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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DOCTRINE OF RAREST OF RARE CASE: A MYTH OR REALITY

AUTHORED BY - JIYA KALRA

“A punishment to be just should have only that degree of severity which is sufficient to deter others.”

ABSTRACT

Capital punishment, often known as the death sentence, is a highly divisive and ethically fraught issue that has been debated for centuries. The procedure entails inflicting the ultimate sentence, namely the execution of a person found guilty of a serious crime, often murder. While capital punishment has been used in numerous civilizations throughout history, its administration and acceptability vary greatly among nations and cultures. Capital penalty supporters say that it serves as a powerful deterrent, discouraging future criminals from committing horrific actions by instilling dread of the ultimate consequences. Opponents of death punishment, on the other hand, argue that it violates the fundamental human right to life and is a type of harsh and barbaric punishment.

Keywords: Capital punishment, debated for centuries, future criminals

INTRODUCTION

Punishment's primary goal has always been to protect society against undesirable and criminal individuals. An individual's punishment serves as a source of security for everyone and aids in creating a sense of terror or dread among people of like minds. Therefore, punishment cannot be seen as an act of rage or revenge against a guilty or unfortunate person who has given in to evil desires but rather as a necessary sacrifice for the sake of public safety. The severity of the penalty in a particular case must be determined by the *brutality of the crime*, the criminal's actions, and the victim's position of helplessness and vulnerability. The Court's response to the public's demand for justice against offenders is the imposition of just punishment. To reflect the public's disgust with the act, the courts should administer punishment appropriate to the offence. When determining whether penalty is appropriate, the Court must take into account not only the rights of the offender but also the rights of the victim of the crime and society at

large.

According to this, punishment must be fair, proportionate to the seriousness of the crime, and it must also have a deterrent effect on society. In the case of *Bachhan v. State of Punjab*, the doctrine of the rarest of the rare was established. In this judgement, the Supreme Court adopted a theory specifically for crimes punishable by death to remove any doubt in courts' minds as to when to impose the death penalty.

NATURE, MEANING AND GENESIS

The death sentence is one of the punishments specified in the Indian Penal Code of 1860, and its application is still possible. Since the I.P.C.'s enactment the death penalty has had the same status. However, the Criminal Procedure Code was also impacted by the winds of change, and it underwent two rounds of revisions that made life in prison the norm and the death penalty the exception.

Changes were required in response to the emergence of the global human rights and humanitarian movements, new criminological theories, the global abolitionist movement, India's international commitments, parliamentary rethinking of the Indian Penal Code reform, and the judiciary's liberal interpretation of the concept of personal liberty under Article 21 of the Indian Constitution. The Indian legislature has implemented numerous protections to prevent injustice since it is knowledgeable about and aware of the death penalty's irrevocable character.

After that, the Supreme Court ruled in *Balwant Singh v. State of Punjab*¹ that it was impossible to list particular justifications. It might have compelled a reexamination of the *Rajendra Prasad v. State of U.P.*² issue. The constitutional interpretation of Articles 14, 19, and 21 of the Constitution changed, making it permissible to dispute the death penalty.

However, the Indian Penal Code's Section 303, which mandated the death penalty as a mandatory punishment for prisoners serving life sentences, had previously been invalidated by the Supreme Court in *Mithu v. State of Punjab* Because hearing the criminal on the issue of

¹ *Balwant Singh v. State*, AIR 1976 SC 230

² *Rajendra Prasad v. State of U.P.*, AIR 1979 SC 916

punishment becomes redundant if the death penalty is mandatory, it is necessary to state the reasons for imposing the death penalty. Bachan Singh recommended choosing the death sentence as a last resort when the alternative punishment of life in prison would be pointless and useless. The death penalty is qualitatively significantly different from other forms of punishment. It stands out for being completely irrevocable.

The court established the following guiding principles or standards for the use of judicial discretion with regard to the death penalty.

1. Only in circumstances of grave responsibility may the severe punishment of death be applied.
2. Along with the circumstances of the crime, the offender's circumstances must be taken into account in choosing the death penalty.
3. The death penalty is an anomaly rather than the rule. Thus, the death penalty must only be used when life in prison seems like an entirely insufficient punishment in light of the relevant circumstances of the offence.
4. Prior to exercising the option of punishment, aggravating and mitigating circumstances must both be given full consideration and a balance must be achieved between the two.

CLASSIFICATION OF RAREST OF RARE CASES

In the Bachan Singh case, the Supreme Court of India only established the "rarest of rare cases" doctrine to direct judges' discretionary power to sentence defendants to life in prison or execution. It didn't go into detail on what the rarest of rare cases are. As a result, there was still no clear answer to the issue of giving judges rules for using their discretion, which led to even more ambiguity and inconsistency in judicial rulings. The Apex Court ultimately provided a classification of "rarest of rare cases" in the Machhi Singh case. However, the classification has its roots in earlier rulings made by the Supreme Court. The Machhi Singh case upholds the fundamental principles of past rulings that made benevolent endeavors to provide some semblance of such categorization. Justice Dua asserted in *Dharma Ram Bhagare v. State of Maharashtra*³ that the issue of punishment was one of judicial discretion. The purpose of the offence, its severity, and how it was committed are all essential factors in establishing the sentence.

