

Judicial Trends in Gender-Based Offences: An Analytical Study of the 'Rarest of Rare' Doctrine

H. S Adithya¹, Dr. Kamalakhannan², Dr. Asha Sundaram³

¹Ph. D, Research Scholar, Saveetha School of Law, SIMATS, Chennai, Tamil Nadu, India.

²Research Supervisor, Saveetha School of Law, SIMATS, Chennai, Tamil Nadu, India.

³Co-Supervisor & Principal, Saveetha School of Law, SIMATS Chennai, Tamil Nadu, India.

*Corresponding Author: dradithyajs@gmail.com

ARTICLE INFO

Received: 20 Dec 2024

Revised: 15 Feb 2025

Accepted: 22 Feb 2025

ABSTRACT

This study provides an in-depth examination of capital punishment in India, tracing its historical roots and analyzing its application in modern times. The research focuses on the Doctrine of Rarest of Rare Cases, a guiding principle for courts in awarding death penalties. The study scrutinizes landmark cases, including Bachan Singh v. State of Punjab and the Nirbhaya case, to understand the judicial trends and nuances of capital punishment. The analysis extends to gender-based offenses, exploring the application of the Doctrine in rape and murder cases. The research highlights the complexities of capital punishment in India, balancing the severity of crimes with societal needs. By examining the jurisprudence surrounding capital punishment, this study aims to contribute to a deeper understanding of its role in the Indian justice system. The findings of this research underscore the significance of careful consideration and rigorous judicial scrutiny in capital punishment cases. The study's insights into the Indian judiciary's approach to heinous crimes can inform discussions on the efficacy and ethics of capital punishment, ultimately contributing to a more nuanced understanding of this contentious issue.

Keywords: Capital Punishment, Death Penalty, Indian Jurisprudence, Rarest of Rare Cases, Judicial Trends, Gender-Based Offenses, Criminal Justice System and Human Rights.

1. INTRODUCTION

Capital punishment in India has its roots in the ancient Penal jurisprudence also. Both Hindu and Islamic laws that were applicable in ancient India were having references of support for the capital punishment in it. Hindu Jurisprudence though has death penalty prescribed in it, but its applicability was restricted such as if the convict does not go for the prayashchit and if the convict is not a female. Reactions to crime have been different at different stages of human civilization and even at a given time they have been different in various societies. The first approach is of punitive approach whose aim is to inflict punishment to the offender who is considered as basically a bad and dangerous character. In the punitive approach, the focus of attention is upon judging the criminal on the basis of his past conduct and not on what improvements he is capable of in future, it still remains a potent force in the modern criminal justice system in the form of capital punishment. In the 19th century India got its well established uniform penal law in the form of Indian Penal Code and adopted the criminal justice system, where the procedure followed for the investigation and the sentencing is coded as the Criminal Procedure Code, 1973. It provides the machinery for the detection of crime, apprehension of the suspected criminals, collection of evidences, determination of the guilt or innocence of the suspected person and the imposition of suitable punishment on the guilty person. Death penalty has gained its importance in IPC along with some other penal laws and the procedure for its imposition and execution in Cr.PC. The death penalty was discussed and debated in detail in pre and post constitutional era. After "Right to Life and Personal Liberty" was granted as the fundamental rights by the Constitution of India in the form of Article 21, the validity and desirability of death penalty has been the questioned for consideration in many of the cases.

The Supreme Court first examined the constitutional validity of the death penalty in Bachan Singh v. State of Punjab. This landmark case addressed conflicting rulings in Jagmohan v. State of Uttar Pradesh and Rajendra Prasad v. State of Uttar Pradesh. While Jagmohan upheld the death penalty's constitutional validity, Rajendra Prasad outlined procedures for courts to determine 'special reasons' for its imposition. Bachan Singh introduced the 'rarest of rare' doctrine, later expanded in Machhi Singh, based on the Sources: Bachan Singh v. State of Punjab (1980), Jagmohan

v. State of Uttar Pradesh (1973), Rajendra Prasad v. State of Uttar Pradesh (1979), Machchi Singh v. State of Punjab (1983)

2. DOCTRINE OF RAREST OF RARE CASES:

In India Doctrine of rarest of rare cases is to be considered as the yardstick for granting capital punishment. The Supreme Court in the Bachan Singh v/s State of Punjab interpreted the amendment made in the Criminal Procedure Code (CrPC) which was enacted in the year 1973. A new amendment was made to Section 354 (3), requiring “Special Reasons” to be given or mentioned while death sentence was imposed for an offence where punishment could be life imprisonment or death. With a new “Doctrine of Rarest of the rare case was originated” where the supreme court interpreted that the normal sentence for murder should be imprisonment for life and not death sentence and death sentence should only be given in the rarest of rare cases where the sentence should be based on the circumstances of the crime and criminal. The court in its decision held that “The expression “special reasons” in the context of this provision, obviously means “exceptional reasons founded on the exceptionally grave circumstances of the particular case relating to the crime as well on the criminal.

