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## **A PROGNOSIS OF THE DEATH PENALTY**

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### **ABSTRACT**

The death penalty in India has gone through various phases of development. From existing as a strict law to being an exception in the court of law, the concept has evolved drastically albeit being open to several interpretations. The capital punishment like several other criminal concepts has been inherited from the British rule and the Courts of India have passed several judgments which have defined and refined the theory capital punishment.

This paper gives a brief introduction of the concept of the death sentence and its constitutional validity. It substantiates as to how the law has evolved over the years. It transverses the process of evolution of the law on the issue based in various cases and judgments passed by the courts in India where the accused was either executed or his sentence was commuted into imprisonment for life.

The paper also highlights the technicalities and the loopholes of the penalty, such as when the sentence awarded is mitigated, because of the plethora of loopholes available to the criminals.

**Keywords:** Death Penalty; Rarest of the Rare; Judicial process; Rape murders; Limitation period

## I. INTRODUCTION

The entire nation united on the night of December 17, 2012 to protest against the gruesome rape and mutilation of Nirbhaya. Each Indian citizen felt anguish and fury from within that night and the ones standing in solidarity of the victim necessitated the requirement of death penalty against the perpetrators. On September 13, 2013 the Court convicted all of the four culprits and announced death penalty for the accused for thirteen offences including gang rape, unnatural offences, murder and attempt to murder and yet the implementation of the order took several years as the trial continued for seven years amidst which the anguish of each Indian increased and the disgust accelerated.

On the 2nd of January in the year 2013 the fast track court was inaugurated to ensure that justice is delivered promptly and favorably in the said case. However, the mother of the victim who dealt with repercussions of the ghastly crime claims that justice for her daughter is not being deferred but denied. To ensure forceful binding of criminal laws, the Indian Penal Code, 1860 (“**IPC**”) stood amended in the year 2013 along with the insertion of Section 376A, which affirms death penalty to a rapist whose act, leads to death of the victim. The amendment was a result of deliberations of the Verma Committee, which was formed by then Union Government to combat sexual assaults against women. Nonetheless, the bill stands contrary to the committees suggestions as the Criminal law (Amendment) Act, 2013 provides for death penalty as punishment for an offence committed in consonance with Section 376A of the Indian Penal Code.

In the backdrop of the Nirbhaya case, the authors of this paper have analyzed the phase wise changes in the Indian judiciary in awarding capital punishment and commented upon the scope and application of the death penalty. This paper also explores the impact of preposterous and inordinate postponement of the execution of death penalty.

## II. CAPITAL PUNISHMENT

According to Black’s Law Dictionary, “*Capital punishment is the sentence of death for a serious crime and is often called the death penalty*”<sup>1</sup>.

Arrays of statutes provide for capital punishment and the same are elaborated below:

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<sup>1</sup>Capital punishment, Black's Law dictionary (11 ed. 2019).

A. Death sentence as under the Indian Penal Code

The IPC prescribes the punishment that is to be imposed once the criminality has been established in the trial courts<sup>2</sup>. The framers of the IPC had categorically established that capital punishment could be imposed only when murder or the highest offence against the state had been committed<sup>3</sup>.

IPC provides for death as a punishment in the following cases:

- (i) Waging or attempting to wage war or abetting waging of war against the Government of India;<sup>4</sup>
- (ii) Abetting mutiny, if committed in consequence thereof;<sup>5</sup>
- (iii) Perjury resulting in the conviction and death of an innocent person;<sup>6</sup>
- (iv) Threatening or inducing an individual to give false evidence which results on the conviction and death of an innocent person;<sup>7</sup>
- (v) Culpable homicide as under Section 302 and 303 and attempt to murder as under Section 307;
- (vi) Abetment of suicide of a minor or insane or intoxicated person who commits suicide in consequence there of<sup>8</sup>; and
- (vii) Kidnapping got random as provided under Section 307.

B. Death sentence as provided under statutes other than the Indian Penal Code.

- (i) The commission of Sati (Prevention) Act, 1987
- (ii) The Narcotic drugs and psychotropic Substances Act, 1985
- (iii) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

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<sup>2</sup>K.D Gaur, Criminal law (6 ed. 2020).

