
SUBJECTIVITY IN SENTENCING: ANALYSIS OF THE RAREST OF THE RARE DOCTRINE

Anamta Khan, LLM, Jamia Millia Islamia, New Delhi

ABSTRACT

The rarest-of-rare doctrine forms the constitutional threshold for imposing the death penalty in India, yet its application continues to be marked by ambiguity, subjectivity, and inconsistency. This paper examines the historical development of the doctrine from *Bachan Singh* to *Machhi Singh*, analysing how aggravating and mitigating factors have shaped India's capital sentencing framework. Through a doctrinal and empirical review, the study highlights significant contradictions in judicial reasoning—especially between the “crime test” and the “criminal test”—and demonstrates how personal judicial philosophy contributes to divergent outcomes. The research further exposes systemic inconsistencies across trial courts, High Courts, and the Supreme Court, revealing that trial courts award death sentences far more readily, while higher courts frequently commute them. In practice, this analytical vacuum means that judicial discretion plays a dominant role: the values, social philosophy and personal attitudes of the sentencing judge or bench often determine what is deemed “rarest of rare.” Overall, the article argues that the rarest-of-rare doctrine, though constitutionally intended to restrict the death penalty, has resulted in unpredictable and uneven sentencing, raising concerns about fairness, uniformity, and constitutional compliance.

ORIGIN OF THE RAREST OF THE RARE DOCTRINE

Death penalty has been prevalent in India since time immemorial. It was used as a tool to eliminate all the anti-social elements that were responsible for disturbing the peace of society. In ancient texts like Manusmriti and Arthashastra, kings sanctioned executions as a means of retributive deterrence, often bypassing any due process. The concept of reform or rehabilitation had negligible presence at that time. During the colonial regime, the British institutionalized capital punishment through codified laws, particularly the Indian Penal Code, 1860. Due to the irreversible nature of capital punishment, it has always been a debatable issue in India. In the old criminal system in India, death penalty was the rule and life imprisonment was the exception. In the Code of Criminal Procedure, 1898, death was the default punishment for murder and judges were required to give reasons for imposing the life sentence instead. The 1973 amendment reversed the presumption, making life imprisonment the rule and death sentence the exception. India upheld the constitutional validity of death penalty through the case of *Jagmohan Singh Vs. State of Uttar Pradesh*¹.

In *Bachan Singh v. State of Punjab*² (1980), where a Constitution Bench of the Supreme Court upheld the constitutionality of the death penalty but significantly narrowed its scope. It introduced the now-foundational “rarest of rare” doctrine. The judgment marked a decisive shift towards principled sentencing, emphasizing that capital punishment may be awarded only in the most extraordinary circumstances, after a careful balancing of aggravating and mitigating factors.

The doctrine also reflects a deeper constitutional tension: the coexistence of the death penalty with Article 21³ of the Constitution, which guarantees the fundamental right to life and personal liberty. While Article 21⁴ permits deprivation of life through “procedure established by law,” the judiciary has interpreted this phrase to mean fair, just, and reasonable procedure. Yet, despite its noble intent, the rarest-of-rare framework continues to face criticism for ambiguity and inconsistency. Neither the legislature nor the judiciary has provided precise, objective standards defining what truly constitutes a “rarest of rare” case. As a result, sentencing often varies significantly between trial courts, High Courts, and the Supreme Court. Recent judicial

¹ 1973 AIR 947.

² 1980 CRILJ 636.

³ The Constitution of India, 1950.

⁴ Id.

trends demonstrate widespread commutation of death sentences, revealing inconsistencies in how courts apply the doctrine and raising concerns about predictability and fairness in capital sentencing.

Against this background, it becomes essential to critically examine the evolution, interpretation, and application of the rarest-of-rare doctrine, especially in light of contemporary judicial trends and the continuing debate on the appropriateness of the death penalty in a constitutional democracy.

The “Death Penalty in India: Annual Death Penalty Report”⁵ examines 215 capital case judgments from trial courts in “Madhya Pradesh,” “Maharashtra,” and “Delhi” between 2000 and 2015 (90 Maharashtra, 82 Madhya Pradesh, and 43 Delhi). It primarily highlights the flaws in death sentencing that stem from the Bachan Singh judgment and subsequent inconsistencies in Supreme Court rulings.

