CONSTITUTIONAL DIMENSIONS OF THE "RAREST OF RARE" DOCTRINE IN RAPE CASES

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ABSTRACT

The application of the "rarest of rare" doctrine in cases of rape creates an essential constitutional deadlock due to the non-existence of clear constitutional parameters to determine situations in which sexual assault would be eligible for being punished through capital punishment.

This research examines the constitutional vacuum that has emerged from the doctrine's expansion beyond homicidal crimes to encompass rape cases, revealing a troubling pattern of judicial inconsistency that undermines constitutional principles of equality and due process. The study analyzes recent judicial pronouncements where fathers repeatedly raping and impregnating their minor daughters have been deemed "not rare enough" for capital punishment. At the same time, similar cases receive vastly different treatment across Indian courts. Through an analysis of constitutional aspects under Articles 14 and 21, this study reveals how the lack of standardized constitutional parameters has established a system in which constitutional morality becomes a sacrifice at the altar of individual judicial subjectivity.

The paper critiques landmark cases and contemporary judicial trends, which, in effect, illustrate constitutional inadequacy in present paradigms to combat sexual violence while keeping constitutional integrity intact. The study finds that constitutional incoherence marks the doctrine's application to cases of rape, establishing an unconstitutional legal framework in which brutal crimes against the most vulnerable entities in society come to be subject to arbitrary constitutional understanding. This work joins an essential deliberation on constitutional reformation necessary to bring into being definitive parameters, which strike an equilibrium between constitutional rights and the necessity of justice to victims of sexual violence.

Keywords: Constitutional dimensions, Rarest of rare doctrine, Rape cases, Constitutional standards, Judicial inconsistency, Article 14, Article 21, Constitutional morality, Sexual violence, Capital punishment, Definitional crisis.

Introduction

Constitutional ramifications of the doctrine of "rarest of rare" in cases of rapes form one of contemporary Indian jurisprudence's most contentious and unresolved constitutional dilemmas. Enshrined as per the lead judgment in Bachan Singh v. State of Punjab (1980), this doctrine was initially conceptualized as a constitutional safeguard to prevent the arbitrary imposition of the death penalty in cases of murder. Nevertheless, in being stretched to cases involving sexual offenses, it has begotten a constitutional conundrum relevant to eroding the very foundation of legal certainty and constitutional interpretation in India itself. In being stretched to cases involving rape, this doctrine has an integral constitutional flaw: an utter dearth of distinctly spelled out constitutional parameters or requisites to guide courts in discerning those cases wherein sexual assault would extend and transgress from life imprisonment to capital punishment.

This constitutional conundrum becomes acute, particularly in examining recent cases of judicial judgments where courts have delivered judgments to the effect that fathers who have routinely raped and impregnated minor daughters do not fall under "rarest of rare" cases and do not deserve the death penalty. In a March 2025 judgment delivered in a Delhi court, Additional Sessions Judge Amit Sahrawat declined to impose death sentence upon a man who raped his 17-year-old minor daughter and made her suffer pregnancy for six months, noting, "the present offence is not against society at large.[1] Rather, it is against an individual, and therefore the death sentence cannot be given". This ruling of the court highlights constitutional weakness in prevailing traditions of interpretation. It raises certain fundamental doubts regarding constitutional morality and the safeguarding of Fundamental Rights in cases of sexual assault.

This constitutional aspect of this crisis extends beyond being merely constricted in individual cases to involve systemic constitutional problems of enforcement and interpretation. The recent ruling in July 2025 in the Punjab and Haryana High Court, commuting the death penalty in one case wherein a father used to rape his minor daughter for four years, manifests this constitutional confusion rampant in this field. Justice Gurvinder Singh Gill and Justice Jasjit Singh Bedi remarked in this case that even being "heinous" failed to undergo the "rarest of rare" litmus test, reflecting on how constitutional law has been tested upon judges' personal

[1] Dad Gets Rest of Life in Jail for Minor's Rape, Court Says Case 'Not Rarest of Rare', Times of India (Sep. 21, 2025), https://timesofindia.indiatimes.com/city/delhi/dad-gets-rest-of-life-in-jail-for-minors-rape-court-says-case-not-rarest-of-rare/articleshow/119766980.cms.

views instead of set constitutional limits. These rulings individually illustrate how constitutional law in rarest of rare doctrine cases in rapes failed to offer legal clarity and constitutional safeguard, to which citizens suffering sexual assault have been entitled under Articles 14 and 21 of the Constitution.