<sup>3</sup>Ibid

<sup>4</sup>Indian Penal Code 1860, 121 (2019).

<sup>5</sup>Indian Penal Code 1860, 132 (2019).

<sup>6</sup>Indian Penal Code 1860, 193 194 (2019).

<sup>7</sup>Indian Penal Code 1860, 195A (2019).

<sup>8</sup>Indian Penal Code 1860, 305 (2019).

- (iv) The Prevention of terrorism Act and Terrorist and Disruptive Activities (Prevention) Act, 1987
- (v) The Indian Air Force Act, 1950
- (vi) The Army Act, 1950
- (vii) The Navy Act, 1957The National Security Act 1986 and the Indo- Tibetan border police Act, 1992 both provide for death penalties as an alternative punishment for criminalities committed by the members of the two armed forces.<sup>9</sup>

### III. CONSTITUTIONAL VALIDITY

It can be easily substantiated that murder and treason are two major categories when the death penalty can be awarded. The crimes punishable with death penalty are also referred as capital crimes, capital felonies and capital offences. The death sentence is the highest form of punishment and implicates judicial killing. The Judges, however, in the offences punishable with death face the conundrum, as they have to make adjudicate amongst the two kosher disciplinary alternatives, which are imprisonment for life and death sentence.

Our country, is amongst of the few nations which maintain capital punishment as a form of punishment, as our country's criminal jurisprudence is an amalgamation of deterrent and reformatory theory.<sup>10</sup>

Those advocating against the death sentence often bring up Article 21 of the Indian Constitution<sup>11</sup> which provides for protection of life and personal liberty, the abolitionists consider the capital punishment to be directly in contravention to Article 19 and 21 of the Indian Constitution. On several occasions prominent Judges such as Justice Bhagwati, Justice Krishna Iyer and Justice A K Ganguly have condemned the death penalty and labeled it as barbaric.<sup>12</sup>

The matter has also been brought up in several cases which questioned the constitutionality of the death sentence. In the landmark judgment of *Jag Mohan Singh v State of Uttar Pradesh*<sup>13</sup>, the cogency of the capital punishment was contested on the fact that it is directly in contravention to Article 19 and 21 of the Indian Constitution. The validity was also questioned

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<sup>9</sup>K.D Gaur, *Supra note 2*

<sup>10</sup>S.N Dhyani, *Jurisprudence Indian Legal Theory*, (2019 ed.)

<sup>11</sup>India Constitution 1950

<sup>12</sup>PSA Pillais, *Criminal Law*, ( 6<sup>th</sup>ed)

<sup>13</sup>*Jag Mohan Singh v State of Uttar Pradesh AIR1973 SC 947*

on the basis that there is no specific procedure pertaining to the death penalty being awarded to an individual. However a five member bench ruled that the capital punishment is contravention with Articles 14, 19 and 21 as death penalty is awarded to an individual according to the procedure established by law and by procedurally evaluating the facts and nature of the act.

However, in the case of *Rajendra Prasad v State of Uttar Pradesh*<sup>14</sup>, Justice Krishna Iyer held that capital punishment could not be imposed on an individual unless the criminal is a threat to the society. He further elaborated that the procedure underlying the duty of the Judge to decide amongst death sentence or life imprisonment in special cases as provided by Sec 343(3) of the Code of Criminal Procedure, 1973 (“CrPC”) in contravention with Article 14 of the Constitution. In his judgment, Justice Iyer advocated abolition of death sentence except for in cases of white collar crime.

Nonetheless, in *Bachan Singh v State of Punjab*<sup>15</sup>, the Supreme Court invalidated the decision of the *Rajendra Prasad’s* case and it was held that capital punishment, as awarded under Section 302 as a possible penalty for murder is not against the principles enshrined in Article 21 as the Constitution permits the state to dispossess an individual of his life and personal liberty as per procedure substantiated by law. This validated the existence of capital punishment in the Indian criminal justice system.

#### IV. EVOLUTION OF CAPITAL PUNISHMENT IN INDIAN JUDICIAL LANDSCAPE

The Supreme Court of India has changed its position on capital punishment more often than not in the favor of the offender. They have been significantly lenient when the life of the offender is at the stake. It is considered to be the duty of the court to overcome as many restraints as possible which are sanctioned by the statutes.