A. Non-consideration of Mitigating Factors/ The dominance of Brutality

B. Reliance on Collective Conscience

C. Non-consideration of Probability of Reformation

D. Failure to consider Life Imprisonment

E. Reliance on Precedents

F. Penological Factors

According to legislative policy described in the CrPC Section 354(3)⁶ [BNSS Section 393(3)]⁷, it mandates that "special reasons" for deciding on the death penalty instead of life in prison or a period of years in jail be documented by the sentencing court. If the offence allows for such alternative sentences, the court in Bachan Singh established complete sentencing guidelines to help judges apply their discretion when determining whether to use the death penalty or not. Examining the choice to use the death penalty, the S.C. first reviewed the significance of the

⁵ P. 39A, *Death Penalty Sentencing in Trial Courts*, National Law University, Delhi, New Delhi, 2020. <https://www.project39a.com/dpsite>.

⁶ The Code of Criminal Procedure, No. 2 of 1973

⁷ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023.

phrase "special reasons" under "Section 354(3)" in the *Rajendra Prasad vs. State of Uttar Pradesh*⁸. According to the Court, "special reasons" indicated that courts may only consider the criminal's circumstances—only aggravating aspects, not mitigating ones—rather than the actual crime.

In the case of *Bachan Singh V. State of Punjab*⁹, on July 4, 1977, Bachchan Singh committed the brutal murder of three children from his cousin's family, using an axe. The murders were carried out in an atrocious manner, and Bachchan Singh was convicted under Section 302 of the IPC. The Sessions Court convicted Bachchan Singh for the murders and sentenced him to death. The decision was upheld by the Punjab and Haryana High Court. He then appealed to the Supreme Court of India. The Court introduced the "rarest of rare" doctrine, stating that the death penalty should only be imposed in cases where the crime was so brutal and extreme that life imprisonment would be insufficient. This doctrine was designed to prevent the death penalty from being used as a routine punishment for murder and to ensure that it was applied only in exceptional circumstances. The "Bachan Singh" sentencing framework introduced the concept of weighing mitigating elements (related to the criminal) against aggravating ones (related to the crime). In actuality, the Court's list of aggravating and mitigating factors is intended to be indicative rather than exhaustive to preserve judicial discretion.

The Aggravating Factors Include:

- The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.
- The offence was committed while the offender was engaged in the commission of another serious offence.
- The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

⁸ 1979 SC 916.

⁹ 1980 2 SCC 684.

- The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
- Hired killings
- The offence was committed by a person while in lawful custody.
- The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 of the Code of Criminal Procedure.
- When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
- When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.
- When murder is committed for a motive which evidences total depravity and meanness.
- When there is a cold-blooded murder without provocation.
- The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Among the Mitigating Factors Are:

- The accused's age. If the accused is young or old, he shall not be sentenced to death.
- The probability that the accused can be reformed and rehabilitated. The state shall by evidence prove that the accused does not satisfy this condition
- That the offence was committed under the influence of extreme mental or emotional disturbance.
- The probability that the accused would not commit criminal acts of violence as would

constitute a continuing threat to society.

- That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- Acted Under Duress or Domination
- That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

In the last phase, the Court will decide whether any penalties other than death would be appropriate in cases where the contributing factors outweigh the mitigating ones. If the Court finds that no other sentencing option is adequate to punish the crime, the case is classified as "rarest of rare". The death sentence is only appropriate in these circumstances¹⁰

INTERPRETATION OF GUIDELINES & CHALLENGES FACED BY INDIAN TRIAL COURTS

The Indian Penal Code (now Bharatiya Nyaya Sanhita) and the Code of Criminal Procedure (now Bharatiya Nagarik Suraksha Sanhita) prescribe capital punishment for certain offences but do not provide any statutory yardstick for deciding *when* the death penalty should be imposed. Because the doctrine is judge-made, sentencing turns substantially on judicial assessment of aggravating and mitigating factors—which themselves are often described in broad, qualitative language (for example, “something uncommon about the crime”). The court notes that the awarding of sentence of death "depends a good deal on the personal predilection of the judges constituting the bench." This is a serious admission on the part of this court.¹¹ The result is a sentencing methodology that permits considerable judicial discretion. Judges' personal values, social philosophy, or perceptions of social utility and deterrence often shape whether a particular set of facts qualifies as “rarest of rare,” producing outcomes that are difficult to reproduce or standardize across benches.

