
THE 'RAREST OF RARE' DOCTRINE IN INDIA: AN EFFECTIVE SAFEGUARD OR JUDICIAL ARBITRARINESS?

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ABSTRACT

The doctrine of rarest of rare is developed to limit the discretionary authority of the judiciary to impose the death penalty, as well as to ensure that the death penalty is granted in extraordinary conditions. Before the development of this doctrine, several death sentences had been passed in a scenario where other forms of punishment might have been more suitable to the purpose of serving justice. The doctrine itself casts doubts on the constitutionality of capital punishment since all individuals enjoy the right to life from birth until the execution moment under Article 21 of the Constitution of India. Although the Supreme Court has provided certain rules to follow when passing the death sentence, the focus of the present research paper is whether the capital punishment, as set by the judiciary, is being applied consistently or whether the capital punishment practice is arbitrary as it has been. This research aims to address the following main questions: to examine legal reasoning in death penalty cases and to determine whether this type of case meets the required standards, and to review and compare international ways of treating the death penalty. This study follows a doctrinal approach, and the use of secondary sources is the primary source of information, comprising case law, judicial pronouncements, scholarly articles, and statutory materials. The paper will attempt to review the conditions and factual scenarios under which death sentences are being handed down, and also to determine how effective the doctrine of the rarest of rare is in factoring judicial judgments.

INTRODUCTION

In ancient India, the king had absolute discretion to punish offenders arbitrarily, with no established principles of law or procedural safeguards. During those times, it was a usual practice to impose very rigid, disproportionate sentences, including capital punishment. With more modern law, 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 and conventions, the question of capital punishment became an issue of public debate. The question arose primarily as to whether sentencing a person to death ran counter to the right to life or whether this was essential for the maintenance of law and order in society. Certain international conventions claim to abolish the death sentence because the death sentence violates the basic right to life. For instance, “the UDHR states in Article 3, Everybody should have the right to dignity and life.”¹, Article 5 states, "Nobody will be tortured or exposed to cruel, inhuman or degrading treatment or punishment."² Similarly, “the Second Optional Protocol of (ICCPR)”³, “Protocol No. 6 of the (ECHR)”⁴, and the Protocol to the American Convention on Human Rights, all strive for the complete abolition of the death penalty.

Such global campaigns make certain nations make the death penalty illegal. Contrary to such nations, India has not determined the death penalty, though the nation has shifted to a restrictive system of capital punishment. Even after all of these efforts, the Indian courts still grant legitimacy to capital punishment as a sentence that can be granted for committing a severe offence, the courts exercise a high degree of control over the sentencing of the death penalty, intending to minimise and avoid any arbitrary application of capital punishment. The restrictive framework for the application of capital punishment was laid down in the Supreme Court judgment “*Bachan Singh, (1980) 2SCC 684*”⁵ in which the Court devised the "Doctrine of the Rarest of Rare", which acts as a restraint that capital punishment shall be awarded only in the rarest of rare cases when there is no alternative option of sentence which would meet the requirement. Section 4 of the BNS, 2023, provides the various types of punishments for various offences. “The Section enumerates six types of punishments: simple imprisonment, rigorous imprisonment, imprisonment for life, forfeiture of property, death, and community service”⁶.

¹ UDHR, G.A. Res. 217 A (III), art. 3 (1948).

² UDHR, G.A. Res. 217 A (III), art. 5 (1948).

³ ICCPR Second Optional Protocol, Dec. 15, 1989, 1642 U.N.T.S. 414.

⁴ ECHR Protocol No. 6, Apr. 28, 1983, Eur. T.S. No. 114.

⁵ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

⁶ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 4 (India)

The Section merely states that punishments are to be of a type and amount appropriate in proportion to the seriousness and gravity of an offence. “Capital punishment is prescribed in several sections throughout the BNS. Under the following sections, capital punishment is provided for: 65(2), 66, 70(2), 71, 103(1), 103(2), 104(2), 109(2), 111(2)(a), 113(2)(a), 140(2), 147, 160, 107, 230(2), 232(2), and 310(3)”⁷. Further, “capital punishment is also provided in Section 31A of the (NDPS) Act, 1985”⁸, as well as certain special legislations.

However, despite its putative protective function, the doctrine has been critiqued for resting on judicial discretion. 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.

This study has examined whether the Doctrine of the Rarest of Rare ensures reliable judicial safeguards against arbitrary imposition of the death penalty or its subjective element inadvertently perpetuates ambiguity and disparity in outcomes. The paper, therefore, attempts to evaluate the effectiveness of the principle in meeting the constitutional mandates and identifies whether reform is necessary for the doctrine to become reliable and non-discriminatory in the Indian administration of criminal justice through analyzing the landmark court judgments, observing the conflicts, and testing the practical implementation of the doctrine.