The stark reality further magnifies the constitutional implications of this definitional crisis, that such horrific crimes are deemed "not rare enough" precisely because violence against women and children has become endemic in Indian society. The fact that a father repeatedly raping his minor daughter and impregnating her is not considered "rare enough" in India reveals the disturbing normalization of sexual violence that has infected constitutional interpretation. As observed by legal commentators, the court that decided this case is in the same Indian state where a political leader's son, who is accused of stalking a woman, was appointed as a law officer in July 2025. Just last month, another Indian court had ruled that a man raping and attempting to kill a 4-year-old didn't qualify as sufficient brutality for capital punishment. Technically, the High Court could be correct in saying that an incestuous rape type crime is not uncommon in India. Still, this fact highlights the constitutional issue instead of supporting judicial reluctance.

The Madhya Pradesh High Court's recent remark in one such case involving rape and attempted killing of a four-year-old child, that being "barbaric" but not "brutal" enough to attract capital punishment, shows the constitutional absurdity of prevailing standards of interpretation.

This legal argument generates a constitutional paradox wherein the prevalence of sexual crimes becomes one of the constitutional grounds for not inflicting the most harsh punishment, thus defeating the constitutional directive of equal protection and equality before law under Article 14.The constitutional doctrine permitting such reasoning shows an essential gap between constitutional ideals and ground reality in cases where society's weakest members are involved.

Literature Review

1. Judicial Precedents

Case law concerning India's "rarest of rare" doctrine evolved through a long series of milestone cases. The cases reflect an enduring strain between the State's authority to impose capital punishment and the constitutional guarantee of the right to life. Where initially, doctrine resulted from murder cases, it has, however, through time, been stretched to cover instances of sexual assault, wherein judges have been required to draw this fine line between judicial

restraint and public outburst.

1.1. Bachan Singh and Machhi Singh Doctrine

The Doctrine was established in Bachan Singh v. State of Punjab (1980). [2]The Court was of the view that life imprisonment would have to be a presumptive sentence in murder cases, and the death penalty could be granted only in those "rarest of rare" cases in which life imprisonment would in no way serve as a sentence which meant it was wholly inadequate. [3]This judgment also meant protection from the arbitrary imposition of the death penalty. It reaffirmed that deprivation of life would have to follow just and fair procedure under Article 21 of the Constitution.[4]

Clarifications were further clarified in Machhi Singh v. State of Punjab (1983). [5]The Court also built an orderly structure by categorizing aggravating circumstances to allow judges to find a "rarest of rare" case. These were the mode of commission, the abhorrence's of the act, and the victim's vulnerability. The Court simultaneously emphasised that these aggravating circumstances would have to be weighed against mitigating circumstances with respect to the background and character of the offender.

1.2. Development of Doctrine in Rape and Sexually Based Offences Charges

Applying this doctrine to cases of sexual violence crimes has been more problematic and inconsistent. Court rationale has veered between due process and rights-centered models and those in which punishment becomes better calibrated to commonly felt outrage in reaction to atrocious or brutal crimes.[6]

1.3. The "Collective Conscience" test: The Nirbhaya Case

The Nirbhaya gang rape and murder case in 2012 [7]was one such watershed moment. The horror of the crime and unprecedented mass protests shaped legal discourse in one way or another. The Supreme Court reconfirmed the death penalty for those guilty and gave it a new aspect to the doctrine. The Court also included that it could be "rarest of rare" if it shocks society's

[2] Bacchan Singh v. State of Punjab, (1980) 2 SCC 684 (India).
[3] Surya Deva, Death Penalty in the 'Rarest of Rare' Cases: A Critique of Judicial Choice-making, in Death Penalty: Indian Perspectives (2025), available at https://academic.oup.com/book/6561/chapter-abstract/150522518?redirectedFrom=fulltext.
[4] CrPC Section 354(3) (India).
[5] Machhi Singh v. State of Punjab, (1983) 3 SCC 470 (India).
[6] Gurmit Singh v. State of Punjab, (1996) 3 SCC 263 (India).
[7] Nirbhaya v. State of NCT of Delhi, (2017) 8 SCC 608 (India).

collective conscience and arouses great indignation. This was a trend in the direction of an emotive criterion, wherein punishment became inextricably linked to public opinion as much as a finely calibrated legal test.

1.4. A Countervailing Trend: Priyadarshini Mattoo and Mohinder Singh

Other decisions demonstrated an attitude of restraint. In Priyadarshini Mattoo (2010), for example, the Supreme Court changed the death sentence of Santosh Kumar Singh to life imprisonment despite the Delhi High Court having deemed the offense to be "rarest of rare". [8]The Court showed commitment to an absolute legal principle as opposed to opinion in society, reiterating once again that even in the most atrocious cases ofrape and murder, the death sentence can hardly be considered guaranteed.

Likewise, in Mohinder Singh (2013), [9]in which the accused had raped his minor daughter and murdered both his wife and daughter, the Court refrained from categorizing the offence as "rarest of rare"). While diabolical, it underscored that sentencing would have to remain humanistic and reconfirmed life imprisonment as the norm and death as an exception. It concluded, instead, that the offender was not entirely dangerous to such a degree that not killing him would put society in peril, underlining resistance in the judiciary to an all-retributive position.