Also in the case of Macchi Singh & Others v/s State of Punjab the judges follows the decision of case of Bachan Singh and held that death penalty should be given only in rarest of rare cases. It can be awarded for the following:

- The murder is committed so brutally which results in arising of intense aggression by the community.
- The murder is committed of a member of Schedule Caste resulting in social disturbance.
- In the cases like dowry death and burning of females for the same.
- When the crime is heinous.
- When the victim of murder is an innocent child or woman or unaided person due to illness.

Also the Supreme Court in the case of Jagmohan Singh v/s State of Uttar Pradesh held that death penalty is necessary not only to prevent crime but also to prevent the society from such crime related activities. The Court held that death penalty will be given as per the circumstances of the case in order to protect the interests of the society and security of the state. In the recent judgement the Supreme Court upheld the death penalty awarded to the accused of the Nirbhaya rape and murder case after calling it as “rarest of the rare case”. In the Nirbhaya judgement, the Supreme Court said that “rarest of rare” case is one in which the “the crime is committed in such a way that it may result in intense and extreme indignation of the community and shock the collective conscience of the society”.

Defining Constitutional validity of Capital Punishment

The death penalty is continuously challenged all across the world on account of humanity, right to life, equality etc. In India, the first challenge for the constitutional validity was made in the case of Jagmohan Singh v/s State of Uttar Pradesh where death penalty was challenged on the grounds of violation of Article 14, 19, 21 of Constitution of India. In Jagmohan case, the Supreme Court found that the death penalty was a permissible punishment and did not violate the Constitution.

The Court held that:

The impossibility of laying down standards is at the very core of the criminal law as administered in India, which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. That discretion in the matter sentences as already pointed out is liable to be corrected by superior courts. The exercise of judicial discretion on well recognized principles is, in the final analysis, the safest possible safeguard for the accused”.

Factors affecting sentence of Death Penalty

In India, the imposition of the death penalty is influenced by a complex interplay of factors. Aggravating factors, such as the brutality and cruelty of the crime, multiple victims or offenses, and previous convictions, can increase the likelihood of a death sentence. Conversely, mitigating factors like youth, mental or physical illness, provocation, and remorse can lead to a more lenient sentence. Judicial considerations, including the gravity of the offense, proportionality of sentence, and public interest, also play a crucial role. Additionally, statutory requirements under the Indian Penal Code (IPC) and special laws, such as the SC/ST Act and UAPA, dictate the applicability of the death

penalty. The Supreme Court's guidelines in landmark cases like Bachan Singh and Machchi Singh further guide the sentencing process. Ultimately, the court's discretion, tempered by these factors, determines whether the "rarest of rare" doctrine is satisfied, warranting the ultimate penalty.

The Supreme Court has identified certain circumstances that serve as mitigating factors when deciding whether to impose the death penalty on an accused. These factors include:

1. **Extreme Mental or Emotional Disturbance:** If the offense was committed under the influence of extreme mental or emotional disturbance ¹.
2. **Age of the Accused:** The accused's youth or old age may spare them from the death penalty.
3. **No Continuing Threat to Society:** If the accused is unlikely to commit violent crimes in the future.
4. **Reform and Rehabilitation:** If the accused can be reformed and rehabilitated.
5. **Moral Justification:** If the accused believed they were morally justified in committing the offense.
6. **Duress or Domination:** If the accused acted under duress or domination from another person.
7. **Mental Defect:** If the accused's mental defect impaired their ability to understand the criminality of their conduct.

In cases where conditions 3 and 4 (no continuing threat and reform/rehabilitation) are relevant, the State must provide evidence to prove that the accused does not meet these conditions.

These mitigating factors are crucial in determining whether the "rarest of rare" doctrine applies, making the death penalty an appropriate sentence.