To understand the attitude of the Supreme Court towards death penalty, 5 (five) separate phases can be substantiated. The five phases are as follows:

##### **PHASE I: Capital punishment as a Rule (1950-55)**

In the 1950s, under the Criminal Procedure Code, 1898 (“**Erstwhile CrPC**”), death penalty was a rule. The court only imposed death penalty, whereas life imprisonment was an exception. As

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<sup>14</sup>Rajendra Prasad v State of Uttar Pradesh AIR1979 SC 916

<sup>15</sup>Bachan Singh v State of Punjab AIR 1980 SC 898

per Section 365(5) of the CrPC, the court had to mention its reason in writing if a lesser sentence than death penalty was awarded in any case. Case in point, in the landmark judgment of *Kirpal and Ors. v. State of Uttar Pradesh*<sup>16</sup>, the Apex Court upheld the High Court's order of death penalty against the offender for stabbing the victim. However, in the case of *Dalip Singh v. State of Punjab*<sup>17</sup>, life imprisonment was given as the court believed that in cases where there is no clarity as to who inflicted the fatal blow, a punishment as severe as death penalty cannot be awarded. Therefore, a mitigated sentence was given.

### **PHASE II: Age of Judicial Discretion (1955-73)**

In 1955, Section 367(5) of the Erstwhile CrPC was amended, after which the courts could either award death penalty or life imprisonment. The judges would consider the facts and circumstances of each case in order to determine the punishment that will be imposed on the accused. In *Jaghir Singh v. State of Punjab*<sup>18</sup>, a capital punishment was bestowed upon the accused as the murder was considered to be a cold-blooded act by the court with no extenuating circumstances. Whereas, in the case of *Hazara Singh v. State of Punjab*<sup>19</sup>, the Apex Court considered life imprisonment a more appropriate punishment as the death of the victim was a result of a sudden quarrel. Although, in cases where the murder was a preplanned act and where there was sufficient circumstantial evidence to prove the guilt; death penalty was considered to be the obvious choice.

### **PHASE III: When Life Imprisonment substituted capital punishment (1973- 80)**

In 1973, the Criminal Procedure Code was introduced. Under Section 354(3)<sup>20</sup>, a special reason had to be stated in case capital punishment was to be imposed on an accused. The 1973 Act made Imprisonment for life the rule and reduced death penalty in exceptional cases.

Thus, in the case of *Asgar v. State of Uttar Pradesh*<sup>21</sup>, the Supreme Court overruled High Court's order of death penalty stating that High Court did not pay due consideration to the new provisions of the CrPC by awarding the capital punishment. The Apex Court held that mere absence of extenuating circumstances in favor of the accused wasn't sufficient reason to order

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<sup>16</sup>Kirpal and Ors. v. State of Uttar Pradesh AIR 1954 SC 706

<sup>17</sup>Dalip Singh v. State of Punjab AIR 1953SC 364

<sup>18</sup>Jaghir Singh v. State of Punjab AIR 1973SC 2407

<sup>19</sup>Hazara Singh v. State of Punjab AIR 1965 SC 720

<sup>20</sup> Criminal Procedure Code, 1973, No.2 Acts of Parliament, 1974,s. 354(3) reads as-"When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded and, in the case of sentence of death, the special reasons for such sentence."

<sup>21</sup>Asgar v. State of Uttar Pradesh AIR 1977 SC 2000

the extreme punishment of death penalty. Therefore, life imprisonment was imposed instead of death sentence.

The Supreme Court started taking onto consideration the socio economic conditions, the physical and the mental state of the accused. Like, in the case of *Ediga Anamma v. State of Andhra Pradesh*<sup>22</sup>, the mental state of the accused was taken into consideration reducing her punishment to imprisonment for life. The court considered the speculative nature of the crime in relation to the punishment and therefore, decided that life imprisonment was a better suited punishment in the present case. Justice VR Krishna Iyer explained his decision on the premises that modern penology requires the judges to not only focus on the crime but also give due consideration to the criminal. Like, the age of the accused, the socio economic conditions, circumstances leading up the crime. All this must be considered before deciding the punishment.

