DOCTRINE OF RAREST OF RARE AND REFORMATIVE SYSTEM: A LEGAL ANALYSIS

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ABSTRACT

The Hon'ble Supreme Court of India formerly advanced the "Rarest of Rare" theory in Indian law, and as a result, the Indian legal system has adopted the stance that "The life sentence is the rule, and the death penalty is the exception." Lawmakers, however, have not enacted yet "What is the rarest of the rare" so absence of any helpful definition for application of that doctrine our legal system talks about "It depends upon the facts and the circumstances of the case," "brutality of the crime," "conduct of the offender previous history of his involvement in a crime," "chance of reforming and integrating him into the society," etc. In light of this, it becomes extremely perplexing and controversial in its use in India's criminal justice system The standard test used to determine whether to sentence a convict to death is whether maintaining an orderly society necessitates ending the life of the person who committed the crime and whether failing to do so would render the death penalty provided by Section 302 of the IPC null and void.

According to the Supreme Court in *Bachan Singh v. State of Punjab*[1], "Death penalty should be imposed when collective conscience of the society is so shocked that it will expect the holders of the judicial power centre to inflict death penalty regardless of their personal opinion as regards desirability of otherwise maintaining death penalty." Since 1980, the continued use of the death penalty has been a contentious topic in our nation. Although in theory the death penalty is still the harshest punishment possible, it can only be applied in the most extreme circumstances. If the penalty cannot be given in 99% of circumstances, the question of supremacy emerges. Even the theory of the rarest of rare occurrences has occasionally come under fire for a variety of reasons. In this way, the judges' perspectives also differ from one another. In this research the researcher has tried all the possible ways to make

[1] AIR 1980 SC 898

a nexus between reformative approach of Indian justice system with Rarest of the Rare theory.

Keywords: Rarest of Rare, Supreme Court, IPC, Death penalty, Indian Justice System.

Doctrine of Rarest of Rare and Reformative system: A Contemporary trend

1.1 Introduction

The question of whether judicial discretion is really based on a well-known scale or simply a reflection of adhocism in the exercise of judicial power is raised by the exercise of sentencing discretion for the award or refusal to award the death penalty on the basis of formulation of aggravating and mitigating circumstances. Therefore, it is necessary to consider whether the doctrine of rarest of rare cases, which appears to be a temporary compromise for the retention of the death penalty in India, has managed to remain on the country's legal horizons despite the uncertainty caused by some recent judicial pronouncements[2] or if it represents a step in the right direction towards the abolition of the death penalty in this nation.

The omnipresent and omnipotent nature of crime is wreaking a havoc to the modern society. It's really astonishing to find the 'innovative' types of crimes committed throughout the motherland and world as a whole. So, with this mammoth increase in crime rate the state has the sentencing system to curb the criminal behaviour of the assailants. There is an urgent need to provide justice to those affected by crime and its aftermath. Section 53 of the Indian penal code, 1860 provides various kinds of punishment to the assailants depending on the gravity of the offence. It's pertinent to note that the first punishment is death/capital punishment for offences under sections 121,132,194, 195-A, 302,305,307, 36-A and 396 of the code.[3]

How can a nation that formerly championed human rights impose the death penalty when doing so violates fundamental human rights? Many discussions about whether to support or abolish the death penalty were taking place around the world between judges, solicitors, administrators, social activists, law commission members, and legal reformers.[4]

[2] Swami Shradhanand v State of Karnataka AIR 2008 SC 3040.
[3] T. Bhattacahrya," The Indian Penal Code", 48 (7 ed., Central Law Publication, 2013)
[4] Ahmed, I.G. (2002). Death Sentence and Criminal Justice in Human Right Perspective. Published in University of Calcutta. pp. 1-4.

