
RAREST OF RARE DOCTRINE IN RAPE CASES: JUDICIAL INTERPRETATION IN INDIA

Saanvi S, School of Law, Christ Deemed to be University

ABSTRACT

This paper analyses how India's doctrine of 'rarest of rare' circumscribes capital punishment in the context of rape and rape-murder trials by using Supreme Court judgments with limited references to High Court and trial-court judgments in so far as they provide sentencing and confirmation patterns. It also demonstrates, through close reading and a coded case matrix, how courts actually balance aggravating and mitigating factors, measure chances of reformation and appeal to "collective conscience." The dataset reports widely acknowledged aggravators and habitual mitigators and looks at bench/forum influences on different levels. Analysing both confirmations of death as well as cases where the doctrine was not used, with severe non-death consequences such as life sentences or long minimums or consecutive sentences, the paper identifies their predictable commutation thresholds and warns of a drift towards offence-centred reasoning in high-salience cases. It suggests minimalistic mitigation restrictions at sentencing (the required mitigation dossier), a forced-reasoning short form checklist and a presumption against death in circumstantial and split-verdict cases, and model non-death term orders. All these tools are intended to translate doctrine into actionable decision points and maintain outcomes as narrow, uniform, and true to constitutional guarantees of equality, dignity, and due process.

Keywords: rarest of rare, capital punishment, aggravating and mitigating factors, reformation, collective conscience.

INTRODUCTION

The death penalty is one of the most controversial topics in criminal jurisprudence, and remains at the centre of the intersection of justice, morality, and constitutional rights. In India, the judicially evolved 'rarest of rare doctrine' has formed the core basis of deciding on the impingement of capital punishment. First enunciated in *Bachan Singh v State of Punjab (1980)*, and later refined in *Machhi Singh v. State of Punjab (1983)*, the doctrine was intended to limit the death penalty in situations where the alternative of life imprisonment was "unquestionably foreclosed." This principle is a shift in the burden of proof so that life imprisonment is the rule, and the exception is capital punishment. It ensures that the death penalty is not applied arbitrarily but is reserved for those crimes which are so heinous and which shock the "collective conscience of the society". Over the years, it has become something of a touchstone between aggravating and mitigating factors as well as the brutality of the offence and the possibility of reform.

The use of this doctrine becomes especially complicated in cases of rape, particularly in cases of extreme brutality or the murder of victims. The nationwide outrage after the Delhi gang rape of 2012 (the Nirbhaya case) and ensuing amendments in the criminal law broadened the capital punishment scope in the offences of rape. This has made judicial discussions on whether death sentences in such cases do justice to the accused or destroy constitutional safeguards under articles 14 and 21.

Judicial interpretation of the doctrine in cases of rape has not always been consistent. While portions of the *Bhartiya Nyaya Sanhita (BNS)* and the *Protection of Children from Sexual Offences (POCSO) Act* provide for the death sentence to certain particularly gruesome forms of rape, the "rarest of rare" is the guiding principle for judges to make the final sentencing decision. The doctrine is intended to give a consistent and principled approach to sentencing but it has the disadvantage of not having a rigid statutory definition and its application may have subjectivity on the part of the judiciary.

Against this background, this research focuses on the interpretation and application of the "rarest of rare doctrine" in cases of rape by the courts in India. It examines provisions in the statute under *Bharatiya Nyaya Sanhita (BNS)* and *POCSO Act*, Constitutional guarantees, important judicial precedents and critical evaluation. The objective is to assess whether, as

applied, the doctrine has the appropriate balance between retribution and deterrence and the rights of both the victims and the convicts.

LITERATURE REVIEW

The statutory materials (BNS §§63–71 on rape and aggravated rape, BNS §103 on aggravation–mitigation, POCSO §§6, 28, 42) set the stage on which judges apply the “rarest of rare” (RoR) test. They broaden the range of cases that present as death-eligible, especially child victims, gang rape, custodial contexts, while §103 formalises a balance-sheet of aggravating and mitigating circumstances¹. POCSO §6 retains death as a ceiling in aggravated penetrative sexual assault², §28 fast-tracks specialised procedure in special courts³, §42 asserts POCSO’s override, altering how conflicts with the general code are resolved⁴. On the constitutional side, Articles 14 and 21 supply the proportionality and non-arbitrariness yardsticks⁵, Articles 32/226 keep the doors open for constitutional review⁶, Articles 72/161 preserve a final mercy check⁷ and Article 141 turns Supreme Court reasoning into binding precedent that should harmonise outcomes⁸. Official committees and law commissions sit between statute and practice such as the Justice Verma Committee (2013) resisted adding death for rape despite public anger⁹, the PSC reports (2013/2018) record Parliament’s later tilt toward expansion, especially for child victims, and Law Commission Reports 156,172,262 track a long arc from definitional reform to a principled scepticism about the death penalty’s utility and consistency¹⁰¹¹². Finally, the NCRB’s Crime in India¹³ and Project 39A’s Death Penalty India studies¹⁴¹⁵ contribute the empirical backbone where the former offers system-level counts and

¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, §103 (India).

² Protection of Children from Sexual Offences Act, No. 32 of 2012, § 6 (India).

³ Protection of Children from Sexual Offences Act, No. 32 of 2012, § 28 (India).

