THE MYTH OF RARITY: UNMASKING INDIA'S DEATH PENALTY PARADOX

Sumaila Shamshad* **Shanaj Parween***

ABSTRACT

The concept of capital punishment is not new to us; it is used in almost every country, except for a few. In India, capital punishment is based on the "rarest of rare" doctrine, although not expressly mentioned in any statute, but rather on the conscience of the judges. In the context of India, the death penalty is given only in cases where rehabilitation becomes impossible, and life imprisonment becomes inadequate. In recent decades, we could see that what was meant to be an exception has gradually turned into a mirror of public sentiments and political mood. And thus, the real question arises, "whether this rarest of rare doctrines is being used appropriately?" So, to answer this question, we have used various data and reports to show whether the spirit of "rarest of rare" still exists or not. Data published by Amnesty International shows that India is in the top ten countries with the most death sentences, with 120 death sentences in the year 2023. This indicates that the principle of Judicial restraint is weakening, and where the death penalty was meant to be used in the most heinous and extraordinary crimes, it is now being used frequently. Therefore, there are some reforms that India's legal system can embrace to conquer such loopholes, adhering to the use of the "rarest of rare" doctrine.

Keywords: Capital Punishment, "Rarest of Rare" Doctrine, Death Penalty, Rehabilitation, Judicial Restraint.

INTRODUCTION

Capital punishment in India is based on the doctrine of "rarest of rare" cases. The death penalty, being the most extreme punishment, is provided under the BNS,2023 (IPC earlier), which

*BA LLB, SECOND YEAR, BRAINWARE UNIVERSITY, KOLKATA.
*BA LLB, SECOND YEAR, BRAINWARE UNIVERSITY, KOLKATA.

includes the capital punishment for the accused for their wrongdoing.[1] The question that arises in one's mind is whether the judiciary can take somebody's life just because they crossed the line of humanity. There are two sets of people, one who agrees and the other who doesn't. Although there is no statutory definition of 'rarest of rare'. It depends upon facts and circumstances of a particular case, brutality of the crime, conduct of the offender, previous history of his/her involvement in crime and chances of improving, yet the Supreme Court in Machhi Singh v. State of Punjab (1983)[2] laid down a five-factor framework for determining when a case qualifies as 'rarest of rare':

Manner of Murder: If committed in an extremely brutal, grotesque, or revolting way that shocks society.

Motive of Murder: When the crime is committed with extreme depravity, such as for political gains or sadistic pleasure.

Socially Abhorrent Nature: When the crime targets vulnerable individuals or communities, it causes widespread outrage.

Magnitude of the Crime: When multiple murders are committed, it shows extreme criminality.

Personality of the Offender and Victim: If the victim is a child, elderly, woman, or otherwise helpless.

Though many people would oppose the death penalty, in Jagmohan Singh v State of U.P. 1973,[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 society. The Court also felt that Indians could not afford to experiment with abolishing the death penalty.

Among all the punishments, this sentence of death occupies a distinct place in criminal and penal jurisprudence. This is because capital punishment is retributive in nature. Since the death penalty is taking life, for life taken, above all, this sentence is also distinct due to its irrevocable nature.[4]

[1] S. Royal Raj, "Rarest of the Rare Doctrine – An Analysis," Law Mantra Online Journal 4, no. 5 & 6 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3225154.
[2] Machhi Singh v. State of Punjab (1983) AIR 957 (SC)
[3] Jagmohan Singh v. State of U.P. (1973) AIR 947
[4] Rajkumari, Research Scholar, and Pratap Singh, Research Supervisor, "The Doctrine of Rarest of Rare: A Critical Analysis," Indian Journal of Integrated Research and Law 2, no. 4 (Year), ISSN 2583-0538