The Supreme Court also in some of its judgments personalized the judgment after taking the physical and the mental aspect of the accused into consideration. Like, in the case of *Thanglah v. State of Tamil Nadu*<sup>23</sup> Justice Chandrachudh considered the socio-economic conditions of the accused which impacted his mental state leading him to commit the said crime. Therefore, the court considered reducing the punishment of the accused to imprisonment for life. The Apex Court, in its plethora of cases tried to define the reasons leading to awarding death sentence. The court was of the view that death sentence should always be bestowed in cases where existence of tranquility of the society is in danger. The court also believed that judicial discretion in awarding death sentence could lead to judicial tyranny. Therefore, Section 302 of the IPC and Section 354(3) CrPC should be in consensus with Part III and IV of the Indian Constitution and should be awarded in cases where they feel that the accused is a hardened criminal who is beyond any rehabilitation.<sup>24</sup>

#### **PHASE IV: Rarest of the Rare Case (1980- 83)**

A pattern was observed in the 1970s and the 1980s wherein it was necessary for the Court to substantiate the reasons as to why death penalty was being awarded. The debate of death sentence continued in later cases as well. The case of *Bachan Singh v. State of Punjab*<sup>25</sup> is one of the landmark judgments which challenge the death sentence on a different dynamic. The

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<sup>22</sup>Ediga Anamma v. State of Andhra Pradesh AIR 1974 SC 799

<sup>23</sup>Thanglah v. State of Tamil Nadu AIR 1977 SC 1777.

<sup>24</sup> *Supra* note 14

<sup>25</sup>Bachan Singh v. State of Punjab AIR 1980 SC 898

court in this case questioned death sentence's compatibility with Article 21 of the Indian Constitution.

Even though the Apex Court upheld the validity of death sentence, however at the same time expressed its concern and said that it should only be bestowed in the rarest of the rare case. Where there is no other option available. But this give birth to another problem, how can one define rarest of the rare.

What may happen to be the gruesome for one judge may not be that extreme for the other judge. In order to solve this dilemma an attempt was made to define rarest of the rare in the case of *Machhi Singh v. State of Punjab*<sup>26</sup> where Justice Thakker attempted to define rarest of the rare in this particular case(explained in the latter part of the article).

### **PHASE V: Post Bachan Singh case**

Taking into consideration the legislative description of the existing guidelines, the Supreme Court made various decisions while deciding whether capital penalty should be bestowed. With the introduction of the rarest of the rare doctrine, the judges stumbled upon many issues. It was due to the lack of definition of this doctrine, the courts faced many issues. Some of them are as follows:

#### ➤ Arbitrariness

Whenever a punishment is imposed it is based on some theory or a proposition. While deciding what kind of punishment the accused deserves, the judge considers a lot of factors. The main aim of punishment is to deter future commission of crimes. Death penalty leaves no room for deterrence or reformation. The only objective that capital punishment achieves is retributive justice. A judge while imposing punishment must have to adhere to Section 354(3) and Section 235(2) of the CrPC. Judges in the past have often accepted their mistakes and the errors they have made while imposing sentences. This makes the idea of imposing capital punishment all the more scary.<sup>27</sup>

The arbitrariness involved while imposing capital punishment is evident and can be understood through the case of *Khushwinder Singh v. State of Punjab*<sup>28</sup>. In this case, death penalty was upheld by the Supreme Court. This case talks about the importance of conducting a sentencing hearing. The judge must consider all factors like the age

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<sup>26</sup>*Machhi Singh v. State of Punjab* AIR1983 SC 957

<sup>27</sup>*Santosh Kumar Bariyar v. State of Maharashtra* (2009) 6 SCC 498

<sup>28</sup>*Khushwinder Singh v. State of Punjab*

of the accused, the cultural background of the accused, the social, mental and emotional stability of the accused. However, such factors were not considered in the above case. The courts in its previous cases have often determined the punishment based on the crime committed, the nature of the crime, background of the victim and the brutality. More often than not factors relating to the criminal are ignored, like in this case.