LITERATURE REVIEW

Scholarly debate on the Doctrine of the Rarest of Rare thus reflects a sharp division over its role as a legal check and its susceptibility to whimsy. The key cases after Bachan Singh (1980) have generally cemented the doctrine as a constitutional vehicle that must check the use of the death penalty to the exceptional cases of the exceptional. Many scholars also hold this position. Khan and Mishra (2025) argue that the doctrine, in conjunction with the legal regime provided by the BNS and BNSS, provides an important safeguard against arbitrary sentencing. The necessary weighing of both aggravating and mitigating factors, plus the availability of review and curative petitions, they argue, makes the procedure more fair and reduces the chances of

⁷ Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023).

⁸ NDPS Act, No. 61 of 1985, § 31A.

executing the innocent. Bose and Choudhry (2025) view the doctrine as an attempt by the judiciary to bring retributive justice into harmony with constitutional principles.

On the other hand, an immense amount of research arises that questions the practical viability of the doctrine. According to Venkata Rao and Sharma (2022), though the goal is to make the application of capital punishment as rare as possible, the doctrine has not been implemented in that way, assuming that capital punishment cannot be administered in a completely fair and rational manner. Inamdar (2025) expresses his apprehension on socio-economic disparities; capital punishment disproportionately affects those from economically weaker or disadvantaged sections, casting aspersions on the inequality of the system itself.

Another important feature of literature underlines procedural flaws. Agarwal (2024) states that repeated postponements in addressing and resolving review and curative petitions lead to the conversion of death sentences because of intense psychological distress, which, in turn, leads to arbitrariness in the sentencing stage, thus eroding the doctrine's reliability. Secondly, very few studies have ever carried out in-depth analyses of capital cases related to the investigation of aggravating and mitigating factors or examined the impact of delays in execution.

Current literature emphasises the existing dichotomy: while the doctrine is expected to advance equity, proportionality, and to prevent the excessive of discretion, it is invariably founded on subjective judicial discretion and is replete with structural flaws that lead rather more often toward arbitrariness than uniformity. Such a duality—conceptually protective yet practically unreliable—forms the core of academic debate and shapes the main investigation of this research: is the doctrine indeed a valid judicial shield or does its operation create arbitrariness?

RESEARCH METHODOLOGY

The paper will also draw primarily on secondary sources, including peer-reviewed scholarly articles, academic journals, reputable books, and trusted news magazines. These materials have been carefully examined to understand the evolutionary development. In this study, a doctrinal approach has been employed, in which a detailed analysis of research papers, landmark cases, along academic debates have been presented. While synthesising insights from existing literature and judicial cases, this study seeks to assess doctrinal coherence, judicial trends, and practical challenges associated with the execution of the death penalty in this context.

LEGAL FOUNDATION OF THE DOCTRINE RAREST OF THE RARE

THE CASE OF BACHAN SINGH V. STATE OF PUNJAB, 1980

Some well-known orders gave rise to the foundation of the Principle of Rarest of Rare in India. The main case, which gave rise to the doctrine, is called *Bachan Singh, 1980*, the most important, which validated the principle of fairness that supports “the fundamental right to life as outlined in Article 21 of the Charter. In the present case, the accused was convicted of murdering his wife and was punished with rigorous imprisonment. After serving out the punishment, he returned home; however, he was aggrieved by the conduct of the wife of his brother and his brother's children and subsequently killed three of his brother's children and inflicted harm on one of his brother's children. Even with the request, the higher court of the state confirmed his conviction and imposed capital punishment on the accused. Later, Bachan Singh appealed to the Supreme Court, which confirmed the previous findings of the lower court and upheld the same punishment. This matter was important not only because he was convicted, but also because the Appellate Court held that Bachan Singh's death penalty did not breach Article 21 of the Constitution. “The Court laid down the Doctrine of the Rarest of Rare, indicating that the death penalty should only be considered after examining the nature and seriousness of the offence, and not applied randomly or arbitrarily”⁹.

THE MACCHI SINGH V. STATE OF PUNJAB 1983

After the verdict in *Bachan Singh, 1980*, the Appellate Court further clarified the standards governing the imposition of the death penalty in “*Macchi Singh v. State of Punjab*”¹⁰. This decision holds particular significance as it outlines the evaluative framework that courts must utilize when determining if the case fits under the doctrine. Machi Singh participated in the killing of seventeen individuals—including women and children—executed with extreme violence as a retribution act. The penalties imposed by the Court were fully upheld by both the Lower Courts, largely based on the exceptional gravity and harshness of the offence. In its decision, “the Court specified certain factors to consider when assessing whether a death sentence is warranted, including the nature of the crime, the manner in which it was committed, the motive in committing the crime, the effect of the crime on society, and the character and

⁹ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

¹⁰ 1983 SCC (3) 9572.

personality of the defendant”¹¹. Moreover, 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”¹². There are other cases as well, which shaped the legal framework for the doctrine of Rarest of Rare, like *Rajendra Prasad v. State of Uttar Pradesh* (1979)¹³, *Jagmohan Singh v. State of Uttar Pradesh* (1973)¹⁴, *Bhagwan Singh v. State of Punjab* (1976)¹⁵.