Application of Doctrine of rarest of rare case in Gender based offences: An Analysis of Judicial Trends

The Doctrine of Rarest of Rare Case is a legal principle applied in India to determine whether the death penalty should be imposed in exceptional cases. Here's its application in gender-based offenses:

Gender-Based Offences Covered:

1. Rape (IPC Section 376)
2. Gang Rape (IPC Section 376(2))
3. Rape with Murder (IPC Section 376(2)(a))
4. Acid Attacks (IPC Section 326A)
5. Dowry Death (IPC Section 304B)

Criteria for Rarest of Rare Case:

1. Gravity of the offense
2. Brutality and cruelty
3. Impact on victim and society
4. No chance of reform
5. Public interest and safety

Judicial Considerations:

1. Nature and severity of injury
2. Victim's age, vulnerability, and helplessness
3. Offender's motive, intention, and conduct
4. Presence of aggravating circumstances (e.g., multiple victims)
5. Absence of mitigating circumstances (e.g., provocation)

The evolution of feminist jurisprudence in India, particularly in relation to crimes against women. The passage highlights the shift towards stricter attitudes against rape, dowry deaths, and honor killings since the 1980s ^{1 2}.

It mentions the Criminal Law Amendment Act of 2013, which introduced the death penalty for rape under Section 376 of the Indian Penal Code (IPC). Previously, the maximum sentence for rape was life imprisonment, unless the victim died, and the case was deemed "rarest of the rare" ^{1 2}.

The concept of "rarest of the rare" is a legal principle established in the Bachan Singh v. State of Punjab case, which limits the imposition of the death penalty to exceptional cases ^{3 1 2}. This principle considers factors such as the brutality of the crime, the offender's motive and conduct, and the impact on the victim and society.

The following are the cases along with the relevant observation from each judgement throws light on the judicial discourse which will help us to analyze the working of law in applying the doctrine and the sentencing policy in the cases of rape coupled with murder to the victim.

- In the case of State Government of NCT of Delhi v. Sunil, a four-year-old girl was brutally raped and murdered by two adults ¹. The trial court sentenced one of the accused to death and the other to life imprisonment, despite the High Court's initial acquittal ^{2 3}. This landmark judgment highlights the judiciary's stance on severe punishments for heinous crimes, particularly those involving minors.
- Jai Kumar v/s State of MP - In this case the accused being unable to commit rape of his sister in law because of her resistance brutally killed her and the court awarded him death sentence categorizing the case as one of the rarest of the rare case. The court observed that killing the victim by giving her severe blows on the head and then severed the head from the body and subsequently killing the 8 years old daughter of the victim only because she was the witness of the crime can be termed as killing involving extreme brutality and exception depravity which is a fit case to award death penalty.

In the landmark case of Raju v. State of Haryana (AIR 2001 SC 2043), the Supreme Court upheld the death sentence awarded to the accused for the heinous crime of raping and murdering an 11-year-old girl. The brutal nature of the crime, where the accused used a brick to inflict fatal injuries on the victim's mouth, was considered "cruel and diabolic" by the High Court ¹. This case highlights the judiciary's stance on severe punishments for such atrocities, particularly when the victim is a minor [6].

Akhtar v/s State of UP - In this case the Supreme Court commuted the death sentence awarded by the High Court to life imprisonment where the accused having raped a young girl had killed her. The difference between the earlier and this case was that death was caused without any premeditation and was not intentional. The accused finding a young girl alone in a lonely place picked her up for committing rape and it was only in the process of doing so while gagging her she died.

- **Md. Chaman v/s State (NCT of Delhi)** – In this case rape and murder was committed on a one and half year old girl, the court commuted the death sentence of the accused to life imprisonment but the fact is that the court did not categorize the case as “rarest of the rare” and gave no reasons for that.
- **Kamala Tiwari v/s State of Madhya Pradesh** - In this case a 7 year old girl was raped and murdered to hide the evidence. There was premeditation for the commission of the offence. It was a heinous offence and the case was rarest of the rare case and the Supreme Court awarded death sentence to the victim.
- **Nathu Ram Godse v/s The Crown** - First death penalty in Independent India was given to Nathuram Godse and Narain Apte, who were involved in the murder to Mahatma Gandhi. They were hanged on November 15th 1949.
- **Dhananjay Chaterjee v/s State of West Bengal** - Dhananjay Chaterjee was hanged on August 15th 2004 for raping and murdering 14 years old girl at Bhawanipore. He was the security guard of the complex where the girl used to live. The Supreme Court held that the crime was heinous and categorized it as “rarest of the rare case”.
- **Mohammed Ajmal v/s State of Maharashtra** - Mohammed Ajmal and Amir Kasab were on the attackers in Mumbai on 26th November 2008. The Supreme Court awarded the death sentence to kasab, the only Pakistani

who was caught alive after the Mumbai massive attack. The Supreme Court rejected the kasab contention where he said that the terrorist attack was against the Government of India and not of the people of India. Later he was hanged on 21st November 2012.