1.5. The Madhya Pradesh High Court: Distinguishing "Brutality"

A recent Madhya Pradesh High Court decision also reflects a restrained approach. A trial court had sentenced a man to death for the rape and attempted murder of a four-year-old child[10]. On appeal, the High Court acknowledged the barbaric nature of the crime but commuted the sentence to twenty-five years of rigorous imprisonment. The Court reasoned that the threshold of "brutality" required for capital punishment had not been met. It placed weight on mitigating factors such as the offender's young age, illiteracy, tribal background, and absence of prior criminal history. This highlighted the importance of a holistic assessment that considers both the crime and the offender, correcting the lower court's over-reliance on the gruesome nature of the Act.

[8] Santosh Kumar Singh v. State, (2010) 12 SCC 202 (India).
[9] Mohinder Singh v. State of Punjab, (2013) 8 SCC 844 (India).
[10] Ajmer v. State of Madhya Pradesh, RPE No. 57 of 2025 (MP HC June 20, 2025).

2. Statutory Framework

2.1. Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012, [11]was a milestone in India's mission to combat child sexual abuse through a complete legal framework. The Act categorizes different offences of sexual abuse of a child and lays down heavy punishment for such crimes. In an amendment in 2019, the Act included stiffer sentences in the form of capital punishment for heinous crimes. Section 6 sanctions the death penalty or life imprisonment in case of penetrative sexual assault leading to the killing of a child or bringing out the victim in a state of vegetability. This acknowledgment of the gravity of offence reflects constitutional mandates under Articles 14 and 21, denoting intent on the part of the legislature to consider such offences to lie in the "rarest of rare" category. The Act, however, refrains from laying down parameters for invoking the doctrine and leaves it to be adjudicated by courts at their discretion, resulting in erratic results.

2.2. Criminal Law (Amendment) Act, 2018

In response to the Nirbhaya case, the Criminal Law (Amendment) Act, 2018, considerably augmented the law for sex offenses, particularly those against individuals in the juvenile category.[12] It added Section 376AB to the Indian Penal Code, to allow for at least twenty years' rigorous imprisonment for the rap of a girl under twelve years, extendable to life imprisonment or even death.[13] This conclusively placed the offence under the "rarest of rare" doctrine. Yet, as far as the imposition of death remains at the sentencers' discretion, the absence of statutory guidelines mentioning specific aggravating circumstances that would be peculiar to such offences renders consistency and fairness in punishment to an equal degree. This leads to a constitutional issue regarding proportionality and the right to life.

2.3. Indian Penal Code, Section 376 and Relevant Provision

The Indian Penal Code (IPC) still regulates the prosecution of rapes. Rape continues to be prosecuted harshly under Section 376, and harsh punishment in proportion to the victim's age and the circumstances of the offense still holds good. Section 376(3) provides punishment for the rape of a woman under sixteen years of imprisonment for not less than twenty years, and it

[11] POCSO Act, No. 32, Acts of Parliament, 2012 (India).
[12] Criminal Law (Amendment) Act, No. 22, Acts of Parliament, 2018 (India).
[13] PRS Legislative Research, The Criminal Law (Amendment) Ordinance, 2018: Legislative Brief (2018), available at https://prsindia.org/billtrack/prs-products/prs-legislative-brief-3028.

would likely be increased to life imprisonment, and also a fine. It shows the realization of the vulnerability of minors and social concern about their welfare. These sections, however, do not provide directly for the "rarest of rare" doctrine or specify parameters for its invocation. In practice, sentencing continues to remain subject to judges' presumptions akin to those in cases involving murder, and gaps and irregularities in legal reaction to sexual assault continue to exist.

2.4. Bharatiya Nyaya Sanhita, 2023

Bharatiaya Nyaya Sanhita, having been enacted in 2023, [14]signifies an umbrella overhauling of criminal jurisprudence of India, including capital punishment. Specific clauses enlarge offences punishable by capital punishment, i.e., those for sex offences in an aggravated mode, including gangrape of girls and repeat incestuous rape. Sections 326 and 327 define capital offences in express terms, evoking sexual offences resulting in loss of life or grievous hurt. While BNS empowers the court to award death punishment in terms of naturae and circumstances of offence, it lacks express criteria for applying the doctrine in terms of sexual offences in specified terms. The BNS, however, mandates obligatory recording of specified reasons in detail by the court in awarding death, specifying transparency and due process conformance. Nevertheless, the expansion of offences punishable by capital punishment affords constitutional challenges to proportionality, arbitrariness, and dilution of safeguards against arbitrariness in relation to doctrine.