WORKING OF THE DOCTRINE

The operation of the doctrine concerns how judges apply this doctrine in practice; that is, the factors they consider in a particular case and from where they derive the appropriate punishment for an offender. Before discussing judges' decisions, it is necessary to have knowledge about the foundational concepts, such as the principle of proportionality, aggravating and mitigating factors, and other relevant circumstances. Together, these concepts are important for guiding the judiciary on the most prudent form of punishment proportional to the seriousness of the offence.

Principle of Proportionality: Originating from German law, “the Principle of Proportionality outlines that the punishment of an offender must be proportionate to the seriousness of the offence”¹⁶. The punishment must be severe enough to denounce the wrongfulness of the act committed, but should not be any more harmful or excessive than the offender's conduct, motive, or circumstances warranted.

“**Aggravating circumstances** are factors that increase the seriousness of the crime and justify a harsher penalty”¹⁷. Therefore, if two people commit similar offences but have different

¹¹ Rachi Singh, Analysis of Bachan Singh and Machhi Singh and Its Implication, 5 Int'l J. Res. & Analytical Reviews 135 (2018).

¹² Anushka Martis, Machhi Singh v. State of Punjab, Legal Service India, <https://www.legalserviceindia.com/legal/article-9031-machhi-singh-vs-the-state-of-punjab.html>.

¹³ 1979 AIR 916.

¹⁴ 1973 AIR 947.

¹⁵ AIR 1976SC 2263.

¹⁶ Peter Dostal, Proportionality, Criminal Law Notebook, <https://criminalnotebook.ca/index.php/Proportionality> (last visited Oct. 15, 2025).

¹⁷ Sanjay Vashishtha, Sentencing in Indian Penal System: Aggravating and Mitigating Factors, 2023 SCC Online Blog Exp 31 (Apr. 7, 2023), <https://www.sconline.com/blog/post/2023/04/07/sentencing-in-indian-penal-system-aggravating-and-mitigating-factors/>.

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); or motive or intent with respect to the crime. On the flip side, “**mitigating circumstances** are factors that diminish the culpability of the accused and may warrant a lesser sentence”¹⁸. For example, if a person causes the death of another and does so in self-defence, this mitigating factor may warrant a lower punishment.

How to apply the doctrine or analyze whether any case is serious enough where an offender can be granted the capital punishment?

Important standards for applying the capital punishments were established by the Supreme Court in *Macchi Singh v. State of Punjab*¹⁹. The Court noted that when capital punishments may apply, it is the Judge's duty to evaluate the specifics of each case diligently regarding two fundamental questions: “Whether the case is one of such exceptional circumstances that no punishment, other than death, would be adequate punishment for the offence committed”²⁰; and “Whether the circumstances are so serious that, notwithstanding consideration of any possible mitigating circumstances, a sentence of death is still justified”²¹.

To understand it more clearly, it's important to analyze the case and understand how exactly judges give a death sentence to anyone based on the circumstances of landmark cases.

THE FAMOUS CASE OF 2015, SHABNAM ALI V. UNION OF INDIA

In present case, two main accused, Shabnam Ali and Salim (hereafter referred to as the convicts), murdered seven people related to Shabnam, including a woman and a ten-month-old baby. “This occurred on April 14, 2008. The convicts initially gave diazepam to all of the members of the family, except for the baby, which rendered them unconscious, and then killed them with an axe. When the investigation began, certain circumstances raised a suspicion with the investigating officer, which resulted in the arrest of both convicts five days later”²². The investigation demonstrated that Shabnam and Salim were in a relationship and that Shabnam was pregnant with Salim's child. The crime appeared to be motivated by the opposition from

¹⁸ “Aggravating & Mitigating Factors in Criminal Sentencing Law,” Justia, Oct. 15, 2025, <https://www.justia.com/criminal/aggravating-mitigating-factors/>.

¹⁹ (1983 Air 957).

²⁰ *Macchi Singh V. State of Punjab* (1983 Air 957).

