THE VAGUE "SPECIAL REASONS" USED FOR THE IMPOSITION OF DEATH PENALTY

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ABSTRACT

Capital punishment is the most severe form of deterrence in the criminal justice system. Its legal validity remains a highly debated issue among nations. While several countries have advocated for the abolition of the death penalty, as it contravenes with contemporary human rights principles, others, including the United States and India, have upheld and retained it as a validated form of punishment within their legal frameworks. In India, the death penalty is imposed only in the "rarest of rare" cases as per Section 393(3) of the Bhartiya Nagarik Suraksha Sanhita, this research paper analyses the numerous cases in which capital punishment was awarded and about the need for the uniform objectivity required due to the absence of any statutory or judicial guidelines in the imposition of death penalty.

How do the ambiguous criteria for "special reasons" in awarding the death penalty under Section 393(3) of BNSS affect the consistency and uniformity of sentencing?

Introduction

According to Section 393(3) of the Bhartiya Nagarik Suraksha Sanhita (BNSS), a judgment convicting an individual for an offence punishable by death must explicitly state the special reasons for awarding such a sentence. The imposition of capital punishment is subject to judicial discretion, wherein the presiding judges must determine whether the nature of the offence is exceptionally grave and heinous, only then a death sentence is awarded. Though given the differing circumstances of each case the Indian judiciary has naturally not laid down a clear set of guidelines for such sentencing. The punishment is decided based on the gravity of the offence; death penalty being reserved for the worst imaginable crime. In the past, the courts in numerous cases applying the "rarest of rare" doctrine have awarded the punishment of death penalty specifying the special reasons, but, neither the provisions of BNS nor BNSS offers any guidelines or stipulates situations to be considered or norms to be employed by the sentencer for the exercise of the discretion[1].

Stare Decisis

Life imprisonment is the rule to which the death penalty is the exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment, having regard to the relevant facts and circumstances of the crime. [2] According to the provisions in BNS, there are certain heinous offences where death penalty or life imprisonment is awarded, though there is no hard and fast rule where the court grants the former instead of life imprisonment.

Bachan Singh v. State of Punjab established the doctrine of "rarest of rare" crime as the trial as well as the High Court stated that it was a cold-blooded act which was deliberate and performed with considerable brutality.[3] The court had to mandatorily consider the circumstances under CrPC in which the crime was committed, the particulars about the criminal and all relevant circumstances relating to the commission of the crime by the criminal. The court felt that the

[1] K. I. Vibhute, Choice Between "Death" and "Life" for Convicts: Supreme Court of India's Vacillation Sans Norms, 59 J. Indian L. Inst. 221 (2017), https://www.jstor.org/stable/26826606 (last visited Mar. 18, 2025).
[2] *Sachin Kumar Singhraha v. State of Madhya Pradesh*, (2019) 8 SCC 371.
[3] *Bachan Singh v. State of Punjab*, (1982) 3 SCC 24.

criminal was young and malleable age and was capable of reformation and hence, should not be awarded death penalty. The Trial Court and the High Court after considering the circumstances o came to the conclusion that it was an extremely cruel and brutal act as the victims had no reason to suspect the intentions of the criminal and they were in a vulnerable and defenseless position when the act occurred and therefore, the death penalty was justified. The Supreme court upheld the constitutionality of capital punishment, and it was ruled that death penalty should only be imposed in rarest of rare cases

In the following decade, Machhi Singh v. State of Punjab[4] struck down Section 303 IPC (now, Section 104 BNS) and stated that in addition to the offence falling under "rarest of rare" crimes, the court also needs to consider the mitigating circumstances which need to be taken into account while deciding these serious offences. Justice Thakkar speaking for the Court held that there are five categories of cases that may be regarded as rarest of rare cases, where the death penalty or capital punishment could be awarded

1. The manner in which murder is committed — When the manner of the commission of the crime is grievous. For example - burning alive.

2. The intention of the offender— When the murder is committed for selfish reasons. For example - for issues related to property.

3. Offense considered as anti-social— When the offense committed is anti-social in its nature. For example - burning the bride alive for dowry.

4. The number of crimes committed — When the crime committed involves a variety of offences including murder. For example — Robbery along with the murder of several members of the same family.