⁴ Protection of Children from Sexual Offences Act, No. 32 of 2012, §42 (India).

⁵ India Const. arts. 14, 21.

⁶ India Const. arts. 32, 226.

⁷ India Const. arts. 72, 61.

⁸ India Const. arts. 141.

⁹ Justice J.S. Verma, Justice Leila Seth & Gopal Subramaniam, *Report of the Committee on Amendments to Criminal Law* (2013).

¹⁰ Law Commission of India, *The Indian Penal Code* (Report No. 156, Aug. 1997).

¹¹ Law Commission of India, *Review of Rape Laws* (Report No. 172, Mar. 2000).

¹² Law Commission of India, *The Death Penalty* (Report No. 262, Aug. 2015)

¹³ National Crime Records Bureau (MHA), *Crime in India 2022: Statistics, Vol. I* (2023).

¹⁴ Project 39A, National Law University, Delhi, *Death Penalty India Report* (2016).

¹⁵ Project 39A, *Matters of Judgment: An Opinion Study of the Supreme Court of India on the Death Penalty* (2017).

conviction patterns and the latter shows who gets death and why, with on-ground detail about socio-economic profiles, process gaps, and commutation trends.

Read alongside, these materials disclose structural tension. The BNS/POCSO framework broadens aggravated offences and, through POCSO §42, may limit judicial room to manoeuvre, while §103 presumes a principled balancing. Constitutional doctrine then requires death to follow only if life is absolutely ruled out for this offender after an offender-focused exploration. Government reports and work of Law Commission, though differing in tone, agree on the same warning that is deterrence arguments are unfounded, and consistency is impossible except if sentences' reasons are controlled and reviewable. The empirical stream further adds that what drives cases towards death in practice is frequently offence seriousness (child victim, barbarity, violation of trust), but what holds back is not only "generic" mitigation but refined mitigation such as the juvenile in context, mental-health evidence, social-history evidence, prison behaviour, believable chances of rehabilitation. The statutory net has ballooned, but the constitutional mesh is tight.

First, POCSO's override (§42) and the proliferation of aggravated categories risk front-loading aggravation and compressing mitigation before the RoR inquiry even starts. Courts have to work harder to keep §103's balance genuinely offender-centred. Second, "collective conscience" rhetoric, though traceable to historical vocabularies of public order, can become a shortcut that crowds out a reasoned reformation finding, precisely the step Articles 14 and 21 demand. Third, while Articles 72/161 function as back-end safeguards, mercy decisions are often opaque without transparent reasons. Their systemic value is blunted and cannot feed back into principled sentencing. Fourth, Parliament's oscillation through its committee reports underscores how legislative responses to public outrage can outpace evidence about deterrence; that heightens the judiciary's burden to show, case by case, why life is inadequate.

NCRB aggregates do not record quality of sentencing rationale, mitigation dossiers, or use of reformation evidence. They cannot probe RoR consistency tests. Project 39A's fieldwork is richer, but its unit of analysis is the population of death row, extracting rape/rape-murder sub-patterns again needs directional coding. Official committee and Law Commission reports are judicious on principle but skimpy on courtroom micro-mechanics (e.g., how frequently courts actually compile social-history records, or what predicts a rationale finding on reformation). Constitutional provisions are settled, but their real-world bite will depend on the benches'

reasons-writing and the mercy authorities' publication of speaking orders. These blind spots account in part for why RoR can appear coherent at the level of doctrine and fractured in the day-to-day practice.

Now turning to scholarly articles and books. The capital sentencing literature in India reveals that the RoR doctrine develops out of a particular history and then all too often fails in practice within the courtroom, with rape and rape-murder cases throwing those tensions into acute focus. Alastair McClure's work historicizes how postcolonial and colonial governments constructed a lexicon of "collective conscience," model punishment, and public order into the legal imagination¹⁶. He argues that intellectual heritage continues to influence how judges speak about the death penalty today, even in sexual-offence cases that produce public outrage. Briefly put, what appears as a disinterested doctrine tends to harbor a historical bias toward regarding some offenses as representative and death-warrantable. From theory to practice, empirical and doctrinal analyses by Anup Surendranath, Neetika Vishwanath, and Preeti Pratishruti Dash contend that the Bachan Singh balancing exercise, i.e. the aggravating vs. mitigating factors, has consistently "collapsed in practice." Sentencing frequently veers from principled analysis of mitigation¹⁷. Results are quite diverse between benches and public outrage in rape-murder trials can take precedence over individualized sentencing. His Project 39A's analysis also illustrates the ways in which trial and appellate courts put capital sentencing into practice in terms that fail to always adhere to the narrow design of the doctrine, even in sex-offence cases¹⁸. Collectively, these studies present a divergence between the on-the-books rule and the off-the-books rule.

Zooming in on sentencing for rape, Mrinal Satish's empirical research of appellate rulings illustrates how extra-legal stereotypes like the behaviour of the victims, "respectability," or whether they were married creep into judicial decision-making and distort proportionality¹⁹.