²¹ *Id.*

²² *Shabnam v Union of India & Ors* (2015) SCC OnLine SC 484

Shabnam's family to their relationship. The statements made by the Appellants have further complicated the issues in the case. Shabnam had contended that while she was asleep, Salim had murdered her family members, while Salim had asserted that she had participated as a planner and in the unfolding of this murder. Both of the convict Appellants had an ample opportunity to apply under law for all available means of legal remedies prior to a death warrant being issued. "The appeal and review petition were duly heard, as required by law, by a three-judge bench in the Hon'ble Supreme Court"²³. After proper consideration, the Supreme Court confirmed the punishment given by the lower courts, and thereafter, the death warrant could be issued.

In reviewing the issues in consideration of the principles established in *Macchi Singh v. State of Punjab*²⁴ The first question to consider is whether there is any punishment short of death in this case. "The Court stated this case was of an extremely grave nature, where seven people were murdered by the convict Appellants, including an infant. The crime was carried out with extreme violence and the intention to kill. The victims were the convict's own family, and the take-and-take murder in which the crime was committed was motivated by rage and contempt for the family's objections to their relationship"²⁵. The other evidence pointed to a planned and deliberate offence.

The second question looks to determine whether the death penalty was still appropriate after considering all mitigating factors. In favour of the convicts, there was only their unblemished record, and the court ruled that this was not enough in itself to diminish it because of the shocking nature of the crime.

In conclusion, and 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.

SAMBHUBHAI RAISANGBHAI PADHIYAR VS THE STATE OF GUJARAT, 2023

In the present case, Sambhubhai Raisangbhai was charged with the offences of kidnapping, sexual assault and murder of a four-year-old child named Rohit on 13 April 2016. The child

²³ Supreme Court Rules, 2013, O. VI, r. 3 (India).

²⁴ *Macchi Singh*, 1983 AIR 957.

²⁵ Shree Chithra Shajeev Naira, Case Comment: *Shabnam Ali v. Union of India – A Deadly Affair in Amroha: The Murder Uncovered*, 4 *Jus Corpus L.J.* Iss. 1 (Sept.–Nov. 2023).

was at home with his brother and grandmother when the act took place. According to the aunt of Rohit, the accused lured the child on the promise of getting ice cream. The child was later found murdered by a pond, with his body found in a totally nude state. "During the investigation, the accused could also indicate the specific location of the child's clothes, which were later recovered"²⁶. After the post-mortem examination, it was confirmed that Rohit had injuries to his genital area, and blood was on his clothes that was identified as belonging to the accused. The post-mortem examination also determined asphyxia caused by throttling as the cause of death. "There was no direct evidence available (e.g., eyewitness observations or medical confirmation) of actual sexual assault taking place. However, the prosecution led a strong case of circumstantial evidence against the accused"²⁷. As a result of this, the lower court pronounced a death sentence to Sambhubhai. Upon review, the Supreme Court of India examined the evidence and the possibly related circumstances. The Court upheld the finding of guilt beyond a reasonable doubt, considering the severity of the crime and the reliable circumstantial evidence.

"The Court also established that the defendant exhibited mild psychotic traits. After considering his mental health, his lack of a previous criminal history, and his potential for reform"²⁸, 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. When considering the judgment alongside the *Macchi Singh* case, the aggravating factors were clear: violence of the offence, the vulnerable victim, and the moral depravity exhibited in the abduction, sexual assault, and murder of a child. The mitigating qualities of the defendant's mental state, lack of previous offending history, and potential for rehabilitation outweighed the aggravating factors.

Thus, the Appellate Court carefully exercised its duty to switch the death sentence to rigorous imprisonment, striking a deliberate balance between the concepts of justice and mercy and reform.

The decision reiterates the importance of closely monitoring the implementation of the death penalty and emphasizes the ongoing significance of the "rarest of rare" concept in our Indian

²⁶ *Sambhubhai Raisangbhai Radhiyar vs State of Gujarat* 2024 INSC 987.

²⁷ Tanishka Shah, *Supreme Court Commutes Death Sentence in POCSO Case*, JGU Child Rights Clinic (Dec. 19, 2024), <https://jgu.edu.in/child-rights-clinic/>.

²⁸ Anup Surendranath & Maitreyi Misra, *Interdisciplinary Issues in Capital Sentencing*, 20 Socio-Legal Rev. 2 (2024).