In another case *M.A Anthony v. State of Kerala*<sup>29</sup>, a death penalty was not awarded. The facts of this case are very similar to the *Khushwinder Singhs's* case yet different punishments were ordered. In this case, the courts factored in the attributes relating to the criminal in order to decide the punishment.

Difference in the judgment and the approach followed in these 2 cases proves the arbitrariness involved while deciding the punishment.

However, after the *Khushwinder Singh's* case, the courts have started considering the attributes of the criminal. Unfortunately, even after all the case, the courts haven't yet devised a system that can provide as a base for collecting and presenting mitigating factors.<sup>30</sup>

➤ Inconsistency

Death penalty is an irrevocable punishment. It differs from all kinds of punishment as it leaves no room for reformation or rehabilitation which is the main aim of criminal justice. Death penalty is imposed by the judges even though there exist no straight jacket formula as to what constitutes as rarest of the rare.

The Supreme Court in the case of *Ujagar Singh v. State of Uttar Pradesh*<sup>31</sup> did not award death sentence to a 17-year old as the accused was a minor. The decisions must be based on vivid reasons. The courts must understand the power they have and must be careful while deciding on such imperative issues.

Even after so many cases it is very difficult to determine as to what classifies as rarest of the rare case. The fate as to what qualifies as rarest of the rare is entirely dependent

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<sup>29</sup>*M.A Anthony v. State of Kerala*, Criminal Appeal No. 811 Of 2009 (Arising Out Of Slp (Crl.) No. 5624 Of 2006) In Death Sentence Ref. No. 5 Of 2005 & Criminal Appeal No. 385 Of 2005

<sup>30</sup>Rahil Chatterjee, The death penalty: a fatal margin of error, March 2019, <https://www.thehindu.com/opinion/op-ed/the-death-penalty-a-fatal-margin-of-error/article26572323.ece>

<sup>31</sup>1981 Supp. SCCS.

on the judges. For instance, in the case of *SK Ishaque v. State of Bihar*<sup>32</sup>, three people were burnt alive. Since, there was no evidence to show whether the appellant had knowledge of the presence of the people, the court held that capital sentence cannot be imposed in cases where there is so much of ambiguity.

The severity and irrevocability of the capital punishment can be best shown by the judgment passed in the case of *Santosh Kumar Bariyar v. State of Maharashtra*<sup>33</sup>. This case discusses the responsibility of the courts while imposing capital punishment. It was due the lack of care exhibited by the judges that led to an erroneous execution. In today's day and age where right to life is the most important fundamental right such cases are not only dreadful, but also gruesome.

➤ Time Factor

The courts have been very inconsistent in considering the time factor in the process of the implementation of the capital sentence. The Supreme Court in the case of *Ediga Annaman*<sup>34</sup> held that when a lot of time has passed by, the accused should not be put through any more agony and his sentence should be shortened to that of life imprisonment.

In the case of *Chawla v. State of Haryana*<sup>35</sup>, *State of Uttar Pradesh v. La Ha*<sup>36</sup> and in *Bhagwan Bux Singh vs. State of Uttar Pradesh*<sup>37</sup>, capital penalty was reduced to life imprisonment due to delay in the execution. However, it was only in the case of *Triveniben v. State of Gujarat*<sup>38</sup>, where the court said that they cannot predetermine a time period while executing a death sentence which would conclude that the execution has been delayed. The Supreme Court believed it would always depend upon the judge to decide whether or not the punishment of death sentence be reduced to that of life imprisonment which leaves a lot of room for inconsistency and ambiguity.

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<sup>32</sup> (1995) 3 SCC 392 (India)

<sup>33</sup> *Santosh Kumar Bariyar v. State of Maharashtra* (2009) 6 SCC 498

<sup>34</sup> *Ediga Annaman* AIR 1974 SC 799

<sup>35</sup> *Chawla v. State of Haryana* AIR 1978 SC.1368.