3. Scholarly Commentary

However, scholars have also universally denounced the recent practice of resorting to the invocation of the "rarest of rare" doctrine in sexual assault cases[15]. The lack of a statutory definition causes blanket judicial discretion, resulting in erratic judgments[16]. The doctrine, it has been contended, as it has been shaped in relation to murder, fails to comprehend those specific wrongs, being loss of dignity and psychic injury, constituting sexual assault.

Criticism also follows over-reliance upon the "collective conscience" test, as in the Nirbhaya judgment. It is argued that this manifests "punitive populism", in which court decrees derive stimulus from public passions more than rational deliberations. These criticisms also support

[14] Bharatiya Nyaya Sanhita, Section 326, 327 (2023) (India)
[15] Meghna Pant & Saumya Uma, Reimagining the 'Rarest of Rare' Doctrine: Capital Punishment and Judicial Discretion in India's Sexual Violence Cases, 16 Indian Journal of Law and Society 122, 130 (2021).
[16] Anup Surendranath, Why the Rarest of Rare Doctrine Fails in Sexual Violence Cases, 34 NALSAR Law Review 45, 52 (2020).

the trend at the legislature, as in this instance of the Bharatiaya Nyaya Sanhita, to proliferate capital offences. [17]Critics argue that this expansion threatens to regularize the death penalty and defeat rather than support the doctrine as protection.

What there ought to have instead, though, is clearer architecture to provide for proportionality, to provide for due process, and at least to provide constitutional protection. Without this kind of reform, there would be neither a doctrine of populist justice nor a principled check upon the deprivation of life arbitrarily.

Scheme of Study

1. **Need for a Principled Standard: Transcending Judicial Subjectivity**

Doctrine of 'rarest of rare' in sexual assault cases highlights Indian law's inherent frailty: absence of an express, principled norm. Seen as an attempt to chart parameters to the arbitrary exercise of the death penalty, the doctrine lacks a statutory definition and hence depends on the court's perception. This has resulted in haphazard and subjective applications, often contravening systematic legal rationale. One in mind here is the invocation, by bench, of society's "collective conscience" as the norm in death penalty imposition[18]. In Mukesh v. State for NCT of Delhi (Nirbhaya),[19] the Supreme Court transmuted public indignation into a pretext for the bestowal of a capital sentence, terming the crime "brutal, barbaric, and diabolical" and expressing hope it would "shock the collective conscience of society." While this may coincide with sentiment, this legitimizes avoiding regular inquiry into crime and offenders.

Applying collective conscience as a criterion opens the door to great perils. It renders judicial decisions subject to publicly voiced opinion rather than enlightened legal analysis and to pressure from majority opinion and sentimentality fueled by the news. [20]The Supreme Court itself cautioned against substituting legal analysis for societal indignation. The doctrine was to

[17] Raghavendra Madan, The Expansion of Capital Punishment in India: Implications of the Bharatiya Nyaya Sahayak, 5 Indian Law & Policy Journal 207, 215 (2023).
[18] Sakshi Joshi, Arshiya Dhawan, Ayushi Parashar & Sherwyn Joy Santhosh, Analyzing the Jurisprudential Trends and Legal Standards in Rarest of Rare Rape Cases: A Study of Commonalities and Implications for Sentencing in India, 3 Int'l J. of Legal Studies & Social Sciences 22 (2025), https://ijlsss.com/analyzing-the-jurisprudential-trends-and-legal-standards-in-rarest-of-rare-rape-cases-a-study-of-commonalities-and-implications-for-sentencing-in-india/
[19] Mukesh & Anr. v. State for NCT of Delhi & Ors., (2017) 6 S.C.R. ___ (India) (superseding the Delhi gang-rape case) (Dipak Misra, Banumathi & Ashok Bhushan, JJ.), available at https://cdnbbsr.gov.in/…/aor_notice_circular/39.pdf.
[20] Rajkumari & Dr. Ripu Daman Pratap Singh, *The Doctrine of Rarest of Rare: A Critical Analysis*, 2 Indian J. of Integrated Research in Law II(4), 1 (2022), https://ijirl.com/wp-content/uploads/2022/08/THE-DOCTRINE-OF-RAREST-OF-RARE-A-CRITICAL-ANALYSIS.pdf.

restrict the death penalty to exceptional cases, carried out under deliberative, principled judgment. The solution is not to do away with the doctrine but to refine it into an objective, openly administered process. An express yardstick would afford sentencing choices to be regular, predictable, and founded upon law, not sentiment of public opinion, whose vicissitudes would otherwise govern.[21]

1.1. Paradox of "Not Rare Enough": Philosophic and Juridical Problem

A critical failure of the doctrine is its inability to reconcile legal technicalities with constitutional morality and the lived experiences of victims. Take, for example, one in which the father sexually abused and impregnated his minor daughter over and over. Still, the court did not deem the crime to be 'rarest of rare' as it did not involve killing and was perpetrated within the family. [22]Though technically justifiable, this line of argument reveals an intrinsic systemic weakness: the prevalence of sex crimes has made morally reprehensible actions an accepted norm through sheer repetition. Rigid attention to physical Act can lead to legal justification in commuting sentences while disregarding the searing psychic injury, violation of trust, and social damage entailed in incestuous sex abuse.