criminal justice system

SURINDER KOLI V. UNION OF INDIA

Surinder Koli's case is known as the "Nithari Hatyakand" case. It has lasted almost twenty years and has been one of the most controversial criminal cases in India. Initially, the prosecution indicted accused no. 1, Surinder Koli, and accused no. 2, Moninder Singh Pandher, on charges of murder, kidnapping, and rape. Serious flaws in the investigation also complicated the case. The investigating authorities did not gather or preserve the evidence in accordance with the prescribed legal and scientific requirements, and the evidence collected also fell short of proper procedures. 29 December 2006 was when the case first drew public attention, due to reports coinciding with a series of missing persons between the time frame of 2004 and 2006, some of whom were children. "During the investigation into the disappearance of several children, a hand was found within a bag by children playing cricket. Searches also recovered what appeared to be skulls and skeletal remains in an open space behind House No. D-5, Nithari, Sector 31"²⁹. These events led to suspicion of the two residents in the house, Koli and Pandher, and they were arrested. Koli reportedly confessed during interrogation to using specific weapons and the sites where he disposed of skulls and bones, which police later claimed to have recovered from locations in accordance with his claims. "In the confession, Koli claimed he lured children with candy, strangled them, sexually assaulted their bodies after they were dead, dismembered them, and ate human flesh"³⁰. He claimed to have murdered 16 people: 9 female children, 5 male children, and 2 adult females. According to him, he committed the acts to fulfil his sexual desires. He allegedly did this while exhibiting an abnormal affect, demonstrating no feelings of remorse or compassion. Medical exams categorised him as having an antisocial personality disorder and described him as a psychopath.

At the Sessions Court, two adult women, Pratibha and Poornima, testified they had been lured by Kohli as well, but without success. Evidence was also led about Koli's socio-economic background: he grew up in a poor family, and he allegedly had been sexually abused by an uncle during childhood. Evidence about his previous work history as a meat-cutter was also admitted by the prosecution to draw inferences about his background that related to the

²⁹ Harshita Kapoor & Adarsh Kumar, Case Note: Surendra Koli, *Indian J. L. Polity & Admin.* (ISSN 2582-7677).

³⁰ Sucheta, Surendra Koli's Acquittal: Notes on the Supreme Court's 13th Nithari Ruling, *SCC Times* (Nov. 12, 2025), <https://www.scconline.com/>.

possibility of him being a dismemberment professional. Based on this evidence, Surinder Kohli was found guilty of several charges by the Sessions Court, while Moninder Singh Pandher was acquitted of multiple charges. In 2012, the Sessions Court sentenced Koli to death. Then the Allahabad High Court confirmed Kohli's conviction and sentence, in regard to the case involving Rimpa Halder. Nevertheless, it acquitted Pandher again. On appeal in 2014, The Supreme Court upheld both the conviction and the sentence, stating that the confession and circumstantial evidence were adequate to prove guilt beyond a reasonable doubt. A review petition was filed the same year, but it was dismissed without a hearing in chambers, despite the case being a death penalty. Koli was scheduled for execution on July 8, 2014; however, In 2015, the Allahabad High Court changed his death penalty to life imprisonment due to the excessive delay in addressing his mercy petition.

Then, in 2025, a curative petition was filed. After a thorough re-examination of the file, “the Supreme Court acquitted Surinder Koli because the confession seemed to have been obtained under duress and the structural protections required by section 164 CrPC had been disregarded”³¹. It further noted that the authorities then tasked with the investigation had wholly ignored the organ-trade angle identified by a government committee. It found that the circumstantial evidence had failed to create a complete, consistent, and corroborated chain and, as such, was not sufficient to establish guilt beyond a reasonable doubt.

In this particular case, several aggravating circumstances were noted:

- The crime was one of sixteen victims who were murdered, aged between five and twenty years, which demonstrates the especially heinous and serious nature of the crime.
- The victims had not only been murdered but, it was claimed, had also been sexually assaulted and cannibalised. This allegation was based solely on Koli's confession, as the police investigation did not recover independent evidence to support this information.
- Two women, Pratibha and Poornima, indicated that Surinder Koli also attempted to lure them, but they did not agree to accompany him.
- The DNA profile of Rimpa Halder, recovered from the clothing material, matched the profiles of her parents and was allegedly recovered from the location identified in Surinder Koli's

³¹ Surinder Koli v. Union of India AIR 2011 SUPREME COURT 970, 2011 (4)

confession.

- The alleged weapons used in the commission of a crime were recovered from the location provided by Koli during the interrogation.
- Medical records expressed that Surinder Koli displayed some psychopathic traits.
- Historical information expressed that he sustained some childhood trauma.

The mitigating factors in favour of Surinder Koli are as follows:

- The circumstantial evidence was inconsistent with the physical evidence recovered, including the alleged weapons and DNA evidence.
- The confession was made under circumstances where it was, at least, questionable whether it was voluntary.
- The investigating officer failed to take proper procedural safeguards with respect to recording the confession. The accused also had no prior criminal history.

After weighing the aggravating and mitigating circumstances, it is clear that while there is some evidence indicating the accused may have committed the offence, the serious inconsistencies and lack of compliance with procedural safeguards could call into doubt the reliability of the prosecution's case. Moreover, it would be unsuitable to apply the death penalty in this situation.