No one should be subjected to torture or to cruel, barbaric, or degrading treatment or punishment, according to Article 5 of the Universal Declaration of Human Rights, which was adopted in 1948. Every Indian citizen has the right to life and personal liberty under Article 21 of the Indian Constitution, which also states that they have the right to live and not perish. 1966's International Covenant on Civil and Political Rights Article 7[5] No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, according to this clause. India is a United Nations member. We are among a handful of nations that have abandoned the death penalty in response to the United Nations' call; 120 nations have done so, and several have also stopped carrying out executions. Even though India only uses the death penalty in the rarest of circumstances, it is one of the 73 nations in the world that still have the death penalty written into their laws.

The death penalty is a long-standing idea that has roots in practically all social groups and civilizations. The death penalty in antiquity used to be discussing common offences against society. Eye for an eye, tooth for a tooth, or blood for blood was a prevalent practise in the early days of human civilization when people were fighting for food, sex, and other things, which led to harm being done to mankind through this extremely old concept of law. The globe gradually evolved along with societal beliefs and practises. In England, a servant who steals a small item is given the death penalty. In those days, people had such a severe attitude[6].

In today's world crime is on heights especially in India, In ratio of crime India exist in top 10 countries n the world. The legislature has passed several laws and a variety of penalties so that people won't commit crimes out of fear of repercussions. Capital Punishment is the most sophisticated form of punishment. In spite of several rulings, India has not yet abolished the death penalty, but judges have made a modest alteration to the way it is used. Now, death sentences are only given under the "rarest of rare" theory. The researcher attempts to concentrate on the characteristics of the death punishment in its investigation. The researcher will make an effort to elucidate on the issues relating to the study's title that were resolved by the Honourable Constitutional Courts of India through this project. The purpose of this study is to determine whether the death penalty imposed.

[5] International Convenient on Civil and Political Rights. (1966) Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966. Retrieved December 28, 2013 from http://www.ohchr.org

[6] Agrawal, A. (2000). Abolition or retention of death penalty in India - A critical Appraisal. Published in Gujrat National Law University, Gandhinagar (India). pp. 2- 4

The Oxford Dictionary defines capital punishment as the legally sanctioned execution of a person as retribution for a crime.[7] When a person commits a capital offence, such as a murder that was planned out in advance, a murder that was committed more than once, a murder that was committed repeatedly, a rape, a murder, etc., the criminal law would often sentence them to death and impose this penalty.[8] The death penalty, often known as capital punishment, is a legal procedure wherein a person is executed by the state as retribution for a crime. The punishment for those found guilty of crimes is the death penalty. Crimes are wrong if they require disciplinary action, and if they are remissible at all, only the crown may do so[9], According to Blackstone, a crime is committed when a public law is violated via any act or omission.[10]

1.2 Evolution of the Doctrine

In the case of *Bachan Singh v. State of Punjab*[11] the "Rarest of Rare" principle first appeared By setting restrictions on the death sentence in this case, the Supreme Court established the "Rarest of the Rare doctrine" by a 4:1 majority. The rulings in Jagmohan Singh v. State of Uttar Pradesh[12] were cited by the judges. where it was found that when a person receives a death sentence, their fundamental right to life is violated. However, if a deadly operation carried out by a dedicated criminal endangers social security in a persistent, deliberate, and dangerous way, his enjoyment of basic rights may be rightfully eliminated. The subsequent guidelines were: -

1. The death penalty should only be used in the most severe situations of extreme guilt.

2. Before choosing the death sentence, the circumstances of the "offender" as well as the circumstances of the "crime" must be taken into account.

3. The death penalty is an exception rather than the rule in terms of punishment. In other words, the death penalty must only be used when life in prison seems to be an entirely inadequate punishment in light of the crime's relevant circumstances, and only in cases where the option

[7] Kindersley, D. (2011). DK Illustrated Oxford Dictionary. Dorling Kindersley Limited and Oxford University Press. ISBN 978-0-1434-1621-0.
[8] http://www.legal-explanations.in/definitions/capital-punishment.html (Visited on 02-05-2023)
[9] Bhattacharya, T. (2013). The Indian Penal Code (ed. VII). Central Law Agency, Allahbad: pp " 8 -10
[10] Ibid.
[11] Bachan Singh v. State of Punjab (1980) 2 SCC 684.
[12] AIR 1973 SC 947

of imposing a life sentence cannot be exercised conscientiously in light of the crime's nature, circumstances, and all relevant circumstances.

