
DEATH PENALTY IN INDIA: A CRITICAL ANALYSIS OF THE “RAREST OF RARE” PRINCIPLE

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ABSTRACT

Death is a punishment that cannot be taken back, making the decision to impose it one of the most serious decisions in the criminal justice system. In India, death penalty is legally allowed but is restricted to the “rarest of rare” cases. The rarest of rare principle developed as a safeguard against the unnecessary and unfair use of death penalty. Over the years, Indian courts have held that death penalty should be an exceptional punishment and that life imprisonment should normally be preferred. The rarest of rare principle continues to guide Indian courts while deciding whether a case deserves death penalty or a lesser punishment. The nature of the crime, the background of the offender, factors that may reduce the punishment and the possibility of reform and rehabilitation are considered while deciding the sentence. The principle requires the court to look not only at how serious the crime is but also at the person who committed it. It tries to maintain a balance between justice for the victim, the rights of the accused, the safety of society and the possibility of reforming the offender. The rarest of rare principle aims to prevent unfair use of the death penalty, but its application involves wide judicial discretion. Differences in how aggravating, mitigating and reformatory factors are considered may lead to inconsistency in sentencing. The application of a clearer and more consistent sentencing approach, with greater consideration of reformation and rehabilitation, will lead to fairer and more consistent decisions in death penalty cases, whereas continued reliance on broad judicial discretion will result in greater variation in sentencing. The sentencing process can follow clearer guidelines, with proper reasons for giving importance to factors in favour of or against the offender. Greater importance can also be given to reform and rehabilitation. To examine the development and application of the rarest of rare principle in India. To understand the role of factors in favour of and against the offender in death penalty cases. To examine whether death penalty decisions are fair and consistent. To study the importance given to reform and rehabilitation.

Keywords: Death Penalty, Rarest of Rare, Capital Punishment, Judicial Discretion, Aggravating Circumstances, Mitigating Circumstances, Reformation, Rehabilitation, Sentencing, India.

1. INTRODUCTION

Death penalty is the most severe punishment that can be imposed by a criminal court. Unlike other punishments, it permanently takes away the life of the person convicted. Therefore, the decision to impose death penalty requires a very high level of judicial care. The question is not only whether a person has committed a serious crime, but also whether the circumstances of the case are such that no lesser punishment would be sufficient.

India has retained death penalty while placing strict limits on its use. The courts have developed the “rarest of rare” principle to ensure that death penalty is not imposed merely because an offence is serious or shocking. The principle requires consideration of the nature of the crime as well as the circumstances of the offender.

The central difficulty is that the expression “rarest of rare” does not provide a simple mathematical formula. Every case has different facts, different offenders and different circumstances. This creates a need for careful judicial reasoning and consistency in sentencing.

The present study therefore examines the development and application of the rarest of rare principle and focuses particularly on aggravating circumstances, mitigating circumstances, reformation, rehabilitation and judicial discretion. It also considers whether the present approach provides sufficient consistency and fairness in death penalty cases.

2. HISTORICAL DEVELOPMENT OF DEATH PENALTY IN INDIA

Death penalty has existed in the Indian criminal justice system for a long period. During the colonial period, the Indian Penal Code, 1860 recognised death penalty for certain serious offences, including murder. After independence, India continued to retain capital punishment within its criminal law framework.

The constitutional validity of death penalty was considered by the Supreme Court in *Jagmohan Singh v. State of U.P.* The Court upheld the constitutionality of the death penalty and recognised the importance of judicial consideration before imposing it.¹

A major change came with the Code of Criminal Procedure, 1973, which made life

¹ *Jagmohan Singh v. State of U.P.*, (1973) 1 S.C.C. 20, 27–33 (India).

imprisonment the normal punishment for murder and required special reasons when death penalty was imposed. This legislative approach became an important foundation for later judicial development of the rarest of rare principle.

In *Bachan Singh v. State of Punjab*, the Supreme Court upheld the constitutional validity of death penalty but significantly restricted its application. The Court held that death penalty should be imposed only in the “rarest of rare” cases when the alternative option of life imprisonment is unquestionably foreclosed.²

The principle was further explained in *Machhi Singh v. State of Punjab*, where the Supreme Court identified broad categories of aggravating circumstances that may be relevant in determining whether a case falls within the rarest of rare category.³

The later development of death penalty jurisprudence has increasingly focused on the individual offender. Courts have recognised that the seriousness of the crime alone cannot decide the sentence. The possibility of reformation, personal background, age, conduct in prison and other mitigating factors have become important parts of sentencing analysis.