This narrow focus on the physical dimension of the crime fails to capture the true horror of offenses that devastate lives without ending them. Legal distinctions between acts deemed "barbaric" versus "brutal," [23]as observed in some high courts, illustrate a concerning tendency to split hairs rather than assess the totality of the crime's impact. The paradox is striking: because extreme sexual violence has become distressingly common, crimes that profoundly harm victims are often legally judged "not rare enough." This gap between legal classification and moral reality underscores the urgent need for a more comprehensive evaluative standard that considers the full scope of harm, beyond mere rarity or physical severity.[24]

1.2. Process Erosion and the Need for Neutral Criteria

Sentencing irregularities are compounded by erosion in constitutional morality's procedural

[21] *The Doctrine of Rarest of Rare in Capital Sentencing*, https://ijlmh.com/uploads/…/The-Doctrine-of-Rarest-of-Rare-in-Capital-Sentencing.pdf.
[22] https://www.instagram.com/p/DMmq0TUBXnO/?igsh=MWNqeXhqcWtlcmZpdA
[23] Suvarna Cherukuri, Sexual Violence Against Women, the Laws, the Punishment, and Negotiating the Duplicity, 10 Laws (Basel) 27 (2021), https://doi.org/10.3390/laws10020027.
[24] Raping, Impregnating Minor Daughter Not Rarest of Rare, Punjab & Haryana HC, LawBeat (July 11, 2025), https://lawbeat.in/top-stories/raping-impregnating-minor-daughter-not-rarest-of-rare-punjab-haryana- hc-1514208.

protection at the system level.[25] The Bachan Singh ruling imposed the "balance sheet" practice, whereby courts must balance aggravating and mitigating circumstances before issuing the death sentence. Formulated to provide for individualized, exhaustive sentencing, this directive all too often is not followed, especially in profile sex crime cases. The courts, bowed to prevailing public sentiment, have been reluctant to consider only the worst elements of crime and not to consider in-depth mitigation circumstances, such as, for example, socio-economic circumstances, personal history, or the defendant's rehabilitative potential.

Due to the death penalty's irreversible nature, the proof standard must be impeccable or unimpeachable [26]. The 2025 ruling in one of such POCSO cases best encapsulates this adage, in which a death row inmate was acquitted as it could not establish a "complete and unbroken chain of evidence." The Court insisted that the 'rarest of rare' criterion encompasses the atrocity of crime and evidence's conclusiveness and reliability. The case points to constitutional danger: unchecked judicial discretion in capital cases may generate irreversible errors. [27]When punishment becomes subject to movable concepts such as collective conscience or thin physical parameters, constitutional morality is undermined, and overarching ideals of rights culture are destroyed. Determinate, principled guidelines are necessary to bring integrity to capital sentencing and prescribe consistency to the dispensation of justice.

1.3. Between Deterrence and Justice

Supporters of capital punishment offer it as a deterrent to these atrocious crimes. Yet judicial improprieties and also crimes of unparalleled brutality, not being seen as "rare," weaken this argument. As a deterrent, capital punishment would have made those actions unusual; yet both court recognitions of their usual occurrence defeat this argument. The practice of capital punishment becomes less deterrent and more punishment for revenge, responding more to public outrage than to systematically finding and preventing crime in an orderly fashion. This places a sharp constitutional focus on this vital question: should it not be the state's duty to protect citizens through crime prevention, or is it surrendering to demands through over punishing?

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[25] Aniket Bhardwaj & Ashiwarya Pandey, Capital Punishment and Article 21 (Right To Life), 9 Indian J. of Law and Legal Reform (2024), https://www.ijllr.com/post/capital-punishment-and-article-21-right-to-life.

[26] Akhtar Ali @ Ali v. State of Uttarakhand, Criminal Appeal Nos. _____ (S.C. Sept. 10, 2025), https://lawbeat.in/supreme-court-judgments/sc-sets-aside-death-penalty-in-pocso-case-when-does-the-rarest-rare-doctrine-truly-apply-1518249.

[27] Evidence Marred by Inconsistencies: Supreme Court Sets Free Death Row Convict in Murder and Sexual Assault of Minor, Deccan Herald (Sept. 10, 2025), https://www.deccanherald.com/india/evidence-marred-by-inconsistencies-supreme-court-sets-free-death-row-convict-in-murder-and-sexual-assault-of-minor-3723072.