The Supreme Court has considered the "rarest of rare" theory in the *Machhi Singh v. State of*

¹⁰ P. Verma, *The Inevitable Inconsistency of the Death Penalty in India*, 6 Cambridge Law Review, 27, 29 Vol. 6, (2021).

¹¹ Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka (2008) 10 SCC 669.

*Punjab*¹² stating that the death penalty is only effective when society demands it, regardless of individual opinions. When the collective conscience of the community is so shocked that it expects the holders of judicial power to inflict death penalty, then capital punishment may be justified. To determine the appropriate sentence, the Court has also specified elements including the victim's name and the level of the offence. In another case the court held that no doubt brutality looms large in the murders particularly in the murder of the old and also the tender-aged child. It may be that the manner in which the killings were perpetrated may not by itself show any lighter side but that is not very peculiar or very special in these killings. Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the "rarest of rare cases". In a way, every murder is brutal, and the difference between one from the other may be on account of mitigating or aggravating features surrounding the murder.¹³ The Contradictory point of the Supreme Court's view had been noted in the case of *Rajvi v. State of Rajasthan*¹⁴ where the Court has prioritized the nature of the offence over the circumstances of the offender, considering the death penalty, which directly contradicts the Bachan Singh principle, which requires considering the offender's background and particularly look into the mitigating circumstances of accused.

A Conflicting View on the Offender's Age was seen in the case of *Ramnaresh v. State of Chhattisgarh*¹⁵ where the Court has imposed life imprisonment for gang rape and murder considering the young age (20-30 years) of the offenders as there is a chance for reform. However, in the case of *Dhananjoy Chatterjee v. State of West Bengal*¹⁶, the Court imposed the death penalty on a 27-year-old; thus, it highlights the inconsistency in judgments regarding age.

Suppose we have a look at the Conflicting views of the Court in terms of the Nature of the offence, as in the case of *Bhagwan Das v. State (Delhi NCT)*¹⁷, an honour killing was considered a "rarest of rare" crime, supporting the death sentence. Conversely, in the case of *Dilip Premnarayan Tiwari v. State of Maharashtra*¹⁸, the Court commuted the death penalty to life imprisonment for a caste-based killing, considering the influence of deep-rooted social

¹² AIR 1983 SC 957.

¹³ Panchhi & Ors. vs State of UP & Ors (1998) SC 2726.

¹⁴ AIR 1996 SC 787.

¹⁵ Cr. App. No. 166-167 of 201.

¹⁶ 1994 SCR (1) 37.

¹⁷ 2011 SC 1863.

¹⁸ Cr. App. No.1026 of 2008.

issues on the offender's mind.

In the case of **Asharfi Lal & Sons vs State Of UP**¹⁹ the accused persons had killed their two innocent nieces to wreak personal vengeance regarding property dispute with the mother of the victims. The court stated that these were cold-blooded brutal murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocked the judicial conscience. Failure to impose a death sentence in such grave cases where it is a crime against the society---particularly in cases of murders committed with extreme brutality--will bring to naught the sentence of death provided by s. 302 of the Indian Penal Code. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders the sentence of death on the two appellants Asharfi Lal and Babu was confirmed. In this case death sentence was awarded by this Court and court did not considered any mitigating circumstances.

Contradictory to this in *Dharmendra V. State of Gujarat*²⁰, the court acknowledged that the crime committed was "no doubt heinous and unpardonable" and that two innocent children lost their lives for no fault of their, but the court chose to give force to mitigating circumstances in the following terms:

"The offence was obviously not committed for lust of power or otherwise or with a view to grab any property nor in pursuance of any organized criminal or anti-social activity. Chances of repetition of such criminal acts at his hands making the society further vulnerable are also not apparent. He had no previous criminal record."