¹⁶ Alastair McClure, *Killing in the Name Of Capital Punishment in Colonial and Postcolonial India*, 41 Law & Hist. Rev. 365 (2023), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/266EE1EA6A37E28D4F3CA47B74BCF991/S0738248022000335a.pdf/killing-in-the-name-of-capital-punishment-in-colonial-and-postcolonial-india.pdf>

¹⁷ Anup Surendranath, Neetika Vishwanath & Preeti Pratishruti Dash, *The Enduring Gaps and Errors in Capital Sentencing in India*, 32(1) Nat'l L. Sch. India Rev. 47 (2020), <https://repository.nls.ac.in/nlsir/vol32/iss1/3>

¹⁸ Anup Surendranath, *Uncertain Trajectories of the Death Penalty in India*, 11(3) Int'l J. Crime, Just. & Soc. Democracy 73 (2022), <https://www.crimejusticejournal.com/article/download/2477/1272/9828>

¹⁹ Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India*, (Cambridge Univ. Press 2016), https://api.pageplace.de/preview/DT0400.9781316759226_A29775490/preview-9781316759226_A29775490.pdf

He calls for formalized sentencing guidelines to moderate discretion.

Abhinav Sekhri's review on Satish's work sharpens the point that doctrinal tests at sentencing, including the RoR standard, tend to misfire without disciplined fact-finding and a consistent mitigation protocol. These works explain why rape cases are especially vulnerable to error such as the predicate findings about brutality, culpability, and reform are already filtered through bias before a court even labels a case RoR²⁰ Adding an insider's perspective, Justice S.B. Sinha explains the tension between proportionality and popular sentiment and the practical challenge of infusing a finely grained death-eligibility rule in the real world with docket constraints and media scrutiny²¹. That goes a long way in explaining how "collective conscience" can become a shorthand lexicon that sounds sound but, applied in practice, can displace thoughtful mitigation analysis.

Both Ratanlal & Dhirajlal and K.D. Gaur provides a strong foundation for the RoR doctrine in rape cases, but they approach it from slightly different directions that combined are helpful. Read together, side by side, they concurred that the post-2013 amendments broadened sexual-offence definitions, increased aggravated categories, and lifted sentencing limits, so more rape cases now approach as death-worthy. Ratanlal & Dhirajlal is the granular map: details, exceptions, illustrations, and thick precedent on how courts handle common aggravators such as child victims, gross brutality, breach of trust, custodial contexts, repeat offending and familiar mitigating themes such as youth, clean record, mental health, prospects of reform²². Gaur provides the compass, he links rape sentencing to constitutional proportionality under Articles 14 and 21, demands individualized justice and sincere reformation analysis, and cautions against allowing "collective conscience" or deterrence rhetoric to eclipse careful thought²³. Tracing both together shows the arc of interpretation where early post-Bachan Singh decisions emphasised mitigation and the narrowness of death. Over time, especially after high-salience sexual-violence cases, courts cite public shock and brutality more readily, even while reciting the same test. Ratanlal & Dhirajlal documents this oscillation in case law and Gaur names the constitutional risk it creates. Read together, these sources also show how the interpretation of the doctrine has shifted. Early post-Bachan Singh judgments had promised

²⁰ Abhinav Sekhri, *Book Review, Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India*, 7 J. Indian L. & Soc'y 67 (2019), https://jils.blog/wp-content/uploads/2025/01/abhinav-sekhri_7.pdf

²¹ S.B. Sinha, *To Kill or Not to Kill: The Unending Conundrum*, 24(1) Nat'l L. Sch. India Rev. 1 (2012).

²² Ratanlal & Dhirajlal, *The Indian Penal Code* (35th ed., LexisNexis 2021).

²³ K.D. Gaur, *Textbook on the Indian Penal Code* (8th ed., LexisNexis 2023).

stringent limitations and effective mitigation.

Gradually, particularly following sensationalised sexual-violence cases, "collective conscience" reasserted itself forcefully as courts rationalised death sentences on grounds of community shock and deterrence. In tandem, the legislative environment increased death-eligibility for sexual offences (e.g., aggravated penetrative sexual assault under POCSO §6), and POCSO's override clause (§42) and specialised procedure (e.g., §28 courts) remodelled the environment in which sentencing occurs. On the constitutional front, Articles 14 and 21 continue to be the benchmarks of uniformity and non-arbitrariness, with mercy powers (Arts. 72, 161) being a balancing factor. The overall outcome is a tug-and-pull of widening death-eligibility and social pressure on one hand and constitutional protection and doctrines on commutation on the other.

Despite this fertile foundation, gaps exist. First, we do not have a systematic, rape-specific chart of how exactly the RoR calculus is effectively applied in trial courts, High Courts, and the Supreme Court, i.e., which aggravators and mitigators are raised, accorded, or outcome-determinative, and how frequently mitigation actually forestalls a thrust towards death in rape-murder cases. Second, the more recent statutory framework, i.e. the Bharatiya Nyaya Sanhita's rape provisions (including §§63–71) and §103's formal aggravation-mitigation perspective, as well as POCSO §6/§42, has not been integrated fully with the constitutional paradigm (Arts. 14, 21) to examine if the legal blueprint itself constricts mitigation before the RoR question arises. Third, although insider commentary suggests institutional pressures, we still have to have empirical tests for "bench effects" and "forum effects" such as do particular courts or benches activate collective conscience more easily than they test out hopes for change? With regard to Ratanlal & Dhirajlal and K.D. Gaur's work, both of them being doctrinal and explanatory rather than empirical, they don't measure how often mitigation succeeds in overcoming death in rape-murder, how often "collective conscience" is invoked in judicial justifications, how detailed reformation analysis actually is, or whether forum/bench effects condition results in trial courts, High Courts, and the Supreme Court. Neither do they completely embed the post-2013 statutory environment and currently BNS structuring into constitutional proportionality to try on whether legal design distorts mitigation prior to the RoR inquiry even arising. The surveyed scholarship converges to a consistent message: the RoR doctrine is historically charged, operationally delicate, and particularly susceptible to mistake in rape cases.