3. RESEARCH PROBLEM

The rarest of rare principle was developed to prevent unnecessary and unfair use of death penalty. However, its application involves considerable judicial discretion. Different approaches to aggravating circumstances, mitigating circumstances and the possibility of reformation may create differences in sentencing.

The main research problem is whether the present application of the rarest of rare principle provides a clear, consistent and fair basis for deciding when death penalty should be imposed in India.

The study also examines whether sufficient importance is given to the background of the offender, the possibility of reformation and rehabilitation, and the interests of victims and their families. The study indicates the need for clearer sentencing guidelines, proper recording of reasons, systematic assessment of mitigating circumstances and greater attention to the possibility of reformation and rehabilitation. A more structured process can reduce unnecessary

² *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, 729–30 (India).

³ *Machhi Singh v. State of Punjab*, (1983) 3 S.C.C. 470, 480–82 (India).

variation while still allowing courts to consider the individual facts of each case.

4. HYPOTHEIS

The application of a clearer and more consistent sentencing approach, with greater consideration of reformation and rehabilitation, will lead to fairer and more consistent decisions in death penalty cases, whereas continued reliance on broad judicial discretion will result in greater variation in sentencing.

Status of Hypothesis — Largely Supported

The hypothesis is largely supported by the study. Judicial decisions show that courts have repeatedly emphasised the importance of considering both aggravating and mitigating circumstances and the possibility of reform before imposing death penalty. The Supreme Court has also recognised the need for a proper framework for collecting and presenting mitigating material.⁴

However, this is a doctrinal and analytical study and does not claim that a particular reform will statistically reduce sentencing differences. The research supports the need for greater structure and consistency in the sentencing process.

5. AIMS AND OBJECTIVES

To examine the development and application of the rarest of rare principle in India and to critically analyse whether the present approach provides a fair balance between the seriousness of the offence, the circumstances of the offender, the possibility of reformation and the interests of victims and their families.

Achieved. The study examines the legal development, judicial application, mitigating circumstances, reformation and rehabilitation and identifies areas requiring improvement.

1. To examine the development and meaning of the rarest of rare principle in India.
2. To understand the legal and constitutional position relating to death penalty.
3. To analyse the approach of Indian courts in applying the rarest of rare principle.

⁴Manoj v. State of Madhya Pradesh, (2022) 9 S.C.C. 1, 18–24 (India).

4. To examine the importance given to aggravating and mitigating circumstances, reformation and rehabilitation.
5. To identify the major difficulties in the present application of the principle and suggest suitable reforms.

The development and meaning of the rarest of rare principle have been examined. The constitutional and legal basis of death penalty has been discussed. Important Supreme Court decisions have been analysed. The role of mitigating circumstances, reformation and rehabilitation has been examined. The major challenges have been identified and reforms have been suggested.

Overall, the objectives of the study have been achieved.

6. RESEARCH METHODOLOGY

The study follows a doctrinal and analytical research methodology. Primary sources include the Constitution of India, statutes and judgments of the Supreme Court. Secondary sources include Law Commission reports, books, research articles and other legal materials.

The study mainly uses case-law analysis and legal analysis to understand how the rarest of rare principle has developed and how it is applied by courts. Important judicial decisions are examined to identify common principles as well as differences in sentencing approaches.

The study is primarily qualitative and does not depend upon empirical interviews or statistical surveys.