Considering These Cases, we Can easily Identify the Gaps in the Bachan Singh Guidelines Inconsistent Application of the "Rarest of Rare", Discretion and subjectivity in sentencing and vague Interpretation of "Rarest of Rare". The subjective and arbitrary application of the death penalty has led "principled sentencing" to become "judge-centric sentencing" based on the "personal predilection of the judges constituting the Bench"²¹

¹⁹ 1987 AIR 1721.

²⁰ 2002 SCC 679.

²¹ Law Commission of India, Govt. of India, *Report No. 262: The Death Penalty* (2015).

INCONSISTENCY IN APPLICATION OF TWO TEST

Sentencing for crimes has to be analyzed on the touchstone of two tests namely, crime test and criminal test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).²² Additionally, it may be noted that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by

- (i) bodily integrity of the victim;
- (ii) loss of material support or amenity;
- (iii) extent of humiliation; and
- (iv) privacy breach.

To award death sentence, the crime test has to be full satisfied, that is 100% and “criminal test” 0% that is, no mitigating circumstances favouring the accused. If there is any circumstances favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused etc. the “criminal test” may favour the accused to avoid the capital punishment. Even if both the test are satisfied, the aggravating circumstances to the full extent and there are no mitigating circumstances favouring the accused, still then the final test of rarest of rare case test is applied. The rarest of the rare depends on the perception of society that is “society centric” and not “judge-centric”, that is whether the society will approve the awarding of death sentence to certain types of crimes or not.

Judiciary applying “crime test”

An analysis of capital sentencing decisions reveals that in several cases involving sexual assault

²² State of Madhya Pradesh v. Udham and Others 2019

and murder of minor victims, the Supreme Court has prioritised the *nature and gravity of the crime* over the personal circumstances of the offender, thereby applying what is commonly referred to as the “crime test.” Under this approach, the courts focus on the brutality of the offence, the vulnerability of the victim, and the societal outrage that such crimes evoke, often without undertaking a detailed assessment of mitigating factors such as the offender’s background, intent, age, or possibility of reformation. This tendency reflects a stricter, offence-centric interpretation of the rarest-of-rare doctrine, where the heinousness of the crime alone is seen as sufficient to justify the imposition of the death penalty. The following cases illustrate how courts have upheld capital punishment by emphasising the atrocity, betrayal of trust, and aggravated circumstances surrounding the offence, while largely sidelining the “criminal test,” which requires a broader and more individualised consideration of the accused. In the case of *Nathu Garam V. State of UP*²³ the court upheld the death sentence awarded by Trial court and confirmed by High Court for causing death of a 14 year old girl by a person aged 28 years after luring her into the house for committing criminal assault. Stress was on the “crime test” and no reference was made to “criminal test”. Hence death penalty was upheld.

In the case of *Dhananjay Chatterjee Alias Dhana v. State of West Bengal*²⁴ the court stated that the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting to the crime so that the courts reflect public abhorrence of the crime. There was no discussion on the mitigating circumstances to satisfy the “criminal test”. Hence the “crime test” was applied.

In the case of *Kamta Tiwari V. State of MP*²⁵ again applied the “crime test” completely ignoring the “criminal test”. The court dealt with a case of rape followed by murder of a 7 year old girl. Evidence disclosed that the accused was close to the family of the father of deceased and the deceased use to call him uncle. The court described the murder as gruesome and barbaric and pointed out that a person, who was in a position of trust, had committed the crime and the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuaded the court to maintain the sentence of death.

²³ 1979 SCC 366.

²⁴ 1994 SCC 220.

²⁵ 1996 SCC 250.

Judiciary applying “criminal test”

The Supreme Court has from time to time in cases involving extremely young victims and disturbing factual matrices, refrained from imposing the death penalty where the “criminal test” indicated that the offender did not pose a continuing threat to society. This demonstrates that the determinative factor is not merely the gravity or heinousness of the offence but the individualised assessment of the offender’s character and reformability. Such decisions underscore that the rarest-of-rare doctrine is heavily influenced by subjective judicial evaluation, leading to a sentencing approach that is nuanced. In the case of *Raju v. State of Haryana*²⁶ the Court commuted death sentence to life imprisonment in a case where a girl of 11 years was raped and murdered. The Court noticed that the accused had no intention to murder her, but on the spur of the moment, without any premeditation, he gave two brick-blows which caused the death. Further, it was also found that the accused had no previous criminal record or would be a threat to the society. Therefore, "Criminal test" was applied and the gruesome nature of crime was ignored.