Responding to those deficiencies, this study will construct a coded set of rape and rape-murder judgments, review the handling of mitigation and reform, and examine patterns in the invocation of "collective conscience," all placed against the backdrop of the statute-constitution matrix. The goal is descriptive clarity but also normative guidance-practical guardrails capable of making the doctrine operate as designed: narrowly, uniformly, and constitutionally.

BODY

Origin

The rarest of rare doctrine of the Supreme Court rests on two pillars: *Bachan Singh v. State of Punjab (1980)* and *Machhi Singh v. State of Punjab (1983)*. Together, they form the work of capital sentencing in modern times, including rape-murder cases. Bachan Singh, a Constitution Bench affirmed the death penalty under IPC §302 (now BNS §103), but calibrated the sentences under CrPC §354(3) (now BNSS §393): life imprisonment is the norm, death is the exception; permissible only for "special reasons" delineated post balancing the aggravating and mitigating conditions in relation to the offence and offender²⁴. The challenge to the constitutional validity of §302 IPC and the entrusting of absolute and arbitrary discretion in the exercise of §354(3) IPC in the face of triple-murder conviction and death affirmed by the High Court was squarely raised.

Appellants in the Bachan Singh case contended that death couldn't conform to a particular formula given post-Maneka Gandhi norms, and the "special reasons" test was normless. The State replied that deprivation of life is allowed under Article 21 under 'procedure established by law' through reasoned sentencing and appeal, restricting discretion, and under §393, special reasons for death are articulated. The Court affirmed the statute and penalty, and stated courts have to balance attenuating circumstances and decide on life, and only if special reasons hold good, then and there, decide on death. It outlined the evolution from a pre-1955 regime in which death was the default, through to the system under CrPC 1973 §354(3), which called for justification of any sentence and "special reasons" for death, showing a trend of restraint.

Methodologically there was a listing by the Court of classic aggravators such as cold-blooded premeditation, helpless victims and, crucially, a non-exhaustive list of mitigating factors such

²⁴ Bachan Singh v. State of Punjab, (1980) 2 SCC 684 (India).

as youth, mental disturbance, prospects of reform, insisting that they be construed in a liberal and expansive manner and run sentencing more towards individualisation and reformation.

Machhi Singh applied the model in a horrific multiple-murder case with seventeen deaths, including women and children. On appeal, the Court questioned how to identify a RoR case and set out five criteria: (1) manner of murder (brutal/diabolical); (2) motive (vile/anti-social); (3) anti-social or abhorrent nature of the crime; (4) magnitude; and (5) personality of the victim (e.g. child or helpless person)²⁵. Despite community outrage, judges globally must balance and decide if life imprisonment suffices before imposing death. The Court upheld death sentences for principal perpetrators (Machhi Singh, Jagir Singh, Kashmir Singh) due to premeditated cruelty and multiple helpless victims, acquitting others with uncertain roles or insufficient evidence.

Bachan Singh enunciates the philosophy of the doctrine, and Machhi Singh provides the instruments. But there is inconsistency in the framework. The five types, although ostensibly objective, encourage arbitrary judicial discretion, especially in sexual-violence offenses. There is no standard of diabolic or anti-social aspects, and hence disparity and arbitrariness, which the doctrine wishes to exclude, become possible.

The core tension is rhetorical. The collective conscience allows courts to reflect community shock, which can shortcut necessary mitigation and reformation analysis per Bachan Singh. Courts must broadly interpret mitigating factors. The key is the quality of the mitigation enquiry, which requires analysis of age, mental health, remorse, reform prospects, role differentiation, and evidence strength. When courts conduct this analysis, the doctrine functions as a true limit. Relying solely on community outrage dilutes it.

The Doctrine in Practice and its Drift

Dhananjay Chatterjee v. State of West Bengal (1994) concerns an eighteen-year-old who was raped and murdered by her security guard after earlier harassment. He was convicted at the trial court under Section 302 IPC, confirmed by the High Court and the Supreme Court²⁶. It was decided after taking into account earlier harassment, trust position of the guard, medical evidence, and proceedings. Conviction highlighted "cry of society for justice," public

²⁵ Machhi Singh v. State of Punjab, (1983) 3 SCC 470 (India).

²⁶ Dhananjay Chatterjee v. State of W.B., (1994) 2 SCC 220 (India).

"abhorrence" and absence of "extenuating circumstances." Main aggravators were helplessness of the victim, violation of duty, and barbaric medical evidence. There was little mitigation analysis, essentially recognizing its absence, diminishing outrage and betrayal to eligibility for death while circumscribing the offender-centered inquiry.