EVOLUTION OF THE DOCTRINE

Capital punishment has been part of India's criminal justice system since ancient times, continuing through the colonial period under British rule and into the post-independence era. After independence, as India drafted its Constitution and embraced democratic values, questions arose about the constitutionality of the death penalty. The pivotal constitutional challenge came in Jagmohan Singh v. State of Uttar Pradesh (1973), the court ruled that the death penalty did not violate Article 14 (right to equality), Article 19 (freedoms), or Article 21 (right to life) of the Constitution, reasoning that the procedure established by law for its imposition was fair and just. The cornerstone of India's approach to capital punishment was laid in the landmark case of Bachan Singh v. State of Punjab (1980). A five-judge Constitution Bench of the Supreme Court reaffirmed the constitutionality of the death penalty but established crucial guidelines to regulate its imposition.[5] This case, which is central to the discourse on capital punishment in India, seeks to limit the use of the death penalty and ensure that it is not arbitrarily applied. In this case, Bachan Singh[6] was convicted of murdering three members of a family. The Supreme Court used this opportunity to address the broader question of when capital punishment should be imposed. The Court held that the death penalty should be imposed only in the "rarest of rare cases when the alternative option is unquestionably foreclosed. Justice P.N. Bhagwati delivered a powerful dissenting opinion, arguing for the complete abolition of the death penalty. However, the majority judgment, while upholding capital punishment, emphasised that its application should be exceptional rather than ordinary.

Three years after Bachan Singh, the Supreme Court further refined the Rarest of Rare doctrine in Machhi Singh v. State of Punjab (1983).[7] This case involved multiple murders committed by Machhi Singh and his accomplices, stemming from a family feud. The Court stated: "In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty." This judgment provided a more concrete framework for lower courts to determine when a case falls within the "rarest of rare" category.

[5] Law Blend, "Rarest of Rare Doctrine in India: Evolution, Key Judgments, and Its Contemporary Relevance," *Law Blend*, April 28, 2025, https://lawblend.com/articles/rarest-of-rare-doctrine-in-india/.
[6] Bachan Singh v. State of Punjab (1980) AIR 898 (SC)
[7] Machhi Singh v. State of Punjab (1983) AIR 957 (SC)

In Mukesh & Anr. v. State for NCT of Delhi(2020),[8] also known as the Nirbhaya gang rape case of 2012, it shocked the nation due to its extreme brutality. The Supreme Court of India upheld the death sentence of convicts by applying the rarest of rare doctrines and emphasising the gravity of the crime and its impact on society. The Court observed that the extreme brutality and inhuman nature of the crime, which involved gang rape, torture, and the murder of a young woman, deeply impacted society. This case further strengthened the principle that when a crime is so heinous that it impacts society at large, and life imprisonment is insufficient as a punishment, the death penalty becomes the only appropriate course of action.

JUDICIAL INTERPRETATION AND APPLICABILITY

The Indian judiciary has declared from time to time that punishment for life imprisonment is the norm and the death penalty is an exception for the rarest of rare cases. According to the judiciary, the death penalty should be awarded only when rehabilitation becomes impossible. The idea of the rarest of rare circumstances is a nebulous idea derived from judicial propriety and based on the status of public conscience. There is no such legal formula by which the application of this doctrine can be determined; rather, it is a result of Judicial precedents. While deciding cases of Capital Punishment, the Court usually applies its mindset to determine the gravity and cruelty of the crime committed. The first case under the ambit of the doctrine, after being laid out in Independent India, is Kehar Singh v. Delhi Administration.[9] The Apex Court upheld the Capital Punishment awarded by the Trial Court as well as the High Court to the accused after being convicted of the crime of murdering Smt. Indira Gandhi. The courtroom docket held that the murder is the rarest of uncommon instances wherein notable punishment is known as for an expert killer and his accomplices.[10] In 2008, in Prajeet Kumar Singh v. State of Bihar,[11] the Court observed that Capital Punishment can only be awarded "when a murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner to arouse intense and extreme indignation of the community."[12] Later, in Santosh Kumar Bariyar

[8] Mukesh & Anr. v. State for NCT of Delhi [2020] 4 AIR (SCR) 550
[9] *Kehar Singh v. Delhi Administration* [1988] AIR 1883
[10] Pubali Chatterjee &Sayani Das, 'Analysis of the Rarest of Rare Doctrine in rewarding Death Penalty' (*iPleaders*, 9 August 2020) <https://blog.ipleaders.in/analysis-rarest-rare-doctrine-awarding-death-penalty/> accessed 6th March 2022
[11] *Prajeet Kumar Singh v. State of Bihar* [2007] Appeal (Crl.) 1621 of 2007
[12] Rashi. Vaishya, 'The Doctrine of Rarest of the Rare' (*Legal Service India e-Journal*) <https://www.legalserviceindia.com/legal/article-726-the-doctrine-of-rarest-of-the-rare.html#:~:text=The%20Doctrine%20of%20Rarest%20of%20Rare%20was%20established%20in%20the,highest%20punishment%20of%20the%20land> accessed 6th March 2022

v. State of Maharashtra,[13] the Apex Court held that "The rarest of rare dictum serves as a guideline in enforcing Section 354(3) and establishes the policy that life imprisonment is the rule and death punishment is an exception."