Nevertheless, when the same evidence and incidents were presented to the Sessions court, the High Court, and even the Supreme Court itself that adjudicated the case, it ruled in favor of the death penalty, raising significant concerns regarding judicial consistency. “As has been mentioned, the case had nearly 20 years before it was finally adjudicated, and this is among the testimonies of time wastefulness by the criminal justice system.”³². The issue that has been raised by this long, drawn-out battle, which has taken place in the courts, is the way the courts have reached contradicting conclusions based on the same facts of evidence. The valid concerns that arise out of this anomaly are whether the old courts have been missing out on certain evidence, or not properly contemplating the same, and therefore, this weakness has

³² Agrawal, Saksham, The Story of Surendra Koli and the Real Death Penalty, NLR Blog (Oct. 28, 2024).

compromised arbitrariness within the system, as relates to the prosecution of issues touching on the issue of capital punishment.

MUKESH & ANR VS STATE FOR NCT OF DELHI & ORS, 2017

The official case is called the Nirbhaya case, and it is abbreviated as Mukesh and Anrs v. State for NCT of Delhi (2017)³³. “The case of the notorious gang rape and the consequent murder of a 23-year-old physiotherapy student, Jyoti Singh, in Delhi on December 16, 2012”³⁴. The incident took place as the victim and her friend were heading home after viewing a film in a theatre; they were on a private bus when six men, including a minor, assaulted them. The criminals had repeatedly raped Jyoti Singh, and were utterly savage when it came to inserting an iron rod in her genital area and which resulted in shattering internal injuries and failure of organs. The two victims were then thrown out of the speeding automobile into an unconscious and deadly state. Jyoti Singh died 13 days later because of her injuries. A significant amount of forensic and eyewitness evidence was the basis of the case. The DNA tests established that the accused had semen on the victim and the victim had blood on clothes belonging to the assailant. Some witnesses testified to the attempts to conceal evidence, such as the burning of clothes and cleaning the bus. The accused had given confession statements during the investigation, and these were applied during the trial session. Based on the compelling evidence, the Lower Court has convicted four adult accused of the offences of gang rape, murder, unnatural sex acts, kidnapping, and criminal conspiracy and awarded them a death sentence under the rarest of rare cases doctrine. One of the accused was dead in the court, and the minor was convicted to three years at a reform facility within the Juvenile Justice Act and was released in 2015. Such convictions and sentences were affirmed in 2014 by the Delhi High Court, and the Supreme Court affirmed the judgment, in a detailed judgment in May 2017, with a heavy emphasis on the unusual brutality of the crime and the need to impose a severe punishment as a deterrent. All review, curative and mercy petitions had been denied, and the four adults were executed in 2020. The case brought mass protests and brought serious reforms to the law. The main and most significant one was the “Criminal Law (Amendment) Act of 2013”³⁵, which had broadened definitions and increased caution on sexual offences, and “the Justice Verma Committee suggestions that were meant to speed up processes, and accord

³³ (2017) 6 SCC1

³⁴ Aditya Singh, Nirbhaya Rape Case: Mukesh & Anr. v. State (NCT of Delhi) & Ors., The Legal Quorum (Apr. 1, 2024), <https://thelegalquorum.com/nirbhaya-rape-case-mukesh-anr-v-state-nct-of-delhi-ors/>.

³⁵ Criminal Law (Amendment) Act, No. 13 of 2013 (India).

greater protection to women”³⁶. These reforms had a tremendous influence on the IPC, the CrPC and other related rules.

It is also pertinent to note that, as the conditions that contributed to the aggravation of the case, the medical and the DNA reports confirmed positively the direct relationship between the accused and the victim. In addition to that, active suppression of evidence that involved burning of clothes and instant washing of the bus was also corroborated by eyewitness accounts. The other incriminating evidence was the mobile phone records of the accused, which merely contributed to his involvement. “The convicts also showed a lack of remorse through their post-crime behaviour. In various interviews and documentary films, some of the accused have pinned the victim on the ground and it depicts their lack of responsibility towards the crime”³⁷. The atrocities of the attack, the various serious injuries that were inflicted on the victim, and the suffering that would later claim her life after thirteen days are of great aggravating issues that were to weigh against the court. As regards the extenuating factors, the case lacks strong or strong evidence in support of the accused. Nevertheless, there have been some considerations taken before the court. These were the socio-economic background of the convicts, who belonged to families of relatively low income; their rather young age, between 20 and 26 years, with one of the criminals being a child at the moment of the incident; and the absence of a criminal history of the adult convicts. Nonetheless, those same factors proved inadequate to balance the severity of the offence and the sheer brutality involved. Based on the analysis above, it can be concluded that all three courts made decisions that were well-based on the use of aggravating and mitigating factors, and as such, the decisions made were legally justified. But the question that lingers is why it took close to seven years to execute the convicted in the case, when there was clear and overwhelming evidence. While justice was ultimately delivered to the victim, the prolonged duration of the criminal justice process raises significant questions regarding its efficacy and functioning.