Bantu v. State of U.P. (2008) gave a sharper turn to that trajectory, in a case of child-victim. A five-year-old child was abducted during a meeting, the accused was found naked in the place, a stick was found in the vagina of the child²⁷. The Court applied traditional tests of circumstantial evidence to determine guilt, then defined proportionality as seriousness. It emphasised the social effects of sexual offences and the importance of exemplary punishment to maintain public confidence and stated that the "penalty of greatest severity" was appropriate. The aggravators, age of the victim, unusual cruelty, and premeditated hiding, were all over the place. Stock reducers played a minor role. Like in *Dhananjay*, the reformation analysis was drowned in the concerns of social order and "collective conscience."

Purushottam Borate Dashrath v. State of Maharashtra (2015) translated the *Dhananjay* frame to clear balance-sheet terms. An employee of BPO, who was on her way for a night shift, was kidnapped by her company driver and an accomplice, gang-raped and killed. The Court went into detail to explain safety standards, the driver's deviation from those standards, the victim's last words, and the narrow pickup window. It was affirmed that the appellant was convicted under Sections 302, 376 (2) (g), 364 and 404 read with 120-B²⁸. Death was confirmed by the High Court and affirmed by the Supreme Court. On sentence, defence contended youth, poverty, family dependence which was referred to as routine "compassionate grounds", not enough against a "calculated and diabolical" offence. Formally, the Court resorted to *Bachan Singh/Machhi Singh* whereby functionally, offence gravity, trust-breach and shock to society won the day. Aggravators considered in this case was planning of abduction, gang rape and murder, position of power, helpless victim, magnitude of cruelty and mitigating factors were considered legally weak

In *Mukesh v. The Nirbhaya case template changed (State (NCT of Delhi) (2017)*, the Court detailed the events of 16 December 2012, the medical aftermath, and the sentence. The prosecution emphasised method, motive, number of offenders, the iron rod, and victims'

²⁷ *Bantu v. State of U.P.*, (2008) 11 SCC 113 (India).

²⁸ *Purushottam Dashrath Borate v. State of Maharashtra*, (2015) 6 SCC 652 (India).

helplessness. The defence argued no premeditation, that the accused was young, poor, had no criminal record, and behaved well in prison²⁹. The Court stated death is for crimes shocking to the community conscience, where aggravation is present and mitigation absent, assessed individually. Essentially, the case establishes: manner + motive + magnitude, victim vulnerability, weak mitigation, no reform prospects = death. Two critiques emerge. First, mitigating factors such as youth, poverty, clean records, prison behaviour, are too weak against severe brutality. Second, reformation was often based on the crime, with brutality used as a proxy for incorrigibility rather than offender-specific evidence like psychological assessments. The Court also noted Justice Lokur's comments in *Shankar Kisanrao Khade* on inconsistencies in judicial and executive approaches, stressing the need for clarity.

Manoharan v. State (2019, review) exhibits both of offence-driven rationale and dissenting alternate. Two school children, aged 10 and seven, were abducted; one was raped, and the two were poisoned and left in a canal. The trial and High Courts convicted him and sentenced him to death. Three-judge bench affirmed the death penalty, pointing to premeditation, the murder of two children, and the absence of remorse³⁰. Defence questioned the voluntariness of the confession, the sufficiency of legal aid, and the factual correctness of the recovery. Section 164 safeguards were met, corroboration existed, and the contention of absence of appropriate proper law aid was rejected. Testimony established killing was cold-blooded, and the petitioner was lacking in remorse or human frailty and was impossible to reform. Justice Sanjiv Khanna dissented, pointing to commutation of sentence to life without remission, and holding courts, even in heinous cases, need to specify the basis of inflicting entire life sentences. The review was rejected, and the sentence of death was affirmed as RoR.

Bachan Singh and *Machhi Singh* cases cite doctrinal language, and they emphasise harshness, victim vulnerability (particularly children), breach of trust, and public outrage. Reducing offender mitigation is the basis of public outrage by the *Dhananjay* case. Child-victim concerns are underlined by the *Bantu* case. *Purushottam's* case outlines typical mitigants as weak, holding measured cruelty worthy of death. A victim-centred approach and victims' rights through the crime over offender evidence mark *Mukesh's* decision. The *Manoharan* case identifies a schism that most endorse cruelty, and a few back whole-life sentences. Shifting

²⁹ *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).

³⁰ *Manoharan v. State by Inspector of Police*, (2019) 7 SCC 716; review dismissed, (2019) 13 SCC 670 (India)

Article 21 protections to slow mercy and execution procedures is undertaken by the Shabnam case, omitting the mitigation gap at the trial and appeal levels.

The shared critique is that “collective conscience” has swollen into a shortcut that can crowd out the hard, individualised sentencing inquiry the Constitution demands. In horrific rape-murders, mitigation is often found too thin rather than cultivated, which results in bench- and forum-effects, with results dependent on rhetoric as much as record. That can be open to challenge on the grounds of arbitrariness under Articles 14 and 21, and undermine the proportionality test.

