

Death Penalty in India and the 'Rarest of Rare' Doctrine: A Critical Study of Judicial Trends

¹ Dr. L. P. Singh

¹ Associate Professor, Dept. Law, Jai Hind college, Bhopal

ABSTRACT

The death penalty remains one of the most controversial forms of punishment in the Indian criminal justice system because it involves an irreversible deprivation of life while simultaneously raising questions of deterrence, retribution, proportionality, judicial discretion and constitutional protection. Indian law has not completely abolished capital punishment but has progressively restricted its application through statutory safeguards and judicial interpretation. The most significant development was the formulation of the "rarest of rare" doctrine by the Supreme Court in *Bachan Singh v. State of Punjab* (1980), under which death punishment is intended to be exceptional and life imprisonment the normal rule. Subsequent decisions, particularly *Machhi Singh v. State of Punjab* (1983), *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009), *Sangeet v. State of Haryana* (2013) and *Shankar Kisanrao Khade v. State of Maharashtra* (2013), demonstrate continuing attempts to define and refine the doctrine. This paper critically analyses the evolution of capital sentencing jurisprudence in India up to 2015, focusing on judicial discretion, aggravating and mitigating circumstances, proportionality, reformation and consistency in sentencing. It also examines the recommendations of the Law Commission of India in its 262nd Report (2015). The analysis demonstrates that although the "rarest of rare" doctrine seeks to limit capital punishment, its application has generated concerns about consistency and predictability. The paper concludes by identifying the need for a more structured and individualized sentencing framework capable of protecting constitutional

values while ensuring fairness in the administration of criminal justice.

Keywords: Death penalty, capital punishment, rarest of rare, *Bachan Singh*, judicial discretion, sentencing, Article 21, criminal justice.

I INTRODUCTION

Capital punishment occupies a distinctive position within criminal law because, unlike imprisonment, it is final and irreversible. Debates concerning the death penalty therefore involve not merely the appropriate punishment for serious crimes but fundamental questions concerning the relationship between the State, individual life and constitutional justice.

India retained capital punishment after independence but gradually developed legal safeguards restricting its application. The Code of Criminal Procedure, 1973 marked an important shift in sentencing policy. Under Section 354(3), where an offence is punishable with death or alternatively with imprisonment for life or a term of years, the court must state reasons for the sentence imposed; where death is imposed, it must state "special reasons." This statutory arrangement reflected a preference for life imprisonment and treated death as exceptional.

The constitutional legitimacy of capital punishment and the principles governing its application have subsequently been shaped substantially by the Supreme Court. The landmark decision in *Bachan Singh v. State of Punjab* (1980) upheld the constitutional validity of the death penalty while restricting its imposition to the "rarest of rare cases" in which the alternative of life imprisonment is unquestionably foreclosed.

The difficulty, however, lies in determining what actually constitutes a "rarest of rare" case.

Subsequent judicial decisions have attempted to refine this standard but have also exposed questions concerning inconsistency, subjectivity and the relative weight assigned to the crime and the individual offender.

The present study examines the evolution and judicial application of this doctrine up to 2015.

II OBJECTIVES OF THE STUDY

The study seeks to examine the constitutional and statutory framework governing capital punishment in India; analyse the origin and development of the “rarest of rare” doctrine; evaluate major Supreme Court decisions concerning capital sentencing; examine the treatment of aggravating and mitigating circumstances; identify concerns relating to judicial discretion and consistency; and analyse the recommendations of the Law Commission of India concerning the future of capital punishment.

III RESEARCH METHODOLOGY

The research adopts a doctrinal and analytical legal methodology. Primary sources include the Constitution of India, Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and judgments of the Supreme Court of India.

Particular attention is given to *Jagmohan Singh v. State of Uttar Pradesh* (1973), *Bachan Singh v. State of Punjab* (1980), *Machhi Singh v. State of Punjab* (1983), *Swamy Shraddananda v. State of Karnataka* (2008), *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009), *Sangeet v. State of Haryana* (2013), *Shankar Kisanrao Khade v. State of Maharashtra* (2013) and *Shatrughan Chauhan v. Union of India* (2014).

Secondary materials include Law Commission reports and scholarly literature concerning capital punishment and sentencing.

IV CONSTITUTIONAL AND STATUTORY FRAMEWORK

Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The constitutionality of capital punishment therefore depends upon both legislative

authorization and constitutionally adequate procedural safeguards.