COMPARATIVE ANALYSIS OF CAPITAL PUNISHMENT PRACTICES ACROSS THE UNITED STATES, CHINA, THE UNITED KINGDOM, AND INDIA

By 2025, worldwide data shows that only “64 countries continue to maintain capital

³⁶ Times of India, Nirbhaya Case Explained, Times of India (Aug. 19, 2024), <https://timesofindia.indiatimes.com/>.

³⁷ India’s Daughter (BBC Storyville 2015).

punishment in both their laws and practices”³⁸. Of these, “9 nations implement the death penalty exclusively in severe circumstances and are governed by stringent procedural safeguards”³⁹. “An additional 23 countries have enacted a permanent suspension of executions, while 111 nations have entirely abolished the death penalty through law”⁴⁰, aiming to align domestic criminal justice systems with international human rights standards.

1. Capital Punishment Practices in the US

The US has significantly lowered the count of executions and death sentences in recent decades. Since the 1990s, “there has been a reduction of more than 85% in both executions and new death sentences, reflecting shifts in social, legal, and procedural elements. Since 2004, nine states in the United States have abolished the death penalty”⁴¹. The method of execution has changed substantially: from public hangings to electrocution in the 19th and early 20th century, and now lethal injection is the primary method employed, which involves injecting drugs into the person to be executed to stop their bodily functions and ultimately kill them. According to researchers, the reduction in death sentences is not entirely because of changing human rights attitudes but because of several domestic influences like declining murder rates, enhanced quality of capital defense, increasing costs of capital trials, the presence of harsh alternative sentences such as Life Without Parole LWOP and prolonged solitary confinement, as well as significant procedural delays in the appeal processes connected with the death penalty.

1.1 Material Legal Proceedings

Judicial review has significantly influenced the evolution of death penalty legislation in the United States. A pivotal moment occurred with the U.S. Supreme Court's ruling in *Furman v. Georgia*, 1972⁴²; the Court found that death penalty statutes permitting unlimited discretion for juries produced random and prejudiced outcomes, thus violating the Eighth Amendment. This ruling invalidated 42 state statutes, effectively establishing a nationwide suspension of

³⁸ World Population Review, Countries With Death Penalty 2025, <https://worldpopulationreview.com/country-rankings/countries-with-death-penalty> (last visited Nov. 16, 2025).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ R. Gaines, *Capital Punishment at Home and Abroad...* (2016) (unpublished M.A. thesis).

⁴² *Furman v. Georgia*, 408 U.S. 238.

executions”⁴³. States responded by abolishing the death penalty, applying it only in certain cases, or revising statutes to limit jury discretion.

It was further explained in *Woodson v. North Carolina* (1976)⁴⁴ “The Court ruled that obligatory death penalties were unconstitutional because they failed to consider the particularized circumstances of each case”⁴⁵. Furman and Woodson together did much to eliminate arbitrariness and lessen the use of the death penalty in the United States.

2. Capital Punishment Practices of China

Historically, China has maintained some of the highest rates of execution globally. This trend intensified when provincial courts were granted more authority to administer and finalize death sentences, resulting in significant regional discrepancies and a rise in executions.

"Concerns about procedural flaws and the arbitrary use of the death penalty prompted the Chinese government to centralize review of all death sentences in the Supreme People's Court. This reform was meant to enhance consistency, fairness, and the rule of law"⁴⁶. Therefore, the SPC set high review standards where every death sentence needed approval by a panel composed of three senior judges to further reinforce procedural safeguards.

Although China still applies the death penalty in cases of certain grave offences, jurists suggest that Chinese leadership believes full abolition is not politically possible at present. However, legal reforms, closer scrutiny, and enhanced appellate review have resulted in a vast reduction in executions. Methods of execution in China include either shooting or lethal injection; the country uses mobile execution vans to administer a three-drug cocktail.

3. Historical Development and Abolition of Capital Punishment in the UK

Historical developments of capital punishment in the UK reveal its path through history. "Historically, punishments varied according to social class, with nobles often executed by beheading, women burned at the stake, and commoners hanged. Between 1688 and 1818, the number of capital offences increased from about 50 to over 200"⁴⁷, illustrating the "Bloody

⁴³ Id.

⁴⁴ 428 U.S. 280 (1976)

⁴⁵ *Woodson v. North Carolina* 428 U.S. 280 (1976)

⁴⁶ D. Oberwittler & S. Qi, Public Opinion on the Death Penalty in China (Edition Iuscrim 2009).