The future is toward discipline, not stealth abolition. Make a mitigation file for eligible cases containing social history, trauma, education, substance abuse, family history, role differentiation, psychological evaluation, risk evaluation, and prison behaviour, financed by legal aid in order to prevent poverty-related denial of evidence. Adopt a formal structure for sentence through listing of aggravators and mitigators, citing authorities, specifying clear prospects for reform, and resolving why harsh sentences will not suffice. Ground the concept of collective conscience on evidence rather than rhetoric. Make reformation an authentic question based on expert source, rather than assumptions based on violence. When courts show that there is no lesser punishment capable of fulfilling retribution, deterrence, incapacitation, and rehabilitation based on detailed reasons, the RoR test truly circumscribes sentence rather than only cataloguing outrage.

Non-Application of the Doctrine

Santosh Kumar Singh v. CBI (2010) marks the return of individualized sentencing. The Court upheld the conviction but commuted the death sentence, considering the offender’s youth (24), family background, evidence reversal, and reform chances against brutality and public hate³¹. Despite “extremely aggravating” facts, there was “nothing to indicate” irredeemability. The balance “was slightly in the balance of life.” The message emphasizes necessary brutality, requiring Courts to reason on reformation before crossing the rarest-of-rare threshold.

In the case of *Rameshbhai Chandubhai Rathod v. State of Gujarat (2011)*, the death penalty was used to drive a deeper stake into the ground of child rape. A 2:2 split decision on the

³¹ Santosh Kumar Singh v. State through CBI, (2010) 9 SCC 747 (India).

sentence was taken to a 5-member bench, which converted to life³². The State relied on bigness and child-victim vulnerability, whereas the defense on youth (27-28), impeccable antecedents, and lack of findings by the trial court on rehabilitation. The Court took the position that the failure to make a finding on the possibility of reformation would render the rarest-of-rare test inapplicable and would make it "obligatory" to record such a finding. Youth and Reform opportunities are invitations to gatekeeping and not throwaway calls.

Ramnaresh v. State of Chhattisgarh (2012) was a case where four persons were sentenced to death for gang rape and murder. On appeal, the Court changed death to life and restated the architecture: life is the rule; death is the exception³³. Sentencers need to craft a balance sheet and give "maximum weight" to mitigation factors like youth, remediation prospects, and lack of ongoing danger. Ramnaresh is often quoted because it provides a practical checklist and holds benches to their work, and not outrage.

Rajendra Pralhadrao Wasnik v. State of Maharashtra (2012; review 2018) first confirmed death in a child rape-murder and then on review changed the sentence to "life till the remainder." The review highlighted the weakness of circumstantial evidence, the obligation to consider remediation, and evidentiary issues such as failure to utilize DNA available and use of inadmissible "bad character" material³⁴. Wasnik has turned into a talisman: any "chink" in the proof in circumstantial cases should interdict death.

Shankar Kisanrao Khade v. State of Maharashtra (2013) transformed death to life through means of a consecutive sentence. Justice Lokur in a separate opinion discussed capital sentencing and enumerated commutation factors such as youth, absence of antecedents, possibility of reform, absence of premeditation, circumstantial evidence and even posture (trial court awarding life and High Court upgrading to death)³⁵. Khade is relevant to the case at hand for purposes of committal and to a diagnosis of inconsistency, encouraging an evidence-based rarest-of-rare that is not a prisoner of offence gravity.

In *State of Rajasthan v. Jamil Khan (2013)*, a Sessions Court imposed a death sentence for the rape-murder of a less-than-five-year-old, reduced by the High Court to life. Upon the State's

³² Rameshbhai Chandubhai Rathod v. State of Gujarat, (2011) 2 SCC 764 (India).

³³ Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257 (India).

³⁴ Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2012) 4 SCC 37; review allowed, (2018) 12 SCC 460 (India).

³⁵ Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546 (India).

appeal asking for enhancement, the Supreme Court refused to reclassify the sentence and was concerned instead with life terms, remissions, and consecutive sentences³⁶. The Court urged the recognition of life without remission and was inclined to have multiple sentences, if remission is granted, run consecutively so as to strike a balance between denunciation and incapacitation without resort to a death sentence. It is a constitutional shift toward individualizing harsh non-death sentences.

Ravi v. State of Maharashtra (2019) was a case of rape and murder of a two-year-old child. The death penalty was imposed by the Trial and High Court. Appealing, defence linked mitigation to a "long line" of mitigation such as the youth of the accused, spotless antecedents, socio-economic background, behaviour in custody, and centrally the absence of any finding the accused was incapable of reforming³⁷. Supreme Court upheld the conviction but substituted life "till natural death without remission." As Ravi himself has explained, quoting Wasnik (review), and other three-judge commutations, a modern expectation is that judgmental committees will clarify why life is "unquestionably foreclosed," not merely why the offence is horrific.

Mohd. Firoz v. State of M.P. (2022) involved kidnapping, rape, and killing of a four-year-old girl. Death sentence given by the trial court under Section 302 IPC was confirmed by the High Court and harsh POCSO/Section 376 terms. Supreme Court confirmed conviction but reduced Section 302 death sentence to the minimum custodial sentence, including a 20-year Section 376-A, with credit for social-investigation and conduct reports³⁸. Its rationale is entwined with evidentiary caution, especially as to evidence which relies on circumstance. with proportionate, non-capital incapacity which maintains denunciation but does not involve incorrigibility.