<sup>36</sup> *State of Uttar Pradesh v. La Ha* AIR 1978 SC. 34

<sup>37</sup> *Bhagwan Bux Singh vs. State of Uttar Pradesh* (1983) 2 SCR 348

<sup>38</sup> *Triveniben v. State of Gujarat* AIR 1989 SC 1335

## V. THE DOCTRINE OF RAREST OF THE RARE

Post *Bachan Singh* case, the doctrine of rarest of the rare came into light. It is based on the Gandhian theory i.e. “hate the crime, not the criminal”. There is no definition available to define as to what amounts as rarest of the rare. The nature and extent of the crime is taken into consideration which leaves a lot of for ambiguity.

The principle of rarest of the rare can be bifurcated into two parts. Namely Aggravating circumstances and Mitigating circumstances

The Aggravating circumstances are as follows:

- If the act committed was pre planned involving brutality;
- Exceptional immorality;
- The victim is either a member of armed forces of the union or of the police or any public servant who were targeted while they were performing their respective duties; or
- Any act committed by a public servant when discharging his duties mentioned under Section 43 CrPC, 1973.

The Mitigating circumstances are as follows:

- An act committed under mental or emotional disturbance;
- The accused is of a very young age. Therefore, must not be penalized with death penalty;
- The probability that the act committed by the accused might not be against the society;
- The facts and the circumstances of the cases reflect that the accused was justifiable in commit the offence;
- The act committed under duress;
- The accused was mentally weak; or
- Probability of the accused to be rehabilitated.<sup>39</sup>

### A. Scope

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<sup>39</sup> *Bachan Singh v. State of Punjab* AIR 1980 SC 898

As per the provisions of the CrPC, the Judges were required to reason out as to why death sentence was awarded in a particular case. This made death sentence a rule. In the *Jag Mohan case*<sup>40</sup>, the Supreme Court upheld the constitutionality validity of the death sentence and was of the opinion that they cannot risk abolishing the death sentence.

The court felt that the Judges must consider the facts and circumstances of each case while imposing death sentence and death penalty should only be imposed when the security of the state is at risk and the person accused has no for the chance of rehabilitation. Ever since this case, life imprisonment the rule while death sentence was reduced to an exception.

The doctrine of rarest of the rare was first introduced in the case of *Bachan Singh v. State of Punjab*<sup>41</sup>. In this case, the Supreme Court observed that the death penalty should only be awarded in cases where no other alternative was available. The court elaborated certain instances where the punishment of death sentence was justified which are as follows:

First, where the courts feel that life imprisonment was insufficient.

Second, where the court believed that there is no alternative to imposing the death penalty.

After the introduction of this doctrine the most important question that arose was as to what constitutes as rarest of the rare. The apex court in the case of *Machhi Singh*<sup>42</sup> tried to define this doctrine a little further. Justice Thakkar mentioned 5 (five) instances where a case would be considered as rarest of the rare.

- Manner

Where the crime has been committed with a lot of intensity and when the victims have been subjected to inhumane torture.

- Motive

Where the crime committed is with a motive that reflects moral wickedness.

- Antisocial and repugnant nature of crime

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<sup>40</sup>Jag Mohan case AIR1973 SC 947

<sup>41</sup> Bachan Singh v. State of Punjab AIR 1980 SC 898

<sup>42</sup>Machhi Singh v. State of Punjab AIR1983 SC 957

When the crime has been committed in order to breed communal hatred or when a crime is committed to increase social wrath.

- Magnitude

If the act committed is against a person to retaliate against an issue and the intensity of the act committed is blown out of proportion.

- Personality of the victim

When the victim is a minor, old person or a woman or a person holding public office<sup>43</sup>

The court also drew up guidelines taking into consideration the *Bachan Singh* case.<sup>44</sup>

- Death sentence should only be imposed in grave circumstances.
- Circumstances which lead to the crime may also be considered.
- Death sentence should only be imposed when life imprisonment seems to be inadequate punishment.
- The court must consider all mitigating and aggravating circumstances before deciding.
- No other punishment seems to be adequate and death sentence seems to be the most appropriate punishment.

The above are the guidelines that the Supreme Court has drawn in order to ensure that the circumstances of the case are given due consideration while imposing death sentence.