7. LEGAL AND CONSTITUTIONAL FRAMEWORK OF DEATH PENALTY IN INDIA

Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has treated Article 21 as an important constitutional safeguard in death penalty cases.⁵

Article 14 also requires fairness and equality before law. Since death penalty is an irreversible punishment, the sentencing process must be based on relevant reasons and must not operate

⁵ INDIA CONST. art. 21; *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, 717–18 (India).

arbitrarily. The constitutional framework therefore requires careful judicial consideration before the extreme punishment is imposed.⁶

The Constitution also provides mercy powers to the President and Governor under Articles 72 and 161 respectively. These powers provide another constitutional stage at which a death sentence may be reconsidered.⁷

Under the present criminal law framework, the Bharatiya Nyaya Sanhita, 2023 (BNS) provides death penalty as one of the punishments for murder under Section 103. The BNS came into force on July 1, 2024, replacing the Indian Penal Code, 1860.⁸

The procedural safeguard has also been retained under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Section 407 requires a death sentence passed by a Court of Session to be submitted to the High Court for confirmation, and the sentence cannot be executed unless it is confirmed by the High Court.⁹

The High Court can confirm the sentence, impose another sentence permitted by law, annul the conviction, order a new trial or acquit the accused in accordance with Section 409.¹⁰

These safeguards show that death penalty is not treated as an ordinary punishment. The law provides multiple stages of judicial and constitutional scrutiny before execution.

8. THE “RAREST OF RARE” PRINCIPLE

The rarest of rare principle was established by the Supreme Court in *Bachan Singh*. The Court did not abolish death penalty but placed a strong restriction on its use. Life imprisonment was treated as the normal rule and death penalty as an exception.¹¹

The principle requires courts to consider both the crime and the criminal. The circumstances surrounding the offence are important, but the personality, background and circumstances of the offender must also be considered.¹²

⁶ INDIA CONST. art. 14; *Bachan Singh*, (1980) 2 S.C.C. at 717–20.

⁷ INDIA CONST. arts. 72, 161.

⁸ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 103, India Code (2023).

⁹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 407, India Code (2023).

¹⁰ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 409, India Code (2023).

¹¹ *Bachan Singh*, (1980) 2 S.C.C. at 729–30.

¹² *Id.* at 728–29.

In *Machhi Singh*, the Court provided broad categories of circumstances that could be considered while deciding whether a case falls within the rarest of rare category. These include the manner of commission of the murder, motive, magnitude of the crime, personality of the victim and other circumstances of the case.¹³

However, these categories cannot operate as an automatic checklist. A particularly brutal offence does not by itself mean that death penalty must follow. The court still has to examine whether life imprisonment is inadequate and whether the offender has any realistic possibility of reform.

The central question is therefore not simply whether the offence is extremely serious. The more important sentencing question is whether the case is such that the alternative punishment of life imprisonment is insufficient.

9. AGGRAVATING AND MITIGATING CIRCUMSTANCES

Aggravating circumstances are factors that make the offence or the offender more serious for sentencing purposes. They may include extreme brutality, multiple murders, planned criminal conduct, vulnerability of victims and other circumstances showing the seriousness of the offence.

Mitigating circumstances operate in the opposite direction. They may include young age, lack of previous criminal record, difficult social or economic background, mental or emotional circumstances, possibility of reform, conduct in prison and other personal circumstances.

The Supreme Court has repeatedly emphasised that sentencing cannot be based only on aggravating circumstances. A proper balance between aggravating and mitigating circumstances is necessary.¹⁴

In *Santosh Kumar Bariyar v. State of Maharashtra*, the Supreme Court stressed the importance of the individualised sentencing approach and cautioned against treating the seriousness of the crime as the only consideration.¹⁵

¹³ *Machhi Singh v. State of Punjab*, (1983) 3 S.C.C. 470, 480–82 (India).

¹⁴ *Bachan Singh*, (1980) 2 S.C.C. at 729–30; *Manoj v. State of Madhya Pradesh*, (2022) 9 S.C.C. 1, 18–24.

¹⁵ *Santosh Kumar Bariyar v. State of Maharashtra*, (2009) 6 S.C.C. 498, 527–31 (India).

The importance of mitigating evidence has also increased in recent jurisprudence. In *Manoj v. State of Madhya Pradesh*, the Supreme Court emphasised the need for meaningful information about the accused, including social background, family circumstances, education, psychological condition, prison conduct and possibility of rehabilitation.¹⁶

This approach is important because a death sentence concerns the whole future of the individual. A proper sentencing hearing therefore requires more than a description of the crime.

10. JUDICIAL APPROACH AND CRITICAL ANALYSIS

Indian death penalty jurisprudence has developed mainly through Supreme Court decisions. The courts have repeatedly stated that death penalty should be imposed only in exceptional circumstances and that life imprisonment remains the normal punishment.