4. Before exercising the option, a fair balance between the aggravating and mitigating factors must be reached by compiling a balance sheet of both. The mitigating circumstances must be given full weight in this process.[13]

The Supreme Court stated that the death penalty is lawful and that it may only be used in the most extreme cases in which all other options have been exhausted. The phrase "Rarest of Rare" was not specifically defined, nevertheless, and the concept has changed throughout time as a result of judicial interpretation.

The Supreme Court reaffirmed in *Mithu Singh v. State of Punjab*[14] that the death penalty is not a required punishment and should only be used if the Bench is confronted with a case involving the "rarest of the rare" circumstances where death penalty is required to restore the collective conscience of society. The court emphasized that the death sentence is an exception rather than the rule and that life imprisonment is the norm.

In the case of *Macchi Singh & Ors. v. State of Punjab*[15], the "Rarest of Rare" tenet was further contested. This decision was significant because it set forth rules for how the "Rarest of Rare" theory should be applied when passing death sentences. The court ruled that, in the rarest of cases, a death sentence may be given when society as a whole is so horrified that it expects those in positions of judicial authority to impose the death penalty, regardless of their personal feelings about whether doing so is desirable or not. The Court said that in order to impose a death sentence, the following elements must be taken into account:

1.Method of murder,

2. reason for murder, and

3. consequences of murder

[13] Rachi Singh, *Analysis of Bachan Singh and Macchi Singh and its implications*, 5 (4) INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS, 135-143, (2018).
[14] AIR 1983 SC 473.
[15] 1983 SCR (3) 413.

4.Socially repugnant or antisocial nature of the crime

5. Dimensions of the crime and the murder victim's personality

The Court ruled that the principles outlined in *Bachan Singh's case*[16] must be taken into consideration together with these principles and applied to the specific facts of each case where the imposition of death sentences is a possibility.

The Supreme Court reiterated the "Rarest of Rare" approach and concluded that the proper penalty must be assessed on a case-by-case basis in Santosh Kumar *Satish bhushan Bariyar v. State of Maharashtra*[17]. Except in the "rarest of rare" instances where reform is impossible, the death penalty is not to be applied. The Court also noted that precedents are inconsistent in the "rarest of rare cases" and that, in the majority of cases, it has upheld or rejected the death sentence without establishing any guiding legal principles.

1.2 Applicability of Doctrine

The main guideline for deciding whether to execute a convict is to take into account whether the continuation of a lawful society requires the death of the offender. When deciding whether a case falls within the category of "rarest of rare," consideration is sometimes given to the deliberate, cruel, terrible, and atrocious character of the crime, perpetrated without concern for the victim.

Justice P.N. Bhagwati and other justices have, however, drawn attention to the uncertainty and vagueness surrounding the interpretation and implementation of this concept. He thought that in interpreting the doctrine and imposing the death sentence, subjectivity and personal prejudices would be crucial factors, leading to a situation in which people would be permitted to live or die based on the judicial perspective. The basic rights protected by Articles 14 and 21 of the Constitution would be violated by such arbitrability and dependence on judges' opinions. The findings of an opinion survey on the death sentence performed with 60 former Supreme Court of India justices by the National Law University Delhi shed light on several crucial issues of India's criminal justice system and use of the death penalty. The majority of the judges thought that the "rarest of the rare" theory was based on categories or types of

[16] Supra 12
[17] (2009) 6 SCC 498.

offenses rather than the impossibility of the alternative punishment of life in prison. Despite being utilized for a long time, the idea is not universally understood among judges, according to the paper titled "Matters of Judgement."[18]