This conundrum highlights the tension in Indian Rape Jurisprudence. The doctrine, as it stands, has an incoherent framework, and it leaves courts to deal with tricky cases based on subjective notions of brutality, murder, and collective conscience. This discretionary and unpredictable application risks undermining equality before law and due process, diluting the judiciary's role as protector of individual rights.[28] In this case, reform is not just procedural; it's constitutional. Achieving justice requires a process that judges crimes in an integrated fashion, both in terms of the tangible and intangible effects it has on victims and society, and in keeping an even-handed and principled legal criterion.

1.4. Including Procedures and Ethical Protection

A corollary element of substantive reform critically consists of facilitating procedural safeguards. The courts must exhaustively review mitigating and aggravating circumstances so that the sentencing process becomes individualized and proportionate. Over-emphasizing aggravating circumstances can make punishment out of proportion, particularly in emotionally charged cases. The POCSO case in 2025 represents the risk of a shortage of procedural rigour, and it reinforces that even in atrocity cases, the evidentiary standard must remain impeccable. The balancing act between procedural discipline and moral judgment can allow courts to find an appropriate balance between the gravity of crime and the amplitude of proportional justice.

Prevailing reliance upon abstractions like collective conscience or cruel physical criteria harms the moral and legal foundation of the doctrine. Constitutional morality, as an implication of extension beyond statutory language, encompasses the core values of a rights-based democratic society. When judicial discretions entail many interpretations based on sentiment or publicity, arbitrariness menaces justice and legitimacy, and law becomes unpredictable. To reflect fully the totality of the impact of crime, and not the extremity of it or physical manifestations, sentencing judgments seek an ordered framework of objectives to provide regularity, proportionality, and responsibility in capital sentencing, and harmonize practice with constitutional values.

1.5. Controlling Mental and Social Aspects of Crime.

Doctrinal failings also come in terms of not being able to mirror sexual crime's social and psychological aspects. Abuse in the long run, breach of trust of family, and long-term emotional

[28] "Revisiting the Rarest of Rare Doctrine: India's Uneven Use of Capital Punishment," Usthadian (Sept. 2025), https://www.usthadian.com/revisiting-the-rarest-of-rare-doctrine-indias-uneven-use-of-capital-punishment/

suffering put upon victims too often become imperceptible as courtrooms zero in purely on bodily harm. Pure material damage is considered; legal criteria pay little heed to such wider ramifications, and some of the most harmful crimes are dealt with poorly.

The ideal evaluation measure needs to consider both material and immaterial damages, and sentencing should better correspond to the entire range of damage thus caused to victims, families, and society. A reformed regime would bind judges to account not just the seriousness of harm, but also the more extensive social, mental, and moral aspects of an offence. Taking these in relation to attendant circumstances and aggravations would enable more mature and fair imposition of the death penalty, reaffirming commitment to withholding from capital punishment in sporadic instances. This would allow procedural and moral integrity to one's position in exercising the 'rarest of rare' doctrine, bolster the integrity of the bench, and safeguard all rights.

1.6. Aligning the Practice of Law and Constitutional Principles.

Unrelenting imposition of the death penalty in cases of sexual assault underemphasizes an objective, principled, and orderly criterion. Without defined criteria, a habitual practice in an arena of legal precedent subject to publicity, revulsion, and progressive conceptions of brutality results in outcomes at times seemingly random and eroding belief in the bench at the level of public opinion. Imposing an ordered scheme would provide direction to judges, such that sentences could be orderly, proportionate, and founded upon rational legal foundations, not opinion poll mood. Regular practice in this respect in relation to constitutional principles would allow the bench to continue in its role as defender of rights while allowing those who would be subject to imposition of the death penalty to do so in circumstances involving it only, and maintaining an integrity both in legal process and in human life itself.

Findings

India's dependence, in cases of rape, on the doctrine of "rarest of rare" bespeaks an imminent necessity for certain and definitive legal parameters in force only in sex crimes. The doctrine, having been initially explicated to mark out imposition of capital punishment in cases of murder, has been hardened in an ad hoc fashion in cases of rape, revealing incoherent tendencies in sentencing and constitutional difficulties.

Of particular concern, then, is the lack of a statutory definition or codified criteria to bring to bear upon doctrine application in sexual offence cases. Instead, there is recourse to imprecise

judicial interpretation, often invoking the "collective conscience" of society, an indicator which came to prominence in the Nirbhaya case. As this invokes an inherently variable and subjective measure to legal argument, this threatens judicial objectivity and constitutional equality principles under Article 14 and constitutional right to life under Article 21, which occasion's unpredictability and reduces consistency and fairness in capital sentences for rape.