REALITY OF THE DEATH PENALTY (MEDIA, POLITICS AND SOCIO-ECONOMIC INFLUENCE)

The phrase "rarest of rare" was meant to draw a moral boundary around the state's power to take a life. When the Supreme Court coined it in Bachan Singh v. State of Punjab (1980), the idea was simple: that death should be used only when life imprisonment becomes unquestionably inadequate. But in practice, that line of "rarest of rare" has blurred. What was supposed to be an exception has slowly become a reflection of public emotion and political climate.

The "rarest of rare" doctrine was meant to serve as a moral and constitutional safeguard and also a reminder that taking a human life should be the absolute last resort. But over the years, this idea seems to be losing its essence.

Official studies like the Death Penalty India Report (2024)[14] and Project 39A's Annual Statistics (2023)[15] show how often death sentences are being handed down, especially by trial courts. Many of these sentences are later reduced or overturned by higher courts, which clearly show how inconsistently the doctrine is being applied. What was once meant to be exceptional is slowly becoming ordinary, undermining the spirit of restraint the courts had once promised.

One of the major reasons behind this shift lies in the growing influence of media coverage, political narratives, and public sentiments. Especially the high-profile crimes attract national attention, and thus, there is often pressure on the judiciary to appear tough and decisive. This emotional environment sometimes overshadows judicial calm and reasoned analysis. The doctrine, which was supposed to protect against arbitrary punishment, now often bends to the noise of collective outrage.

At the same time, there is also a harsh social reality attached to the death penalty in India. Studies show that most people sentenced to death come from economically poor and socially marginalised backgrounds. They are often individuals with limited education, weak legal

[13] *Santosh Kumar Bariyar v. State of Maharashtra* [2009] 6 SCC 498
[14] Project 39A, Death Penalty India Report (National Law University Delhi,2024)
[15] Project 39A Death Penalty in India: Annual Statistics 2023 (National Law University Delhi, 2024)

representation, and little social support. Their vulnerability makes them easier targets for the harshest punishments, revealing how inequality still shapes outcomes in our criminal justice system.

In truth, the "rarest of rare" doctrine today reflects more about who the accused is than what the crime was. Its moral purpose was to uphold justice through restraint, which is fading amid public pressure and systemic bias. This reality raises a question: if the principle no longer protects fairness, can it still claim to represent justice?

COMPARATIVE ANALYSIS WITH OTHER COUNTRIES AND THEIR NEEDS

No nation decides on capital punishment in isolation. The world's experience reveals that the death penalty is not just a question of law but of collective conscience. Comparing India's position with other constitutional democracies helps us to trace whether the "rarest of rare" doctrine still reflects evolving human rights standards or remains an outdated compromise.

The United Kingdom once used the death penalty as routinely as India does today. The Murder (Abolition of Death Penalty) Act, 1965, formally ended executions for ordinary crimes, and by 1998, abolition became permanent through the Human Rights Act and the ratification of the Sixth Protocol to the European Convention on Human Rights.[16] This transition came after years of debate over wrongful convictions and moral inconsistency.

In South Africa, the death penalty fell not through legislation but through moral reasoning. In State v. Makwanyane (1995), the Constitutional Court struck down capital punishment as incompatible with human dignity and equality.[17] The judgment marked a turning point: it declared that a state built on constitutional morality cannot mirror the violence it seeks to prevent.

If we look at the global data published by Amnesty International (2023), it shows that more than 85 nations have completely abolished the death penalty, and over 140 are abolitionist in law or practice.[18] In contrast, India continues to appear on lists of the top ten countries with the

[16] Death Penalty Project, *50 Years On: The Death Penalty in the United Kingdom* (London: The Death Penalty Project, 2015), 12–13, https://www.deathpenaltyproject.org/wp-content/uploads/2017/12/DPP-50-Years-on-pp1-68-1.pdf.
[17] *State v. Makwanyane and Another*, (1995) 3 SA 391 (CC), South African Constitutional Court, accessed October 15, 2025, https://www.saflii.org/za/cases/ZACC/1995/3.html.
[18] Death Penalty Information Center, "Countries That Have Abolished the Death Penalty Since 1976," *Death Penalty Information Center*, last modified 2024, https://deathpenaltyinfo.org/policy-issues/policy/international/countries-that-have-abolished-the-death-penalty-since-1976.

most death sentences, ranked ninth in 2023 with 120 new death sentences.[19] This statistical presence undercuts India's moral claim of using the punishment "rarely."