⁴⁷ Gaines, Capital Punishment at Home and Abroad, at 9

Code." The twentieth century saw significant changes in both social and legal opinions as a result of high-profile injustices. "The Timothy Evans case (1950)—wrongly executed for a murder subsequently associated with a serial killer—highlighted the shortcomings in criminal investigations. Similarly, the Derek Bentley case (1953) involved the execution of a young person who was not directly involved in the murder"⁴⁸. These cases sparked a wider movement against capital punishment, which led to its abolition.

4. Indian Position on Capital Punishment: Limited Retention with Constitutional Safeguards

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."⁴⁹ and do not void justice. Indian law precludes execution in certain circumstances, such as for pregnant women, people with any kind of mental disorder, and when undue delays on death row invalidate the execution. These restrictions illustrate the balancing that the country attempts to reach between retributive justice and the value of life and human dignity.

5. Observations of Comparison

Examining the above-mentioned countries, a pattern emerges: a steep drop in the numbers of executions coupled with a shift toward greater procedural protections. Though some nations, like the U.K., have eradicated capital punishments, others have continued to keep the death penalty but limit its application through judicial reforms and greater supervision and review.

This comparative analysis makes clear that, even as the grounds of the plus in capital punishment vary from human rights concerns to concerns about arbitrariness, cost, or legal accuracy, countries have enacted significant reforms to ensure that no one is executed without rigorous procedural protections. The resulting international trend toward abolition, or drastic

⁴⁸ Id.

⁴⁹ India Const. art. 72.

restriction, reflects a growing recognition of the importance of human dignity, fairness, and constitutional due process in the operation of criminal justice.

CONCLUSION

The present analysis on the subject goes to reveals that the Doctrine of the Rarest of Rare occupies an important place in India's death penalty legislation and stands as a legal safeguard, besides being a point of controversy at times. In other words, the doctrine provides a set of minimum guidelines upon which the courts exercise extreme caution before the sentence of death is given. So, by necessitating a full review of mitigating and aggravating circumstances and enabling offenders to pursue multiple levels of judicial review like appeals, review applications, and curative petitions, the said doctrine has preserved the right to life without rigorous scrutiny.

On the other hand, research also identifies areas where the applicability of this doctrine may be foreseeably arbitrary. Discretion by different judges can lead to different conclusions from essentially the same facts and evidence in the case of the Nithari Hatyakand. This may raise questions about the consistency, fairness, and dependability of capital punishment.

Improvement of the doctrine thus has to take care of the systemic delays that often negate the goal and finally the very purpose of capital punishment. Lengthy delays only prolong the psychological agony of the inmate and might eventually result in a reduced sentence, which would defeat the purpose of the principle altogether. Ensuring prompt and consistent judicial procedures, along with clearer sentencing standards, would make the doctrine of Rarest of Rare noticeably fair, equitable, and predictable in its application through the operation of criminal justice in India.

REFERENCES

1. S. B. D. A. Choudhary, The Rarest of Rare Doctrine: Origin, Interpretation and Legacy of Bachan Singh, Essential Case Law 26.
2. R. V. Rao & P. Sharma, Death Sentence in India: Is It Rare Yet Arbitrary? (2022), <https://ssrn.com/abstract=4155332>.
3. Umendra Pratap Singh & Srijan Mishra, The Doctrine of 'Rarest of Rare' in Capital Sentencing: A Critical Study of Its Suitability and Application in Indian Jurisprudence, 8 Int'l J. L. Mgmt. & Human. 3745 (2025).
4. M. P. Mittal, Limits to Judicial Discretion in Deciding Death Penalty Cases.
5. S. Watharkar, An In-Depth Study of the Justness and Fairness of Capital Punishment in India.
6. R. Gaines, Capital Punishment at Home and Abroad: A Comparative Study on the Evolution of the Use of the Death Penalty in the United States and the United Kingdom (2016) (unpublished M.A. thesis).
7. D. Oberwittler & S. Qi, Public Opinion on the Death Penalty in China, Edition Iuscrim (2009).
8. X. Chen, Destiny of the Death Penalty in China in the Contemporary Era, 1 Frontiers L. China 53 (2006).
9. Carol S. Steiker & Jordan M. Steiker, The Rise, Fall, and Afterlife of the Death Penalty in the United States, Ann. Rev. Criminology
10. Shahista Inamdar, Death Penalty Debate in Contemporary India, in Contours of Contemporary Legal Research: A Multidisciplinary Perspective – Volume 3: Criminal Justice, Forensics, and Emerging Legal Paradigms 86 (2025).
11. Kaifi Khan & Abhishek Mishra, Evaluating the Relevance of Capital Punishment: A Critical Analysis of Judicial Pronouncements in India, 3 LawFoyer Int'l J. Doctrinal Legal Rsch. 418 (2025).