The State's strategy in these commutations was to usually heavily emphasize brutality, child-victim vulnerability, "collective conscience," and deterrence. The defence responded with youth, socioeconomic, clean record, behavioral tests and custody behavior, circumstantial-proof weaknesses and, where applicable, delay or mental illness. In reality, there are four recurrences when death is avoided: (i) proof posture (acquittal at one stage or circumstantial evidence invites caution); (ii) offender-specific mitigation (youth, no antecedents, remorse, prison conduct); (iii) alternate structured tools (whole life terms, long minimums, consecutive)

³⁶ State of Rajasthan v. Jamil Khan, (2013) 10 SCC 721 (India).

³⁷ Ravi v. State of Maharashtra, (2019) 9 SCC 622 (India).

³⁸ Mohd. Firoz v. State of Madhya Pradesh, (2022) 7 SCC 443 (India).

that meet denunciation and incapacitation without death; and (iv) constitutional supervening factors (delay, mental illness). Opinions such as Khade synthesise these pivots. later benches like Ravi operationalise it rather than taking it for granted by horror.

Read together, these cases pull the doctrine back towards the Bachan Singh case i.e. death is not a reflex to horror, but a last resort after a genuine enquiry into the person before the court. Santosh Kumar Singh case makes it clear that this pivot, that it is not enough to think about brutalization without reformation, is the central thought. The Rameshbhai Rathod case makes "possibility of reform" a finding of the court. Ramnaresh case defines the balance-sheet and instructs benches to give "maximum weight" to youth, reform potential and lack of continuing risk. Wasnik's (review) case includes prudential evidence by cautioning that there are "chinks" that interdict death. Khade's case calls the systemic subjectivity and she edits repeatable commutation elements. Jamil Khan and Ravi cases make severe non-capital sanctions operative so as not to rely on the noose when the purpose is denunciation and incapacitation. Mohd. Firoz's case hybridization of evidentiary restraint and customised incapacity.

FINDINGS

The main finding that emerges from all the cases and sources: the formal test is stable, practice is not. The Bachan Singh/Machhi Singh formula, a recipe of life-the-goal, death-the-exception, a balance-sheet approach, maximum weightage to mitigation, reformation is given due consideration, is repeated ad nauseam by the courts, but in cases where the facts are atrocities such as child victims, barbarous brutality, betrayal, offence-ascendancy rules the roost. Mitigation is mocked as "too thin" and especially as generic (youth, poverty, no antecedents) rather than offender-specific evidence as deterrence language and the "collective conscience" are inflated. The most consistent finding is the gap between doctrine as expressed in paper and doctrine as practised on the ground.

Bench commutation is unlikely without (i) proof of mitigating factors (unclean record, youth, good prison behaviour), (ii) offender-specific factors (youth, clean record, rehabilitation prospects), (iii) structured non-death sanctions (whole life, long, sequential sentences), and (iv) constitutional factors (delay in mercy). This "commutation toolkit" appears in Ravi, Wasnik (review), Mohd. Firoz cases, and when synthesised, Khade's case shifts decision-making from individual sentencing outrage to broader outrage.

Mitigation is not only under-weighted, it is under-developed. Reformation or so-called "future dangerousness" is regularly articulated in the absence of a formal mitigation record, i.e., social history reports, clinical evaluations, risk assessments, etc. Khade's case emphasises this void, and the commutations issued recently are responses to the void by requesting specific findings demonstrating life is "unquestionably foreclosed" before requesting death. Still, absent regular evidence-based mitigation files, so much rests upon the judicial intuition sign of a rule of restraint.

The statute-constitution matrix operates in two ways. Moreover, what's done since 2013 and the BNS widens aggravated types and continues a death-eligibility system, while POCSO's override and special courts outline procedure. Meanwhile, Articles 14 and 21, and the power of mercy under Articles 72/161, give protection against only the most severe situations, by commuting even instances of delay or mental condition. The overall effect is push and pull where there's more upstream eligibility and more downstream due-process restrictions.

The remedies are also more progressive. Where the RoR test is not satisfied, courts increasingly fine-tune harsh non-death sentences through whole life, very long minimums, or consecutive terms so that denunciation and incapacitation without the gallows can be achieved.

The essence of the doctrine remains unaltered constitutionally, though its legitimacy in rape and rape-murder offences depends on the possibility of a record of its balancing and constructing a record that is more offender-focused.

SUGGESTIONS

First, make mitigation real. Pre-sentence in every instance of capital-eligible rape or rape-murder, courts ought to have before it decides between life and death a pre-sentence dossier of mitigation material. It must include the following: (i) social history (background of the family, education, trauma) (ii) clinical/psychological assessment (treatability, risk) and (iii) a proven report on behaviour in custody. Trial judges must order these forthwith after conviction, and these must be funded by legal aid so poverty can never be an obstacle to experts. Direction in practice at the level of the High Courts ought to be given so that such reports become automatic, and if missing or vacant, sent back for a new sentencing hearing by the appellate courts instead of speculating on reformation on the basis of a thin record.

Second, standardise reasons. Sentencing orders require a structured approach to demonstrate balance, and not recite it. Appendix a short, uniform worksheet to each death-eligible judgment which (a) identifies each aggravating and mitigating circumstance with citation of the record, (b) indicates a clear finding on prospects of reform using the dossier, and (c) contains the answer to one compulsory question: why is a whole-life or other severe non-death sentence inadequate for this offender? High Courts may order the execution of the worksheet in all the references for confirmation and the Supreme Court may consider its non-existence as a ground for quashing a death sentence. This turns doctrine into a working checklist.