Of particular relevance in this context is judicial reluctance to view severely violent sex crimes as "rarest of rare," particularly in situations of long-protracted incestuous abuse culminating in pregnancy. [29]Neutral as to killing or perceived absence of threats to society, it has been used as a rationale for not granting capital punishment by courts. Such an argument in effect sanctions excessive sexual exploitation in favor of physical demise, as against emotional destruction and social destruction suffered by victims. It dilutes legal acknowledgment of the all-encompassing impact of trauma and offers poor constitutional protection to child-sexual-abuse survivors.

The courts have also exhibited an unhealthy obsession with distinguishing "barbaric" from "brutal" sex offences. [30]Thus, in one case, the Madhya Pradesh High Court reduced a sentence of death in the rape and attempted murder of a child who was just four years old, rationalizing that there was no comparable brutality although the circumstances were horrific. This subtle semantic distinction diverts attention from an inquiry into the whole range of harm and invites arbitrary decisions on sentencing, ultimately undermining the doctrine's protective function. Procedural failings also enlarge these substantive weaknesses. While in Bachan Singh, the Supreme Court necessitated courts to undertake a "balance sheet" inquiry weighing aggravating and mitigating circumstances in capital cases, most courts fail to conform to this exemplary practice, especially in sensational cases.

Admissible mitigating circumstances such as the offender's youth, history, mental state, and reformation potential continue to be disregarded by courts. On the other hand, the rigors of strict evidentiary standards are not strictly followed. Reversals of death sentences due to poor prosecution further illustrate unevenness in the application of procedural protection, escalating the fear of wrongful execution in desperate cases.

[29] India: Rape, Death Penalty And The Doctrine Of Rarest Of Rare, IJFMR (2023),https://www.ijfmr.com/papers/2023/6/9914.pdf

[30] *Rape, Death Penalty, and the Doctrine of Rarest of Rare in India*, Mondaq (Date), available at https://www.mondaq.com/india/crime/1439912/rape-death-penalty-and-the-doctrine-of-rarest-of-rare-in-india

Empirical research at fault criticises the belief in providing an effective deterrent to sex crimes in capital punishment. It still prevails at high prevalence rates even in cases of severe punishment, reflecting an imperceptible deterrent impact of the death penalty.[31] This dual relationship between ideal doctrinal intent and practical outcome presents an important test case to capital sentencing rationality in rapes, often being transformed into symbolic retribution rather than instrumentality of deterrence.

Differentials in sentencing based on socio-economic, caste, and sex biases remain substantial. Minority defendants have been overwhelmingly sentenced more severely, providing evidence of system wide court biases in contravention of constitutional guarantees of non-discrimination and equality. This unfairness also invites doubts regarding consistency and equality in dominant doctrine uses. Sensitisation training to judges, police officers, and prosecution officials in sexual offence cases also symbolises another necessary issue. [32]

Deficits in sensitisation to gender, trauma, and forensic sciences translate into less-than-ideal evidentiary analysis as well as victim handling, impacting court outcomes negatively. Victims' testimonies and trauma-informed practices continue to be sparsely represented in court practice, and victim involvement in the process of law remains scanty. [33]In scholarship on law reform, researchers observe an express necessity in codifying laid out guidelines in sentencing, tailor-made for sexual offenses, in the rarest of rare cases.

Formalized guidelines indicating aggravating situations such as victim vulnerability, aggravated situations of repeat abuse, and mental impact, and mitigation situations of offender traits, can regularize judicial discretion and boost foreseeability. Jurisdictions as different as the United Kingdom demonstrate how specialist sentencing councils help ensure regular, fair, and just adjudication criteria in sensitive cases.

Concisely, findings highlight that prevailing case law in applying the doctrine of rarest of rare in rapes cases is incoherent and disappointing. Without express, specialist guidance indicating certain characteristics of sex offences, sentencing continues to be irregular, frequently capricious, and at times constitutionally invalid. Reform committed to establishing specific,

[31] Study of sexual assault cases among below 18 years age group during September 2018 to September 2020 in Government Medical College, Patiala, Punjab, India: cross-sectional study https://pmc.ncbi.nlm.nih.gov/articles/PMC8895555

[32] Analysis of the Shakti Mill Gang Rape Case: Understanding the Concept of Repeat Offender and Rarest of Rare Doctrine(2025), https://www.informaticsjournals.co.in/index.php/jcls/article/view/48935

[33] Om Prakash Singh, Sharmila Sarkar & Vipul Singh, *Clinical Practice Guidelines for Assessment and Management of Psychiatric Emergencies in Victims of Sexual Violence*, Indian J. Psychiatry, Vol. 65, No. 2, 175–180 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10096199/

victim-oriented, and process-sturdy criteria in capital rapes cases becomes necessary to ensure constitutional rights, support victims' dignity, and support judicial integrity in the criminal process.