In another case²⁷ the Court commuted death sentence to that of life imprisonment. A girl of 6 years was raped and murdered by a boy of less than 22 years. Though, this Court found that the act was heinous and required to be condemned, the accused did not require to be eliminated from the society. The appellant did not had a criminal record. "Criminal test" was applied and the Court found some circumstances favouring the accused so as to avoid death sentence.

The Court in another case commuted the death sentence to life imprisonment where a girl of 4 years was raped and murdered. Though this Court felt that the case was perilously near the region of the rarest of rare cases, but refrained from imposing extreme penalty.²⁸ "Criminal test" was applied and the accused narrowly escaped death sentence.

In the case of *Amrit Singh v. State of Punjab*²⁹ Court commuted death sentence to that of life imprisonment where a 7-8 years old girl was raped and murdered by the accused aged 31. Court stated that the manner in which deceased was raped is brutal but it could have been a momentary lapse on the part of the appellant, seeing a lonely girl at a secluded place. “criminal

²⁶ 2001 SCC 50.

²⁷ *Bantu Alias Naresh Giri v. State Of MP* (2001) SCC 615

²⁸ *State Of Maharashtra v. Suresh* (2000) 1 SCC 471

²⁹ (2006) 12 SCC 79.

test” as seen has been applied in favour of the accused to avoid death sentence.

In the case of *Rameshbhai Chandubhai Rathod v. State of Gujarat*³⁰ the Court commuted death sentence to life imprisonment of the accused committing rape and murder of a girl of 8 years. It was noticed that the accused at the time of the commission of crime was 27 years old and possibility of reformation could not be ruled out. "Criminal test" was applied considering the age of the accused and possibility of reformation saved the accused from death penalty.

A comparative reading of the above judgments reveals a striking inconsistency in how the Supreme Court has applied the “crime test” and the “criminal test,” ultimately exposing the deep subjectivity embedded within the rarest-of-rare doctrine. In several cases, the Court has emphasised the brutality of the offence, the vulnerability of the victim, and societal anger—leading to confirmation of the death penalty without substantial engagement with mitigating factors. Yet, in an equally significant cluster of cases, the Court has shifted its focus to the offender’s intent, age, background, and possibility of reform, resulting in commutation even where the factual circumstances were comparably heinous.

This duality shows that there is **no consistent judicial philosophy** guiding capital sentencing; instead, outcomes vary depending on whether a particular bench prioritises the severity of the crime or the characteristics of the accused. Moreover, the absence of clear statutory guidance allows terms like “atrocious,” “public abhorrence,” and “momentary lapse” to operate as flexible judicial tools rather than principled legal standards. Together, these inconsistencies illustrate the fragile and often unpredictable nature of capital sentencing in India, where similar factual matrices can lead to starkly different punishments depending on how the competing tests are balanced—reinforcing the core critique that the rarest-of-rare doctrine fails to ensure uniformity, transparency, and constitutional fairness.

EMPIRICAL TRENDS AND CONTEMPORARY JUDICIAL PRACTICE

There is high inconsistency between trial courts, High Courts, and Supreme Court in sentencing. Trial courts continue to award death sentences in substantial numbers, while many High Courts and the Supreme Court either commute or refuse to confirm capital sentences on appellate review. This pattern evidences an unsettling gap in how the doctrine is applied across

³⁰ (2011) 8 SCC 93.

judicial tiers: trial courts may impose death while appellate courts—applying their own evaluative judgments—often reduce the sentence.

Annual monitoring of death-penalty activity records that 120 death sentences were imposed by trial courts in 2023, yet appellate courts remanded, acquitted, or commuted a large proportion of cases heard by High Courts; only one confirmation by a High Court was reported in 2023 and none by the Supreme Court. This drastic fall-off demonstrates that while trial courts often rely heavily on the of the crime and public outrage in awarding death sentences, appellate courts apply the *Bachan Singh* and *Machhi Singh* standards with greater scrutiny, giving substantial weight to mitigating circumstances such as age, socio-economic background, possibility of reform, and procedural irregularities. The data shows that many trial-court decisions fail to meet the constitutional threshold for the “rarest of rare” standard, leading to frequent reversals or commutations on appeal. This pattern reveals a systemic inconsistency: capital sentencing in India largely depends on the judicial tier involved, resulting in a fragmented and unpredictable application of the doctrine. These statistics highlight the practical inconsistency between trial-level sentencing and appellate scrutiny. Coming to the Supreme Court, none was confirmed by it.³¹