Third, establish evidentiary thresholds. Apply a death penalty presumption for divided opinions or circumstantial convictions. High Courts may make this formal in a circular, and judicial academies may instruct trial courts. Sentencing orders will be required to indicate whether a case was circumstantial and describe how the presumption was reversed. Death sentences should be overturned by appellate courts if circumstances reveal a gap.

Fourth, have "collective conscience" take its place. Don't treat it as an endpoint conclusion reached only after a serious, evidence-based failure of reformation-unless it is the case that it was, in which case it's the starting point. This is mostly a training and editing job. Judicial academies may be able to operate short courses using anonymised cases in which the rhetoric has crowded out the analysis. Appellate benches should eliminate formulaic invocations that are not bound to facts and the mitigation record. The point is not to disregard community shock but on the contrary to make sure that it never replaces reason.

Fifth, normalise non-death severe outcomes. Where the RoR bar is not met, courts should use graduated sanctions such as whole life imprisonment with a speaking order on remission limits, very long minimum sentences (e.g., 30 - 40 years), or consecutive sentences between the counts to reflect total blameworthiness. High Courts could also spread the word on how to describe proportionality, victim interests, and incapacitation without having to resort to death. This gives benches some credible tools in cases where the crime is terrible, but the person isn't beyond reform.

Sixth, eliminate bench and forum effects using data and feedback. Each High Court should have a simple sentencing dashboard, updated by the registry, keeping track of for capital eligible rape cases of those aggravators and mitigators pleaded and credited, whether a mitigation dossier was filed and its quality, findings on reform and the sentence chosen.

Outliers can be identified and calibration through the ongoing improvement of judicial education can be achieved, not only through appellate reversals, but also through an annual note to the full court, which remains anonymous.

Seventh, place the Statute and the Constitution in judgment. Include a set paragraph indicating how statutory aggravators and minimums were filtered based on proportionality and reformation under Articles 14 and 21. But that single paragraph halts the bloated statutory universe from pushing mitigation aside before the RoR inquiry even begins and renders appellate review neater and more standardised.

Eighth, affirm mercy-stage due process and victim engagement unentombed by impact assessment. When the case arrives before the executive, have a routine mercy checklist that follows the file: up-to-date mental health status, institutional behaviour, family situation, and proof of change, with deadlines so that there is no capricious delay. At sentencing, embrace victim impact statements with trauma-informed practices and address how harm to the victim contributed to proportionality and reaffirm that the constitutional issue is whether this offender is genuinely beyond redemption and whether life is simply insufficient.

Existing tools can implement this such as High Court directions, model forms, training modules, and legal aid financing. Success will lead to better mitigation dossiers, reasoned findings with expert support, fewer remands for weak sentencing, and consistent imposition of harsh non-death penalties when death isn't warranted.

CONCLUSION

This study aimed to test the hypothesis that the doctrine of the "rarest of rare" might have provided a real constitutional break in rape and rape-murder cases, but vanishes in the face of outrage. Both things are true at the same time. On paper, the test makes perfect sense: Life must be the rule; death the exception after a true balance of aggravation and mitigation and a reasoned inquiry into reformation. In practice, particularly in high salience cases, courts tend to fall into offence-dominant reasoning, for example, by making much of brutality, vulnerability of child victims, breach of trust and "collective conscience", while being dismissive of mitigation by labelling it as "too thin", unless it is undertaken with offender-specific evidence. That is the fundamental disparity between doctrine on the books and doctrine in practice.

At the same time, there is a counter-trajectory, which is visible and growing. Benches that commute do so for repeatable reasons such as evidentiary caution in circumstantial or split verdict cases, offender centred mitigation that actually probes background, mental health and prospects of reform and a preference for structured non-death punishments such as whole life terms, for long minimums, for consecutive sentences when the RoR bar is not met. Layered on top of this is a statutory-constitutional push and pull whereby more cases look like death-eligible under the post-2013 regime and now the BNS/POCSO, but Articles 14 and 21 and mercy jurisprudence thicken due process and make the system honest.

The solution to the gap is pragmatic not theoretical. Make mitigation real through mandatory pre-sentence dossiers and expert inputs. Use a simple sentencing worksheet which requires a court to explain why life is actually bad for this offender. Construct a presumption against death in circumstantial and split verdict cases. Collective Conscience should be used as a conclusion, not as an assumption. And normalise capital non-death punishments so denunciation and incapacitation do not require the noose. These are low-friction changes that could be introduced by the courts using available resources - practice directions, model forms, brief training and litigation-specific legal-aid interventions.

Finally, this study suggests a research agenda that can keep reform honest, by coding, at the court level, which of the aggravators and mitigators are pleaded and accepted, how frequently reformation is accounted for meaningfully, where "collective conscience" is invoked and whether bench and forum effects explain results. If courts turn from rhetoric to record and if scholarship provides the measure then the RoR doctrine can do what it promised which is to condemn the worst crimes with precision, but reserve the ultimate penalty only when what cannot be taken away is life clear beyond doubt, leaving capital sentencing small, steady, constitutional.