The full bench of Dr. Dhananjaya Y. Chandrachud, C.J., Hima Kohli, and Pamidighantam Sri Narasimha, J.J., has commuted the petitioner's death sentence for the crime of kidnapping and murdering a 7-year-old minor to life imprisonment for at least 20 years, without remission, while exercising its inherent jurisdiction through a review petition in a criminal appeal. "Although the petitioner's offense was undeniably serious and impermissible, it is not appropriate to uphold the death sentence that was imposed on him. The 'rarest of rare' theory stipulates that the death penalty must only be used if there is no chance of a criminal's rehabilitation, and not just because the offense was terrible.[19]

1.3 Reformative System

"Every saint has a past, and every sinner has a future" In the case of *Mohd. Giasuddin v. State of A.P.*[20], Justice Krishna Iyer made this comment This one sentence sums up the reformative idea of punishment well. According to the reformative or restorative view of punishment, the goal of a state's criminal justice system should be to reform the offender rather than to merely punish him.

The state has a responsibility to make sure the criminal can contribute to society after receiving his penalty. The Supreme Court of India said that reformation should be the primary goal of punishment in the case of *State of Gujrat v. Hon'ble High Court of Gujrat*[21] and that an attempt should be made to reconstruct the decent man of a condemned prisoner while he is being punished. There is a public benefit to this as well.

All of the items mentioned thus far appear to be excellent on the surface. Is the philosophy of reformative justice, nevertheless, actually applicable? If not, would retributive justice be the

[18] Shohom Roy, Symbiosis School of Law, *Applicability of Doctrine,* The burden to declare "rarest of the rare" : subtle failures of substantial justice, https://blog.ipleaders.in/the-burden-to-declare-rarest-of-the-rare-subtle-failures-of-substantial-justice/ (Visited on 11-05-2023)

[19] "Death Sentence to be imposed only if no possibility of reform"; SC commutes death sentence to 20-years rigorous imprisonment in 7-year-old's kidnapping-murder case... https://www.scconline.com/blog/post/2023/03/22/death-sentence-to-be-imposed-only-if-no-possibility-of-reform-in-convict-sc-commutes-death-sentence-to-20-years-rigorous-imprisonment-in-kidnapping-murder-case-of-minor-legal-news-legal-research-upd/ (Visited on 11-05-2023)

[20] Mohd. Giasuddin v. State of A.P., (1977) 3 SCC 287

[21] AIR 1998 SC 3164

best course of action? If not, how does India's criminal justice system decide how to punish a Criminal. Not only is the type of punishment under discussion, but also its severity.

The reformative or restorative theory of punishment places a strong emphasis on the individualism-based reformation of criminals[22]. This argument holds that the court must consider the offender's environment while determining the appropriate sentence. These variables include, among others, the offender's age, personality traits, the crime committed, and the environment in which it was done. This idea aims to make the criminal a law-abiding member of society via rehabilitation. Punishment is therefore only seen as a means to an end and not as its own goal.

Women, first-time offenders, and juvenile offenders are the main populations for which the reformative theory of punishment is employed.

Eye for an eye will make the entire world blind, according to Mahatma Gandhi. He promoted the forgiving and nonviolent gospel. On the basis of these ideas, India attained freedom. The Indian legal system likewise incorporates similar elements.

The importance of the reformative notion of punishment has frequently been emphasized by the nation's courts. The Supreme Court declined to increase the offender's penalty in the case of *Gulab Singh v. Yuvraj Singh*[23] while keeping in mind the need to reform the Indian Penal System. There are several legislative provisions that show the supremacy of reform in India's punishment system.

1.3.1 Parole-

A prisoner on probation is given the opportunity to leave custody while maintaining good behavior. A probation officer is appointed as the person's guardian or supervisor after their release. Such a probation officer's duties include supervising the assigned probationers, assisting them in finding jobs, and providing rehabilitation assistance.