## B. Application

The doctrine of rarest of the rare is not free from criticism. The profound judicial minds have often pointed out the obscurity and ambiguity merging out of this doctrine. One of the most decorated judicial minds, Justice Bhagwati also pointed out all the fallacies arising out of the doctrine. He pointed out the subjectivity that would be involved while deciding the fate of the accused. It would depend upon the composition of the bench whether a person would be imposed with a death sentence or life imprisonment. He believed this subjectivity was clearly in contravention with the fundamental right of the

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<sup>43</sup>Ibid

<sup>44</sup> *Bachan Singh v. State of Punjab* AIR 1980 SC 898

right to life and personal liberty as provided under Article 21 of the Indian Constitution.<sup>45</sup>

Even though post the Bachan Singh judgment, death penalty was imposed only in the rarest of the rare cases taking into consideration the mitigating and the aggravating circumstances. However, this theory has been severally criticized since the courts have imposed different punishment in cases with similar facts which clearly shows that the different mindsets followed by the judges.

The court has also been criticized since in several cases the judges have not given any due consideration to the past background of the accused and have also not considered whether or not the accused can be rehabilitated or not.

The courts have also been criticized for imposing death punishment directly by just taking the nature and the role played by the accused into consideration. It was only after the *Bachan Singh* case, the court started analyzing the circumstances that led to the crime. For instance, in the case of *Karan Singh v. State of U.P.*<sup>46</sup>, the accused in an attempt to exterminate his entire family, killed five people. The Supreme Court affirmed the death sentence as this was considered a gruesome act which was executed with immense brutality. However, in the case of *State of Maharashtra v. Suresh*<sup>47</sup>, death penalty was commuted to death sentence even though the accused was guilty of raping and murdering a 4-year old child. Even though the court accepted this to be gruesome act but they did not impose the death penalty and upheld High Court's order to commute death sentence to life imprisonment. The Supreme Court, in its recent judgments has shown real progress by punishing the ones involved in honor killing. In one of its cases, the Supreme Court held the accused guilty of killing his daughter by strangling her. The accused committed this crime as the victim was living with another man of which the accused did not approve of and therefore, decided to kill her. The Court has held that in cases where the families are not happy with their family arrangements, they cannot take matter in their own hands and physically assault them<sup>48</sup>. All they can do is socially cut off all relations with a person but they cannot physically torture them.<sup>49</sup>

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<sup>45</sup>Bachan Singh v. State of Punjab AIR 1980 SC 898

<sup>46</sup>Karan Singh v. State of U.P AIR 2006 SC 210

<sup>47</sup>State of Maharashtra v. Suresh (2000) 1 SCC 471

<sup>48</sup>Bhagwan das V State (NCT) Delhi

<sup>49</sup> Lata Singh v. State of UP (2006) SCC 456

The court while deciding whether a case falls under the head of the rarest of the rare can ignore the fact that family has boycotted all social relations from the accused even if the case is based on circumstantial evidence. Such heinous crimes cannot be justified through this route.

## VI. TIME BAR WHILE EXECUTING DEATH PENALTY

When the death penalty is awarded by the sessions court there exists a mandatory provision wherein this award must be affirmed by the High Court. After the death conviction is acknowledged the convict is free to approach the Supreme Court. It is a well-established rule that the death sentence is awarded to an individual only in the 'rarest of rare' cases and that to after elaborate deliberation regarding the same.

Yet there exist instances wherein owing to inordinate and superfluous delay in the hanging of the accused, the death sentence is reduced to imprisonments for life. In *Madhu Mehta v Union of India*<sup>50</sup>, the Court ordered the death penalty to be converted into life imprisonment after it was brought to the notice that the mercy petition of the convict had been pending before the court for nearly nine years. The court justified the mitigation of the death penalty into life imprisonment for life by pointing out that the right to a speedy trial is within the ambit of Article 21 of the Indian Constitution which is operative through all stages of the trial including when the mercy petition before the President of India.

Similarly in *State of Uttar Pradesh v Ramesh Prasad Misra*<sup>51</sup> the apex court commuted the death penalty of the accused to that of life imprisonment owing to the inordinate delay after the commission of the crime.

