and the underlying social context.³¹

In the State of Maharashtra v. Damu³² case, the offender was convicted for the murder of three children as a human sacrifice to recover some hidden treasure. The court held that such horrifying acts by the accused made it fall under the criteria of “an extremely rare case”, but even then, the court did not impose the death penalty on them. Life imprisonment was imposed by the Court, reasoning that the crime was motivated by ignorance and superstition, which was considered to be mitigating circumstances.³³

In contrast, in the Sushil Murmu v. State of Jharkhand³⁴ case, the accused was convicted for the murder of a child as human sacrifice, it was held by the Court that, by the nature of the crime it was clear that the accused “was not possessed of the basic humanness and completely lacks the mindset which can be reformed.” The Court refused to accept such superstitious motive as a mitigating factor and held that, the case should be categorised under ‘rarest of the rare cases’ in

²⁹ “Bhagwan Das Case Summary” <<https://www.ejusticeindia.com/case-summary-bhagwan-dass-v-state-nct-of-delhi/daughter>>

³⁰ The State Of Maharashtra vs Dilip Premnarayan Tiwari & Others [2007] 109 Bom L R 2453

³¹ “The State Of Maharashtra vs Dilip Premnarayan Tiwari”< <https://indiankanoon.org/doc/1865255/> >

³² State of Maharashtra v. Damu [2000] 6 SCC 269

³³Law Commission of India, The Death Penalty (Report No. 262) para 5.2.41

³⁴ Sushil Murmu v. State of Jharkhand [2004] 1 JCJR 58 (SC)

which the death penalty is the rule, with no exception no matter what”, but, in the case with similar circumstances, the Court did not find the murder of three children as human sacrifice, unhuman enough to be counted as one of “the rarest of the rare case” and impose the death penalty, on the other hand in another case it found the murder of one child for same purpose unhuman and brutal enough to impose death penalty on the murderer, as a rule.³⁵

In the system of justice, sentencing policies hold immense significance particularly in severe punishments like the death penalty, as it is irreversible. Based on the analysis of the cases and information presented it can be said that the imposition of the death penalty has become more reliant on the individual judge's discretion rather than being guided by established principles.

From my point of view, capital punishment is valid and should be considered reasonable provided that, it is prescribed only in cases in which the crime committed is of extreme nature. One human, who does not value the lives of other humans and the integrity of his own country, does not deserve to be treated with empathy.

As there is no uniformity in the sentencing process by the court there is an imbalance in the result, and based on the study of the cases sharing similar circumstances in some the death sentences were imposed but, in some cases, were not.

The Supreme Court should work on clarifying the doctrine, providing specific guidelines for application, keeping in consideration the criticism of the doctrine, and establishing and ensuring consistent application across courts. The goal should be to strike a balance between providing justice to victims and ensuring that the death penalty is reserved for only exceptional cases.

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³⁵ Law Commission of India, The Death Penalty (Report No. 262) para 5.2.41