In *Jagmohan Singh v. State of Uttar Pradesh* (1973), the Supreme Court upheld the constitutionality of capital punishment. The position acquired a different statutory context after enactment of the Code of Criminal Procedure, 1973.

Section 354(3) of the CrPC became particularly significant. It requires special reasons when a court chooses death for an offence for which life imprisonment is an alternative. The provision effectively made life imprisonment the ordinary sentencing option and capital punishment exceptional.

Another important procedural safeguard was the separation between conviction and sentencing contemplated by Section 235(2), allowing the accused an opportunity to be heard on sentence. These procedural changes subsequently became important elements of the Supreme Court's reasoning concerning constitutional capital sentencing.

V BACHAN SINGH AND THE BIRTH OF THE “RAREST OF RARE” DOCTRINE

The decisive development occurred in *Bachan Singh v. State of Punjab* (1980). A Constitution Bench considered whether the death penalty for murder violated constitutional protections.

By a majority of four to one, the Court upheld capital punishment. At the same time, it substantially restricted judicial discretion by declaring that death should be imposed only in the “rarest of rare cases” when the alternative option is unquestionably foreclosed.

The decision established several principles. Life imprisonment should constitute the rule and death punishment the exception. Courts must consider circumstances concerning not merely the offence but also the offender. Mitigating factors must receive meaningful consideration, including the accused's age, background, mental or emotional circumstances and prospects of rehabilitation.

The judgment emphasized the importance of human dignity and required exceptional justification before the State could take life as punishment. Later Supreme Court jurisprudence has repeatedly interpreted Bachan Singh as requiring consideration of the probability that an offender can be reformed and rehabilitated.

Thus, the doctrine was designed not simply to classify particularly horrific crimes but to create a presumption against capital punishment unless life imprisonment could no longer provide an adequate sentencing response.

VI MACHHI SINGH AND EXPANSION OF THE DOCTRINE

The next major development came in Machhi Singh v. State of Punjab (1983).

The Supreme Court attempted to provide greater practical guidance for applying Bachan Singh. It discussed circumstances involving the manner of commission of murder, motive, socially abhorrent nature of the crime, magnitude of the offence and personality of the victim.

The judgment also emphasized balancing aggravating and mitigating circumstances before selecting capital punishment. Later Supreme Court decisions have reiterated Machhi Singh's requirement that mitigating factors receive full weight before the sentencing choice is made.

However, the development was not without difficulty. Turning the flexible constitutional standard in Bachan Singh into categories based substantially upon characteristics of the crime created the possibility that attention would shift away from individualized circumstances of the offender.

Indeed, the Supreme Court later observed in Swamy Shraddananda that the approach in Machhi Singh had expanded the scope of capital punishment beyond what had been contemplated in Bachan Singh. This tension between the two judgments became important in later death-penalty jurisprudence.

VII AGGRAVATING AND MITIGATING CIRCUMSTANCES

The “rarest of rare” doctrine requires an individualized sentencing inquiry. Aggravating circumstances can include extreme brutality, calculated or premeditated conduct, multiple victims and circumstances demonstrating exceptionally serious culpability. These factors concern the gravity of the offence.

Mitigating circumstances shift attention toward the offender. Relevant considerations may include age, socioeconomic circumstances, absence of previous criminal conduct, circumstances surrounding the offence, possibility of reform and rehabilitation, and other aspects of the offender's individual background.

This distinction is critical. A capital sentencing decision based exclusively on the brutality of the crime risks converting “rarest of rare” into a test of whether the offence shocks the court. Bachan Singh, however, requires broader consideration of the individual who committed it. The question is ultimately whether, after considering both dimensions, life imprisonment has been demonstrated to be an inadequate alternative.

VIII SWAMY SHRADDANANDA AND THE SPECIAL CATEGORY OF LIFE IMPRISONMENT

An important development occurred in Swamy Shraddananda v. State of Karnataka (2008). The Supreme Court confronted the difficulty created by cases in which ordinary life imprisonment appeared insufficient but death appeared excessively severe. It developed an intermediate sentencing approach under which imprisonment could extend for the remainder of the offender's natural life, or for a specified long period without ordinary remission.

The decision was important because it reduced the binary character of capital sentencing. A court no longer necessarily had to choose between an ordinary life sentence potentially affected by remission and death.