Recommendations and Conclusion

This study identifies Indian adjudication's critical need to develop clearly established, principled, and consistent criteria for invoking the rarest of rare doctrine in rapes and sexual offenses. As it unfolds today, invocation without any codified framework results in inconsistent, ad hoc, and often distressful sentencing outcomes, contravening constitutional protection of equality before law and right to life and due process under Article 14 and 21 of the Constitution.

The doctrine was initially conceptualized to restrain the arbitrary imposition of capital punishment to an extensive degree in murder cases. It has been invoked in rapes cases and shown inherent structure and norm weaknesses.Courts have used inherently subjective principles such as the "collective conscience" of society, as in the Nirbhaya case. It captures the public's sentiment but leaves the sentiment and social opinion to decide the rationality of judgment. It drives sentencing away from objectivity, diluting the feature of a fair trial. This trend dilutes constitutional separation of powers and rational decision-making. [34]

To sidestep this roadblock, there must be co-operation between the legislature and judicial institutions to adopt codified, evidence-informed sentencing guidelines for sexual offenses. The guidelines would have to specify specific express circumstances of aggravation, such as the victim's age, degree of vulnerability, nature and brutality of crime, association of offender with victim (such as family or custodial relation), repeat offender, and psychic and bodily damage caused. In parallel, mitigation circumstances such as the offender's age, mental illnesses, socio-economic circumstances, or realistic possibility of rehab, too, would have to be considered. Such an approach of "balance sheet," under which circumstances of aggravation and mitigation circumstances in totality in an orderly fashion would be considered and weighed, would allow consistency in judgments to be reached through constitutionally constrained discretion being utilized by courts.

Reinforcement of procedural safeguards is also required, as in view of the irrevocability of death, fact-finding and trials have to be of impeccable accuracy. Here, recent cases illustrate

[34] H. S. Adithya, Kamalakhannan & Asha Sundaram, *Judicial Trends in Gender-Based Offences: An Analytical Study of the 'Rarest of Rare' Doctrine*, J. Info. Sys. Eng'g & Mgmt., Vol. 10, No. 40s (2025).

how poor investigations or dubious forensic practice distort fairness in capital rape cases. Detailed, reasoned judgment would have to accompany the award of death sentences, not just on legal argument, but also on the opinion of experts on psychic damage suffered by the victim, as well as the opinion of experts on recent findings in forensic science. Judges, prosecutors, and investigators also would need specialist training in trauma, gender sensitivities, and recent advances in forensic science. Institutional capacity thus built would enable the court system to consider sexual violence more sensitively and fairly.

Towards this end, research also identifies systemic injustices. The vulnerable sections usually marked by caste, class, sex, or region receive the toughest punishment. This uneven penalization violates constitutional equality and destroys public trust in the court system. To set this right, reforms should account for unconscious biases, multiply and multiply check and balance mechanisms, and provide access to good legal aid to all socio-economic classes.

Further, the deterrent value of the death penalty for rapes remains questionable. Empirical research fails to conclusively establish that capital punishment has been an effective deterrent to sexual assault. Over-reliance on harsh punishment can get us a reactive system and not one to address the root causes of sexual assault. A more pervasive prevention program is needed, involving sets of judicial reform, victim support services, public education, gender equality initiatives, and community-based interventions to counter cultural and structural causes of sexual assault.

Constitutionally, reforms must draw an equally fine balance between the gravity of odious sex offenses and the imperatives of safeguarding fundamental rights and human dignity. The progressive ideal of constitutional morality binds courts to train themselves to inflict capital punishment in only those unusual cases in which, otherwise, no punishment would be sufficient. When it comes to sex offenses, by and large, rapes, courts must take into account the entire panoply of damages, such as mental harm, violation of family trust, and social humiliation, and not merely restrict the inquiry to bodily damage or mere death.

Briefly, the rarest of rare doctrine, as it has been used in rapes cases, today is blemished by conceptual imprecision, uneven practice at the bench, poor procedural protection, and dubious reliance on populist morality. Without experience-responsive and experience-specific guidelines, its invocation can entrench injustice and erode faith in law-enlightened state institutions of disposition. India thus needs to undergo extensive reforms. These involve codifying detailed sentencing guidelines on sexual offences under the doctrine, enforcing strict

evidentiary and procedural norms, institutionalizing training in gender and trauma-sensitive adjudication, correcting systemic socio-economic gaps, and inculcating victim-centricity in practice at sentencing.

Such reforms would bring India's capital sentencing law in harmony with constitutional ideas of fairness, proportionality, and equality, and re-establish state commitment to justice for sexual assault victims. Thus, in this fashion, law will ensure most dastardly sexual offense cases have legal responses, morally fitting, and constitutionally valid.

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