In *Bachan Singh*, the Court placed the rarest of rare principle within the constitutional framework of Articles 14 and 21.¹⁷

In *Machhi Singh*, the Court attempted to provide practical guidance for identifying rarest of rare cases.¹⁸

However, later cases showed that the application of the principle could become difficult when different courts attached different importance to aggravating and mitigating circumstances. In *Sangeet v. State of Haryana*, the Supreme Court discussed concerns regarding inconsistency in the application of the rarest of rare framework and the need for a more principled sentencing approach.¹⁹

In *Shankar Kisanrao Khade v. State of Maharashtra*, the Supreme Court also examined the need for a more structured approach to death penalty sentencing and discussed the relationship between crime, criminal and the circumstances of the case.²⁰

A major development came through *Manoj*, where the Court focused strongly on the quality of mitigating evidence available before sentencing. The Court recognised that courts require

¹⁶ *Manoj*, (2022) 9 S.C.C. at 18–24.

¹⁷ *Bachan Singh*, (1980) 2 S.C.C. at 717–20, 729–30

¹⁸ *Machhi Singh*, (1983) 3 S.C.C. at 480–82.

¹⁹ *Sangeet v. State of Haryana*, (2013) 2 S.C.C. 452, 463–66 (India).

²⁰ *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 S.C.C. 546, 571–75 (India).

meaningful information about the offender to properly decide whether death penalty is necessary.²¹

The judicial approach therefore shows a gradual movement from simply classifying the crime as brutal or exceptional towards a more complete assessment of the individual offender.

Critical Analysis

The major difficulty lies in the absence of a completely uniform method for weighing different factors. Two cases may contain similar aggravating circumstances but may result in different sentences because the mitigating circumstances are assessed differently.

This does not mean that judicial discretion should be completely removed. Every crime has its own facts. A rigid formula may itself create unfairness. The real need is for structured discretion, where judges retain the ability to consider individual circumstances but follow a clear process for recording and weighing the relevant factors.

The recent judicial approach continues to emphasise this need. In 2025, the Supreme Court reiterated that courts must consider the possibility of reform and rehabilitation and the totality of the offender's circumstances before imposing or maintaining a death sentence.

Thus, the problem is not necessarily the existence of judicial discretion itself. The greater concern is whether that discretion is exercised through a transparent and consistent sentencing process.

11. REFORMATION, REHABILITATION AND VICTIM-CENTRIC JUSTICE

Reformation is an important part of modern criminal justice. Punishment is not concerned only with suffering for the offence; it also considers whether the offender can change and return to society. In death penalty cases, the possibility of reformation becomes especially important because the punishment is irreversible. If there is a reasonable possibility that the offender can be reformed, the justification for taking away life becomes more difficult.

The Supreme Court has repeatedly recognised reformation and rehabilitation as relevant considerations. Recent decisions have continued to hold that where there is evidence or a

²¹ Manoj, (2022) 9 S.C.C. at 18–24.

reasonable possibility of reform, a lesser sentence may be appropriate.

At the same time, justice cannot focus only on the accused. A serious crime can permanently affect the victim's family through loss of income, emotional trauma, social difficulties and other consequences.

A balanced sentencing system should therefore consider both offender rehabilitation and victim-family rehabilitation. Victim compensation and support should not be treated as separate from sentencing concerns. The criminal justice system should attempt to reduce the long-term impact of the crime on affected families.

- **Proposed Reformatory Responsibility Model**

One possible reform is to introduce a legally regulated reformatory responsibility mechanism in appropriate cases where death penalty is replaced by life imprisonment or another long-term sentence.

Under this model, the convict would not be required to personally meet or directly interact with the victim's family. Instead, where legally permissible, a part of the convict's lawful prison earnings, skill-based work or other approved resources could be directed through a court-supervised victim rehabilitation fund, subject to the convict's capacity, statutory safeguards and the rights and consent of the victim family.

This would not replace State compensation. It would operate as an additional restorative mechanism where appropriate.

The purpose would not be revenge against the offender. It would connect reformation with responsibility. A person who is given an opportunity to reform could also be encouraged to contribute, within lawful limits, towards repairing some of the harm caused by the offence.