5. The personality of the victim — when the victim is a renowned personality, a child, or an elderly person. [5]

Bachan Singh v. State of Punjab and Macchi Singh vs. State of Punjab asserted and re-asserted that 'when society's conscience is shocked to the root to an extent that it would expect the court

[4] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470; 1983 AIR 957; 1983 SCR (3) 413.
[5] *Rituparna Katak, Capital Punishment in India and Its Constitutional Validity,* JCLJ 903 (2022).

to inflict death penalty as there remains no strand of reformation then it can be so awarded'.[6]

In the very infamous case of Mukesh vs State of NCT Delhi also known as the Nirbhaya case, the court stated that the brutal, barbaric and diabolic nature of the crime is evincible from the acts committed by the accused persons. It amounted to the devastation of social trust and destroyed the collective balance and invites the indignation of the society. The Court weighed the aggravating circumstances and the mitigating factors, and reached to the conclusion that the aggravating circumstances outweigh the mitigating circumstances, thereby justifying the imposition of the death penalty on the accused persons. [7] In this case, life imprisonment seemed insufficient considering the relevant circumstances of the crime and the brutal nature of the crime. [8]

Non-objectivity in the sentencing

In the case of Bachan Singh, it was contended that the term "special reasons" specified in section 354(3) of CrPC was "very loose" and as no standards of imposing death penalty are set therefore, it is up to judiciary's interpretation. [9] In the recent times, the doctrine of "rarest of rare" crimes acquired inherent fluidity and the judicial discretion and the inconsistency stating the special reasons for capital punishment by the court in numerous cases is reflected. The court has not set out strict guidelines as to what constitutes a "rarest of rare" crime, the way the nature of the crime is judged can be quite subjective, as what may be cruel and brutal for one person may not be for the other person and this gives the judges a wide discretion.

The Supreme Court, has admitted that "there is a very thin line on facts which separates the award of a capital sentence from life imprisonment (in the case of rape and murder) and the subjective opinion of individual judges (as to the morality, efficacy or otherwise of a death sentence) cannot be entirely ruled out."[10]

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[6] *Death Penalty: Legislative and Judicial Chronology from Bachan Singh v. State of Punjab (1980) To Manoj Singh v. State of M.P.*, LiveLaw (Aug. 21, 2022), https://www.livelaw.in/columns/death-penalty-article-of-14-criminal-procedure-code-crime-and-the-criminality-test-bachan-singh-supreme-court-207070 (last visited Mar. 18, 2025).
[7] *Mukesh & Another v. State for NCT of Delhi*, (2017) SCC Online SC 533.
[8] Ms. Ravi, Death Penalty in India: A Critical Study, 10 Int'l J. Creative Res. Thoughts (2022), available at IJCRT22A6337.pdf (last visited Mar. 19, 2025).
[9] Jagdish John Menezes, Why the Question of Life or Death Remains the Most Difficult One, [2011–12] J. Indian L. Soc'y 110 (2011–12).
[10] *Rameshbhai Chandubhai Rathod v. State of Gujarat*, (2009) 5 SCC 740.

It was argued if Dhananjoy Chatterjee v. State of West Bengal (1994) falls under the ambit of "rarest of rare". There was no eyewitness, the case is reported to have rested on circumstantial evidence alone. Chatterjee pleaded innocence but the Supreme Court ruled that his guilt was "amply evident". The crime was allegedly perpetrated in revenge for the girl's complaints to her parents about his harassment of her. The Supreme Court held that the case fell into the category of "rarest of rare" cases for which the death penalty could be imposed. They imposed the death penalty because of the "savage nature of the crime".[11] The Court, while determining the appropriate punishment, considered not only the rights of the victim but also the broader interests of society.

The ongoing outrageous case of the recent times, the RG Kar rape-murder incident, the convicted was sentenced to life imprisonment by the Sessions Court, stating that the case did not fall under the rarest of rare category. The court considered the brutality and the nature of the offence and reached this conclusion.