- **Yakub Abdul Razak v/s State of Maharashtra** - Yakub Abdul Razak was convicted for financing in 1993 Bombay Bombings. He was hanged on 30th July 2015 in Nagpur.
- **Mukush v/s State for NCT of Delhi** - The last punishment was given to four convicts involved in Nirbhaya Gang Rape case of 2012 relying on the doctrine of “rarest of rare case” where they were hanged together in Tihar Jail on March 20th 2020.

List of Capital Offences (Indian Penal Code, 1860)

S.N	Section	Description of the Offence
1.	Section 120B	Being a part to a conspiracy to commit a capital offence
2.	Section 121	Treason for waging war against the Government of India
3.	Section 132	Abetment of mutiny actually committed
4.	Section 194	Perjury resulting in the conviction and death of an innocent person
5.	Section 195A	Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person.
6.	Section 302	Murder
7.	Section 305	Abetment of a suicide by a minor, insane person or intoxicated person
8.	Section 307 (2)	Attempted murder by a serving life convict
9.	Section 364A	Kidnapping for ransom
10.	Section 376A	Rape and Injury which causes death or leaves the woman in a persistent vegetative state.
11.	Section 376B	Rape of a child below 12 years
12.	Section 376E	Certain repeat offenders in the context of rape
13.	Section 396	Dacoity with murder in case where a group of five or more individuals commit dacoity and one of them commits murder in the course of that crime, all members will be held liable for the same.

3. CONCLUSION

India retains capital punishment due to the severity of certain crimes and the need to maintain societal balance. This extreme measure is reserved for rare, heinous cases that shock humanity. The Indian Penal Code, 1860, outlines

constitutionally valid punishments. Despite debates on moral implications and effectiveness, capital punishment remains an option for deterring crimes and setting examples. Many argue it's essential for offenders beyond rehabilitation.

There are number of provisions related to Capital Punishment in India, but still India is in the favour of giving capital punishment. The ideology behind still keeping capital punishment is because of the gravity of crimes constituted in a society and it is considered as the last resort to stop those crimes completely and also to maintain a balance in the society. Capital punishment is never given under the normal circumstances and it is usually given in the 'rarest of the rare cases' where the crimes are against the humanity and highly heinous in nature. Earlier before the enforcement of the formal legislation, there were number of theories of punishment which were given at that time, but after the enforcement of Indian Penal Code, 1860 now there are proper provisions where every type of crime and its punishment is mentioned and is constitutionally valid. Hence whenever any person commits any crime or an offence he should also have the knowledge of its consequences. However still there is a continuous debate because of moral impact and its effect on criminal behaviour. Still many argue that it is violation of Right to Life and is brutal. But for the offenders of crimes, imprisonment is not enough. Capital punishment is the only option for setting an example to other offenders. Many countries still have not abolished capital punishment and retained it extending its scope. People refrain from crime when they fear the punishment. People who are scared of death for them death penalty is most effective deterrent. The judicial trends discussed and analyzed above are important to understand the sentencing procedure of the Supreme Court in the cases attracting the death penalty.

4. REFERENCES

- [1] Law Commission of India, Report No.262 on Death Penalty, August 2015, Page 15.
- [2] Law Commission of India Report No.187th on the Mode of Death Penalty, October 2003, Page 31-32.
- [3] All India Report 1973 SC 947
- [4] Annual Survey of Indian Laws 2000, page 526
- [5] Supreme Court Judgment (1) 1999 (S).
- [6] All India Report 2001 SC 2043
- [7] Supreme Court Case Judgment – No.60 (1999)
- [8] Supreme Court Case Judgment (2001) 2 No.28.
- [9] All India Report 1996 SC 2800.
- [10] Criminal Legal Judgment of Supreme Court of India (1949) No.834.
- [11] All India Report SCC 2017.
- [12] All India Report SCC 2020.
- [13] SCR (1) No.37 (1994).
- [14] SCC (2012) No.9 (1).
- [15] Ahmed Siddique's Criminology and Penology, Eastern Book Company, 6th ed. 2009.
- [16] Criminology & Penology by Sirohi JPS Allahabad Law Agency, 2011 edition.
- [17] Indian Legal and Constitutional History by Dr. Paranjape N.V, Central Law Agency, 6th ed 2009.
- [18] <http://www.ncrb.nic.in/>
- [19] <http://www.erces.com/>
- [20] <http://en.wildpedia.org/wiki/crime>