This model would require careful safeguards. It should not amount to forced labour, should not affect basic prison rights, should not become a condition for parole or remission in an arbitrary manner, and should not burden the family of the offender who was not involved in the crime.

12. MAJOR CHALLENGES IN THE PRESENT APPLICATION OF THE PRINCIPLE

One major challenge is the lack of a completely uniform sentencing approach. The rarest of

rare principle gives courts important discretion, but different courts may attach different weight to similar factors.

Another challenge is the difficulty in assessing the possibility of reformation. Reform is a future possibility and cannot be measured with complete certainty. Courts therefore require reliable information about the offender's background, prison behaviour, psychological condition and rehabilitation prospects.

The quality of mitigating evidence is another concern. An accused may not always have sufficient resources or legal assistance to place complete information about family background, education, trauma, poverty or other relevant circumstances before the court.

There is also a concern regarding overemphasis on the brutality of the crime. Seriousness of the offence is undoubtedly relevant, but brutality alone cannot replace an individualised sentencing assessment.

Delay in death penalty proceedings creates another serious concern. Long periods spent under a sentence of death can have severe psychological consequences and raise questions about fairness and proportionality. The Supreme Court has considered delay as a relevant factor in appropriate cases.

Another difficulty is balancing victims' interests with the rights of the accused. The seriousness of the loss suffered by the victim's family must be recognised, but sentencing must still follow constitutional principles and cannot be determined solely by public anger or emotional reaction.

Finally, the present system needs a better mechanism for collecting pre-sentencing information. Courts need reliable reports rather than general statements about whether an offender can or cannot reform. The Supreme Court's directions in *Manoj* recognise this need.²²

13. POSSIBLE REFORMS AND SUGGESTIONS

The first reform should be the development of clearer sentencing guidelines for death penalty cases. Courts should follow a structured process for considering the crime, offender, aggravating circumstances, mitigating circumstances and possibility of reform.

²² *Manoj*, (2022) 9 S.C.C. at 18–24.

A standardised mitigation report should be prepared in every case where death penalty is being considered. It should contain relevant information about the offender's age, family background, education, economic circumstances, mental and psychological condition, previous criminal history, prison conduct and rehabilitation prospects.

Greater importance should be given to reformation and rehabilitation. The possibility of reform should be assessed through reliable evidence rather than through assumptions based only on the nature of the offence.

The legal system should also improve victim-family rehabilitation. Compensation, counselling, financial assistance and social support should be available to families who suffer serious consequences because of the offence.

The proposed reformatory responsibility model can also be considered. Where a death sentence is commuted to life imprisonment, and where legally and practically appropriate, a court-supervised mechanism could allow the convict's lawful earnings or approved contributions to support a victim rehabilitation fund. This should always operate with proper safeguards and should not replace State compensation.

There should also be better sentencing training for judges, prosecutors and defence lawyers so that mitigating evidence is properly collected, presented and considered.

Finally, death penalty cases require special care and timely disposal because the punishment is irreversible. Unnecessary delay should be avoided while ensuring that every constitutional and legal safeguard remains available to the accused.

14. CONCLUSION

The rarest of rare principle remains the central standard governing the imposition of death penalty in India. It was developed to ensure that death penalty is used only in exceptional cases and that life imprisonment remains the normal alternative.

The study shows that the principle has provided an important safeguard, but its application still involves considerable judicial discretion. The main difficulty is not the existence of discretion but the possibility of differences in the manner in which aggravating, mitigating and reformatory factors are assessed.

A fair death penalty system must look at both the offence and the offender. The seriousness of the crime, the suffering of the victim's family and the safety of society are important considerations, but so are the background, circumstances and possibility of reformation of the offender.

The study supports a more structured sentencing process with proper mitigation reports, consistent consideration of relevant factors and meaningful assessment of rehabilitation. Victim-family support should also form an important part of criminal justice.

The proposed reformatory responsibility model provides one possible way of connecting rehabilitation with responsibility towards those affected by the crime. It should be developed only through clear legislation and safeguards.

The future of death penalty jurisprudence in India therefore depends not merely on deciding whether a crime is extremely serious, but on ensuring that the final sentence is reached through a careful, transparent and constitutionally fair process.