Each of these countries, like the UK through legislation, South Africa through constitutional morality, and others through evolving conscience, has reached a point where justice and dignity could no longer coexist with state executions. India, despite its constitutional promise of equality and the "rarest of rare" safeguard, remains caught between progress and punishment.

THE WAY FORWARD: REFORMING DEATH PENALTY JURISPRUDENCE

Even after more than four decades of applying the "rarest of rare" doctrine, India's death penalty debate is still stuck between principle and practice. The courts speak of balance and restraint, yet the system continues to reflect fear, bias, and inconsistency. What began as a promise of a moral framework has now turned into judicial instincts and public pressure. At this stage, we can say that reform is not a matter of choice but of credibility. If India wishes to remain true to its constitutional principles of dignity and equality, then its death penalty jurisprudence must evolve beyond retribution and restoration.

The very first step is to confront the legal structure itself. The Law Commission of India's 262nd Report (2015) made a clear recommendation: to abolish the death penalty for all crimes except terrorism-related offences.[20] The reason given was that the arbitrary application of the death penalty undermines the idea of justice. But the Parliament failed to act on this recommendation. Overall, the absence of statutory guidelines leaves the judges to interpret "rarest of rare" by their own conscience, creating a pattern where the fate of an individual's life depends on the personal outlook of the bench. Therefore, judicial reforms must begin with codified standards that would reduce this subjectivity.

Secondly, we see that behind every death sentence lies a story of unequal defence. The Death Penalty India Report (2016) by Project 39A revealed that more than three-fourths of India's death-row prisoners came from economically fragile backgrounds, who are represented by lawyers lacking both resources and experience.[21] So, to restore fairness, India must invest in its legal-aid system, where there will be more capable advocates, access to translators and time

[19] Death Penalty Information Center, "Executions Around the World," *Death Penalty Information Center*, last modified 2024, https://deathpenaltyinfo.org/policy-issues/policy/international/executions-around-the-world.
[20] Law Commission of India, The Death Penalty: Report No. 262 (New Delhi: Government of India, 2015), https://lawcommissionofindia.nic.in/reports/Report262.pdf.
[21] Project 39A, *Death Penalty India Report* (New Delhi: National Law University Delhi, 2016), https://www.project39a.com/research/death-penalty-india-report.

for preparation. Without these basic reforms, the "right to be heard" remains a right only in name.

The death penalty cannot be abolished by judicial decree itself; it requires both the Parliament and society to speak together. The conversation of reform must rely upon data, not outrage and empathy. Global trends of abolition show the change and its development in the legal system. The United Nations Office of the High Commissioner for Human Rights has noted that countries worldwide have abolished death punishment through open political debates and not secret judicial orders.[22] Thus, India can follow the same, starting with limiting executions to exceptional cases and eventually abolishing them as a mark of legal maturity.

Reforming death penalty jurisprudence is not about softening justice; it is about deepening it. The real strength of a legal system lies not in how severely it punishes but in how fairly justice is conveyed. Whatever the reforms, they must be consistent with the spirit of the Constitution. True justice does not demand a life for a life; it demands the law to remain humane even when humanity falters.

CONCLUSION

In conclusion, India's death penalty jurisprudence exposes a deep paradox, where a nation that gives pride to the Right to Life still justifies taking it. The "rarest of rare" doctrine was meant to restrain the state but not to empower it. Yet the uneven application of this doctrine has made our legal system more fragile in recent decades. However, if we look around the world, most of the constitutional democratic countries have already abolished the death penalty, and they have realised that abolition is not about mercy but about maturity and credibility. Justice is not measured by the number of lives taken but by how effectively it is delivered without resorting to taking a life. Thus, it's time for India's legal system to shift from vague use of this doctrine and to be more accountable. Reforms cannot be bought by a single judgment or report, but there must be collective acceptance that state-sanctioned killing cannot co-exist with constitutional dignity. Also, India must gradually move forward in reforming the use of the rarest of rare doctrine to certain cases only. Justice will endure, not by taking life, but by proving its values for every life equally.

[22] Office of the United Nations High Commissioner for Human Rights (OHCHR), Moving Away from the Death Penalty: Lessons from National Experiences (Geneva: United Nations, 2017), https://www.ohchr.org/en/publications/reports/moving-away-death-penalty-lessons-national-experiences.