While evaluating the delay in the execution of an individual, Justice Iyer in *Ediga Anamma case*<sup>52</sup> held that there exists great inconsistency related to the time factor of capital penalty and if the hanging is prolonged by two years and two months then the death sentence must be converted into life imprisonment. Justice Reddy also mitigated the death sentence of a gruesome murderer in the case of *T.V Vastheswaran v State of Tamil Nadu*<sup>53</sup> after the convicted was kept in solitary for eight years as he waited to be executed. The Court in this case ruled

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<sup>50</sup>Madhu Mehta v Union of India AIR 1989 SC 2299

<sup>51</sup>State of Uttar Pradesh v Ramesh Prasad Misra AIR 1996 SC 2766

<sup>52</sup>Ediga Annaman AIR 1974 SC 799

<sup>53</sup>T.V Vastheswaran v State of Tamil Nadu AIR 1983 SC 361

that in case the execution is delayed by more than two years then the same would be unconstitutional. However, this decision was overruled in *Triveniben v State of Gujarat*<sup>54</sup>, by a bench of five judges of the apex court held that there cannot exist a predetermined or fixed period to execute death sentence and no amount of delay can make the death sentence inexecutable. However the court maintained that the delay can still be an important ground for commutation of an individual's sentence.

The preposterous and disproportionate delay in the execution of the death sentence has been a cause of concern in several cases of public prominence such as that of Afzal Guru, Ajmal Kasab and most recently the perpetrators of Nirbhaya.

The superfluous and extensive delay in the convict's execution has two fold repercussions.

The first being that the general public, the political parties and activists all demand stringent, binding and immediate action against the culprits of gruesome crimes. When the sentence is awarded to convicts of the highest order is mitigated, the faith of the general public in the justice system diminishes and their rage against the culprits escalates. The Indian Criminal Justice system ensures security and availability of rights to both the accused and the victim. However when the punishment of the accused is either mitigated or the execution is inordinately delayed then the rights of the victim are being withheld by the authorities themselves. It is extremely alarming and a matter of grave concern that it took nearly eight years for the criminal proceedings to take course in the gruesome Nirbhaya case. The culprits of Nirbhaya clung to a new procedural provision each time in order to ascertain and ensure that their sentence could either be delayed or mitigated while the victim had been dead for eight years and no relief or justice endowed upon the victim's family until January, 2020. The extra judicial killing of Priyanka Reddy's perpetrators in December 2019 was widely appreciated which signals lack of faith in judiciary due to its time consuming proceedings.

The other bitter repercussion of the death sentence arises from the agony and turmoil it bestows upon the accused. Several abolitionists consider death penalties to be nothing but judicial murder. Furthermore the trauma that the convict has to go through while waiting for one's execution has a gruesome and horrendous effect on his mental health. The delay in execution has an impact on the accused in unimaginable ways and would cause cognitive torture to the prisoner and shall thus be violative if Article 21 of the Constitution. By awarding death penalty the state seizes all freedoms of the convict granted under Article 19 furthermore an inordinate

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<sup>54</sup>*Triveniben v. State of Gujarat* AIR1989 SC 1335

and superfluous delay in execution shall have a dehumanizing effect. The torment of alternating hope and anguish's because of uncertainty shall have a direct impact on the convict's physical, mental and emotional wellness.

## **VII. CONCLUSION**

A worldwide change can be observed wherein the world is waking up to sensitize with human rights and human life. The attitude towards death penalties has also greatly changed over the years. In India, capital punishment has been under the lens of the civil rights activists for ages now. It suffers from several loopholes; the first drawback is that there exists no substantial format to decide as to what constitutes as rarest of the rare. Furthermore the taking away of the convict's life depends entirely upon the preceding judge's opinion as to what incorporates as a crime worthy of being awarded the capital punishment. Additionally in the words of Mahatma Gandhi, "An eye for an eye will make the whole world blind". The death penalty is considered as judicial murder by those who believe in the reformation of the criminals. However the hanging of Nirbhaya's rapist on 20<sup>th</sup> March 2020 reinstated the faith of the general public in our judicial system that was outraged by the delay in conviction. Victims of gruesome crimes like Nirbhaya remind us that the aim of capital punishment is not only justice for the victim but a chance to reestablish the public's faith in our judicial system and the rule of law.