The Probation of Offenders Act, 1958 governs probation in India. This Act allows for the release of first-time offenders who have committed crimes like stealing (Section 379 of the Indian Penal Code) or cheating (Section 420 of the Indian Penal Code), which carry sentences

[22] Dr. NV Pranjape , Studies in Jurisprudence and Legal theory, 18th Ed., Ch12, pg 264.
[23] Gulab Singh v. Yuvraj Singh, 1995 Supp (4) SCC 623

of less than two years in jail. As long as the offense is not one that carries a life term, this Act explicitly exempts criminals under the age of 21 from the punishment.

1.3.2 Pardon-

According to Article 72 of the Indian Constitution of 1950, the President of India has the authority to pardon a criminal. Under Article 161, the Governor has been given comparable authority. Article 72(1) gives the President the authority to commute, reprieve, or suspend the offender's sentence in addition to granting pardons. The President may use the authority in situations where a court martial, union law, or death sentence has been handed out.

The Governor is also given the authority to pardon, reprieve, respite, commute, or remit an offender's sentence under Article 161.

13.3 Commutation of Sentence-

Section 54 and Section 55 of the Indian Penal Code, 1860 deals with the commutation of sentences. Section 54 provides for commutation of sentence in case of death penalty to any other punishment and Section 55 provides for commutation of sentence in case of life imprisonment to 14 years. Such commutation can be done by the Appropriate Government (Governor of the State) without the approval of the offender. The power of the Government is co-extensive to the power under Section 433 of the Criminal Procedure Code, 1973. Article 72 of the Constitution of India, 1950 also empowers the President to commute the death sentence of an offender. A Governor is also empowered under Article 161 of the Constitution of India, the difference between Article 161 and Section 54 of the Indian Penal Code, 1860 is that in case of Article 161, the Governor has to seek advice from the Council of Ministers of the State[24].

The reformative approach to punitive action may seem ideal, yet it has numerous drawbacks. The reformative theory of punishment has some of the following gaps:

1. The prohibitive theory of punishment, as opposed to the reformative theory, must be used to punish habitual criminals who have a predisposition to commit a crime.

[24] Akriti Gupta, Reformative Theory of Punishment in India https://lawcorner.in/reformative-theory-of-punishment-in-india/ (Visited on 11-05-2023)

2. The reformative hypothesis is useless when the penalty is the death penalty. This is so that the wrongdoer can be changed by life, not death. Death sentences are therefore antithetical to the penal system's reformative component.

3. The offender-centric approach that the reformative theory of punishment frequently employs can be unfair to the victim. Courts may unwittingly transgress inmates' rights in their efforts to uphold the victims' legal rights.

4. In a country like India, where poverty is a major contributing factor to crime, people will be driven to commit minor offenses and return to prison under the guise of reform if they perceive convicts to be relaxed.

1.4 Conclusion:

All proponents of the reformative theory agree that before deciding on a specific punishment, it is important for the judge to take into account the offender's age, the severity of the offense, and their social and economic circumstances. Only then will the judge be able to determine the appropriate punishment. Contrary to preventive theory and retributive theory, the goal of a reformative approach is to give an offender a punishment that will help them improve as a person and be rehabilitated rather than punish them in order to make them a better person who is fit to live in a general society. Based on abovementioned contentions it is possible to claim that the retributive approach does provide some justification for the death penalty.

When the accused is given the death penalty, it is more than just a punishment; we are putting an end to or killing a person in the name of truth and the law. Killing someone is morally wrong and shows a lack of regard for human life. And refusing the death penalty does not imply that one is advocating for the offender.

Democracies all over the globe embrace reformative theories of punishment and oppose deterrent theories of punishment because when the death penalty is applied, it destroys the potential for betterment that may have improved the life of an individual. Because "even the most heinous criminal remains a human being possessed of common human dignity," one should value every single person. According to the norms and laws we created, we have no right to select who gets to live and who gets to die.