The Court also cautioned against mechanically treating the categories identified in Machhi Singh as automatically justifying death. Subsequent

accounts of the jurisprudence recognize Swamy Shraddananda as an important qualification of the broader application that had followed Machhi Singh.

IX SANTOSH BARIYAR: REASSERTING BACHAN SINGH

Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) represented an important attempt to restore the restrictive character of the Bachan Singh doctrine. The Supreme Court emphasized that death cannot be imposed merely because the crime is exceptionally serious. The possibility of reformation and rehabilitation of the offender must also be evaluated.

The Court treated “rarest of rare” as a narrow exception rather than an independent category of particularly disturbing crimes. Subsequent Supreme Court judgments summarize Bariyar as requiring particularly rigorous scrutiny before death is selected and emphasizing the offender's possibility of reform.

This approach returned the focus to individualized sentencing and reinforced the principle that the State bears a substantial burden before the ultimate punishment can be justified.

X SANGEET AND THE PROBLEM OF INCONSISTENT SENTENCING

In Sangeet v. State of Haryana (2013), the Supreme Court critically examined the manner in which the aggravating-versus-mitigating circumstances approach had developed. The case highlighted a central weakness in Indian capital sentencing: judicial decisions did not always apply Bachan Singh uniformly. Different courts could attach different significance to similar circumstances, producing uncertainty regarding which cases actually qualified as “rarest of rare.”

This is particularly problematic because capital punishment is irreversible. Sentencing consistency is therefore more than an administrative objective; it is closely connected with equality and fairness. The issue illustrates a fundamental paradox. Judicial discretion permits courts to consider individual circumstances, but excessive or

insufficiently structured discretion can produce unequal outcomes.

XI SHANKAR KISANRAO KHADE AND THE SEARCH FOR CONSISTENCY

The Supreme Court again confronted these concerns in Shankar Kisanrao Khade v. State of Maharashtra (2013). The judgment examined inconsistencies in previous death-penalty decisions and emphasized factors such as the possibility of reformation, the offender's age, previous criminal history and whether the offender represented a continuing threat. These considerations reflect the individualized approach contemplated by Bachan Singh.

The decision also contributed to institutional reconsideration of capital punishment by drawing attention to the broader question of whether the death penalty served legitimate penological objectives and how consistently the judiciary applied the “rarest of rare” standard. The Supreme Court's concerns ultimately formed part of the background to the Law Commission's subsequent detailed examination of capital punishment.

XII SHATRUGHAN CHAUHAN AND POST-SENTENCING RIGHTS

Capital punishment jurisprudence is not limited to the sentencing judgment. The treatment of a prisoner after a death sentence has been confirmed also raises constitutional questions. In Shatrughan Chauhan v. Union of India (2014), the Supreme Court considered circumstances surrounding execution and mercy petitions. Among other issues, prolonged and unjustified delay in deciding mercy petitions could provide grounds for commutation of a death sentence.

This jurisprudence reflects the continuing operation of Article 21 even after conviction and sentencing. Later summaries of the Supreme Court's death-penalty jurisprudence recognize Shatrughan Chauhan as establishing that prolonged execution delays can justify commutation. Thus, constitutional protection does not terminate when the judicial sentencing process ends.

XIII CRITICAL ANALYSIS OF JUDICIAL TRENDS

The jurisprudence from Bachan Singh through the decisions of the 2000s and 2010s reveals several significant trends.

First, the Supreme Court consistently treats death as an exceptional rather than routine punishment. Section 354(3) and Bachan Singh together establish a strong preference for life imprisonment. Second, later decisions increasingly emphasized individualized sentencing. The character of the offence remains important, but the offender's personal circumstances and potential for rehabilitation cannot be ignored.

Third, the Court became progressively more conscious of inconsistency in the application of the doctrine. Bariyar, Sangeet and Khade illustrate judicial concern that apparently comparable cases might receive different punishments because the “rarest of rare” test lacks a mathematically precise definition.

Fourth, the development of special-category life imprisonment provided courts with an alternative in cases where conventional life imprisonment appeared inadequate but death was not considered justified.

Finally, the jurisprudence demonstrates increasing emphasis upon procedural fairness, including meaningful sentencing hearings, consideration of mitigating evidence and constitutional scrutiny of post-sentencing treatment.

XIV LAW COMMISSION OF INDIA AND THE DEATH PENALTY

The Law Commission's 262nd Report on the Death Penalty (2015) represented a major institutional reconsideration of capital punishment. The official Law Commission archive identifies Report No. 262 as The Death Penalty, submitted in 2015.