Though the nature of the crime of both the cases are very similar but the punishments awarded to the convicts differ which proves that the absence of a legislative policy and guiding principles as to what constitutes "special reasons" warranting death sentence coupled with the "social philosophy" of a judge dictating his judicial discretion to opt either of the alternative punishments has undoubtedly led to divergent and sometimes inconsistent judicial decisions with regards to true scope of the so called "special reasons".[12]

Necessity of a well-defined sentencing framework

The boundless authority to determine life and death based on self-established regulations raises significant ethical and moral concerns, undermining the paradox of a society that upholds the principles of civilization while simultaneously advocating capital punishment in the pursuit of justice.[13] Time and again, it has been proved that the constitutional validation established by the Bachan Singh case has failed to prevent death sentences from being arbitrary and volatile.

[11] *Dhananjoy Chatterjee, India: Death Penalty* (Amnesty Int'l Jan. 27, 1994), available at https://www.amnesty.org/en/documents/asa20/012/1994/en/ (last visited Mar. 19, 2025).
[12] K. I. Vibhute, Delay in Execution of Death Sentence as an Extenuating Factor and the Supreme Court of India: Jurisprundence and Jurists' Prudence, 35 J. Indian L. Inst. 122 (1993).
[13] Chitra Chanda & Annirudh Vashishtha, International Standards v. National Practice: A Comparative Analysis of India's Death Penalty Jurisprudence, 4 Ind. J. Integrated Res. L. 50 (2022), available at https://example.com/ijirl-vol4-issue2.pdf (last visited Mar. 20, 2025).

The Malimath Committee Report 2003, recommended that there is an imperative requirement for permanent statutory guidelines to regulate judicial interpretation. There are no set factors which the courts assess while imposing a sentence and because of that there is disparity in the matter of sentencing. The Committee suggested that the framework of the sentencing guidelines should be formulated under the Chairmanship of a former Judge of Supreme Court, or a former Chief Justice of a High Court experienced in criminal law with other members representing the prosecution, legal profession, police, social scientist and women representative.[14]

However, a few judges in response to this report has expressed their reservations to standardize the judicial discretion. They argued that the guidelines will limit and restrict them to weigh the aggravating and mitigating factors which will naturally affect the nature of sentencing. The need to align the judicial discretion with the "rarest of rare" doctrine has been emphasized stating that it will change the 'judge-centric' approach to a 'principal-centric' one.[15]

The U.S. criminal code (**1**8 U.S.C. 3592) explicitly defines the mitigating and aggravating factors that guide the imposition of the death penalty. India could consider using this framework as a reference to introduce a new section or sub-section in the Bhartiya Nagarik Suraksha Sanhita (BNSS), providing clear and structured legal guidelines for courts to follow when determining death penalty sentencing.[16]

Conclusion

Vagaries of judicial arbitrariness have made the death penalty virtually a lethal lottery. It not only undermines the rarest of rare of rare case doctrine and the requirement of 'special reasons' but also reveals that 'unguided judicial discretion' leads to illegal or unfair extinction of life.[17] The court has repeatedly asserted that the punishment imposed should be proportionate to the nature and the gravity of the offence, it should also consider the social impacts of the crime

[14] Committee on Reforms of Criminal Justice Sys., Ministry of Home Affairs, Govt. of India, Report of the Committee on Reforms of Criminal Justice System (2003).
[15] K. I. Vibhute, Choice Between "Death" and "Life" for Convicts: Supreme Court of India's Vacillation Sans Norms, 59 J. Indian L. Inst. 221 (2017), https://www.jstor.org/stable/26826606 (last visited Mar. 18, 2025).
[16] 18 U.S.C. § 3592 (2018),18 U.S. Code § 3592 - Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified | U.S. Code | US Law | LII / Legal Information Institute (last visited Mar. 20, 2025).
[17] K. I. Vibhute, Choice Between "Death" and "Life" for Convicts: Supreme Court of India's Vacillation Sans Norms, 59 J. Indian L. Inst. 221 (2017), https://www.jstor.org/stable/26826606 (last visited Mar. 18, 2025).

committed. The only solution to this issue is not a straitjacket formula but a framework of guidelines which the courts can refer to while exercising their discretionary powers so that the efficiency of the law and justice system is not undermined. A "judge, even when he is free, is not to innovate at pleasure. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence." [18]

[18] Benjamin N. Cardozo, *The Nature of the Judicial Process 114* (Yale Univ. Press 1921).