Deen Dayal Tiwari v. State of Uttar Pradesh³²

The Appellant-convict was charged for killing his wife and four minor daughters. The Trial Court convicted the Appellant and awarded death penalty to him. The Appellant preferred an Appeal and the High Court upheld the Trial Court’s Judgment. Being aggrieved, he was before the Apex Court. The Supreme Court commuted the death sentence. The three-Judge Bench of Justice Vikram Nath, Justice Sanjay Karol, and Justice Sandeep Mehta remarked, “Weighing the totality of circumstances and having regard to the legal principles discussed above, we are of the view that while the crime is heinous and deserves the highest degree of condemnation, it does not meet the threshold of “the rarest of rare” so as to irrevocably foreclose the option of life imprisonment. There is evidence or at least a reasonable probability of reform, therefore a lesser sentence must be preferred. while the offence is brutal, certain mitigating factors, especially the Appellant’s lack of criminal antecedents tilt the scales in favour of commutation.

³¹ Project 39A, Annual Statistics Report 2023, available at: https://www.project39a.com/annual-statistics-report-2023?utm_source.

³² (2025) INSC 111.

Sundar @ Sundarrajan v. State by Inspector of Police³³

Supreme Court commuted the death sentence awarded for the kidnapping and murder of a 7-year-old child to life imprisonment for not less than 20 years, without remission. The Court held that "even though the crime committed by the petitioner is unquestionably grave and unpardonable, it is not appropriate to affirm the death sentence that was awarded to him. As we have discussed, the 'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal. Neither the trial court, nor the appellate courts have looked into any factors to conclusively state that the petitioner cannot be reformed or rehabilitated."

WAY FORWARD

The rarest-of-rare doctrine was envisioned as a constitutional safeguard to ensure that the death penalty remains an exceptional punishment imposed only when life imprisonment is unquestionably inadequate. However, the analysis in this study reveals that the doctrine has not achieved the consistency, predictability, or fairness that the Supreme Court originally intended. Despite the guiding framework laid down in *Bachan Singh* and refined in *Machhi Singh*, courts continue to differ widely in how they interpret aggravating and mitigating factors, often prioritising the brutality of the crime over a principled assessment of the offender's circumstances.

The contradictory judicial trends—particularly the inconsistent application of the "crime test" and the "criminal test"—demonstrate that sentencing outcomes frequently depend on the value systems and personal philosophies of individual judges. Empirical data further exposes deep structural inconsistencies between different judicial tiers: while trial courts regularly impose death sentences, High Courts and the Supreme Court frequently commute them, indicating that many trial-level decisions fail to satisfy the constitutional threshold of the doctrine.

There is a strong need for clear statutory guidelines defining aggravating and mitigating factors, so that the death penalty is not left solely to subjective judicial interpretation. Codifying these principles, even in an indicative form, would help standardise sentencing across trial courts and reduce excessive reliance on personal judicial philosophy. Sentencing courts must be mandated to conduct a structured, reasoned balancing exercise, explicitly demonstrating how each

³³ Cr. App No. 300-301 of 2011.

relevant factor was weighed. Trial courts often overlook mitigating circumstances or rely disproportionately on brutality and collective conscience; mandatory, detailed sentencing orders would encourage transparency and allow for meaningful appellate review. Courts should adopt a reformation-first approach, as emphasised in *Bachan Singh*, by requiring the State to prove beyond doubt that the accused is incapable of reform. Clear guidelines for assessing reformation potential—such as age, socio-economic background, psychological evaluation, and lack of prior criminal record—should be uniformly applied.

Finally, to prevent judge-centric sentencing, the judiciary would benefit from regular training and sensitisation programmes on capital sentencing, focusing on mitigating factors, constitutional morality, and comparative human rights standards. Such reforms would move India closer to a principled, fair, and constitutionally compliant death-penalty framework.