The report examined questions concerning deterrence, arbitrariness, administration of criminal justice and constitutional values. It represented a substantial change from the Commission's earlier position in its 35th Report.

The 262nd Report recommended abolition of the death penalty for ordinary crimes while retaining it for terrorism-related offences and waging war. Later Supreme Court discussion of the report confirms that it recommended abolition for offences other than the specified exceptional categories. The recommendation reflected concerns that the administration of capital punishment presented difficulties that could not necessarily be resolved merely through formulation of additional judicial categories.

XV RESEARCH GAP

A significant research gap existing by 2015 concerned the difference between the theoretical formulation of the “rarest of rare” doctrine and its practical judicial application. Although Bachan Singh established life imprisonment as the norm and death as the exceptional alternative, subsequent decisions demonstrated difficulty in developing a completely predictable standard. The interaction between Bachan Singh's individualized approach and Machhi Singh's offence-oriented categories generated doctrinal tension.

Further research was therefore needed into whether judicial discretion could be structured more consistently without eliminating individualized sentencing. Empirical analysis of death sentences imposed by trial courts and their treatment by appellate courts was also particularly important for evaluating whether the doctrine produced predictable outcomes. The Law Commission itself noted arbitrariness as a major concern in death-penalty adjudication after Bachan Singh.

XVI FINDINGS AND SUGGESTIONS

The analysis shows that the “rarest of rare” doctrine significantly restricted the legal availability of capital punishment but did not eliminate uncertainty in sentencing. A more structured sentencing process would require systematic presentation of mitigating evidence before a death sentence is considered. Courts should expressly examine the offender's age, background, prior criminal record, circumstances leading to the offence and realistic prospects of rehabilitation

rather than relying predominantly upon descriptions of the brutality of the crime.

The prosecution's case for death should also address why the alternative of life imprisonment is inadequate. The Supreme Court's jurisprudence makes clear that capital punishment should not follow automatically from the seriousness of an offence; the alternative punishment must be meaningfully considered. Greater consistency in sentencing reasoning and careful appellate scrutiny are particularly important because an erroneous death sentence cannot ultimately be corrected after execution.

XVII CONCLUSION

The evolution of capital punishment jurisprudence in India up to 2015 reveals a continuing effort to reconcile the State's authority to punish exceptionally grave crimes with constitutional commitments to life, dignity, equality and procedural fairness.

The decisive turning point was *Bachan Singh v. State of Punjab*, which preserved the constitutionality of capital punishment while confining it to the "rarest of rare" cases. *Machhi Singh* attempted to provide practical guidance but contributed to an offence-oriented categorization that later decisions approached cautiously. *Swamy Shraddananda*, *Santosh Bariyar*, *Sangeet* and *Shankar Kisanrao Khade* progressively emphasized individualized sentencing, rehabilitation and careful consideration of alternatives.

The central difficulty lies not simply in identifying extremely serious crimes but in determining when life imprisonment is genuinely inadequate. The irreversible character of death requires exceptional judicial rigor. By 2015, concerns regarding arbitrariness, deterrence and consistency had become significant enough for the Law Commission of India to recommend abolition of

capital punishment for ordinary crimes while retaining specified exceptions.

The judicial history of the "rarest of rare" doctrine therefore demonstrates both the strength and limitations of judge-made safeguards. It substantially narrows the circumstances in which death may be imposed, but its effectiveness ultimately depends upon consistent application, individualized consideration of mitigating circumstances and meaningful examination of whether a less severe punishment can satisfy the purposes of criminal justice.

REFERENCES

- [1] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.
- [2] *Jagmohan Singh v. State of Uttar Pradesh*, (1973) 1 SCC 20.
- [3] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.
- [4] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.
- [5] *Sangeet v. State of Haryana*, (2013) 2 SCC 452.
- [6] *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.
- [7] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.
- [8] *Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka*, (2008) 13 SCC 767.
- [9] Government of India. (1950). *The Constitution of India*.
- [10] Government of India. (1860). *The Indian Penal Code*, 1860.
- [11] Government of India. (1973). *The Code of Criminal Procedure*, 1973.
- [12] Law Commission of India. (1967). 35th Report: Capital Punishment. Government of India.
- [13] Law Commission of India. (2015). 262nd Report: The Death Penalty. Government of India.