³ *Dharma v. State of Maharashtra*, AIR 1973 SC 476

Similarly in Jagmohan Singh v. State of U.P. Justice Palekar speaking for the unanimous court stated that death penalty might be inflicted where the murder was diabolical in conception and cruel in its execution or was of a person of high standing whereby the society was rocked to its very foundation. Death penalty was intended to be given in such worst cases.

1. White collar criminals who murder for personal, financial, or property gain only, such as a drug dealer who purposefully or knowingly adulterates intoxicating substances to cause harm and causes death for the purpose of profit; such a dealer in lethal goods was regarded as a threat to social security and was, therefore, a social justice violator whose eradication was necessary for society to survive.
2. Killing of law enforcement or military personnel while they are on duty.
3. A seasoned murderer, dacoit, or armed robber who was beyond redemption because of how much he enjoyed killing, raping, and murdering.

However, in Machi Singh V. State of Punjab, a deliberate effort was made to categorize the situations and cases, placing them under the heading of "rarest of rare cases," in order to clear up any ambiguity in the application of the Bachan Singh ratio. For the purpose of exercising its judicial discretion in this matter, the court developed a five-point criteria. These include the murder's method of execution, reason for the crime's commission, heinousness and despicability of the crime, its scope, and the characteristics of the murder victim. Thus, in Machhi Singh, five criteria were established in order to place the case in the category of the rarest of rare, as will be discussed below.

- *Method of Murder Commission*
- *Motive for the Murder's Committal*
- *Socially repugnant or anti-social aspect of the crime*
- *Magnitude of Crime.*
- *Characteristics of the Murder Victim*

Life in prison without parole is the norm; death penalty is an exception. In other words, the death penalty must only be used when life in prison seems to be an entirely inadequate punishment in light of the crime's relevant circumstances and only in cases where the option to sentence someone to life in prison cannot be fully exercised in light of the crime's nature, circumstances, and all other pertinent factors. Before exercising the choice, a just balance between the aggravating and mitigating conditions must be reached.

A balance sheet of aggravating and mitigating factors must be created, giving the mitigating

circumstances full weight.

The sentence was mitigated after the high court agreed that the case qualified for inclusion in the rarest of rare categories due to the two-year delay in the legal process.

The Supreme Court has rejected the argument that circumstantial evidence cannot be used to support a death sentence. In the case of Shivaji v. State of Maharashtra, in which a 10-year-old girl was raped and killed, the court emphasised the necessity to apply sanctions appropriate to the offence. The Court claims that there is no logic to the claim that a death sentence should not be granted in the presence of circumstantial evidence.

SCOPE OF DOCTRINE OF RAREST OF RARE CASES

The Supreme Court upheld the death penalty's legitimacy in Jagmohan Singh v. State of U.P. in 1973, concluding that it not only serves as a deterrence but also symbolizes society's rejection of the crime. The court also believed that Indians could not afford to try out capital punishment abolition. In the Bachchan Singh case, constitutionalism was vindicated once more. As a result, the following claims about the case of Bachchan Singh emerged:

- i. Only in severe circumstances of conviction can the harsh measure of the death sentence be used.
- ii. The circumstances of the perpetrator should be taken into consideration before choosing the death punishment. (Growing and dwindling circumstances)
- iii. Life in prison without parole is the norm, while death is the exception. In other words, the death sentence should only be used when life in prison proves to be an entirely inadequate punishment in light of the specifics of the crime.
- iv. A balance between the two needs to be established, so it is necessary to create a balance sheet of all the stimulating and mitigating variables. The mitigating conditions should be given full priority.

“FORMULATION OF RAREST OF RARE DOCTRINE”

In Jagmohan Singh v. State of Uttar Pradesh, the Supreme Court upheld the death penalty's legitimacy. But in 1980, the Court was once more requested to reevaluate it in light of some judicial rulings and legislative amendments⁴. The death sentence was made an uncommon

⁴ Rajendra Prasad (1979)3SCC 646, See Also Dalbir Singh, AIR 1953 SC 364, and See Also Ediga Annamma,

punishment under the 1973-adopted New Cr.P.C.'s section 354(3), which required the judge to provide particular justifications.

Again, in *Rajendra Prasad v. State of U.P.* the Court "expressed the opinion that the special reasons for imposing death penalty must relate to the criminal rather than the crime and death penalty is the last step in a narrow category" in light of the procedural and substantial reasonableness mandated in *Maneka Gandhi*⁵. Where, if left alive, the killer is not likely to be saved and continues to kill others after being released from jail or prison. Furthermore, they said that it could only be granted if the interests of the general public, public order, and the security of the state and society demanded it. When Bachan Singh's appeal was brought before the division bench, they discovered that these views ran counter to the facts of the *Jagmohan* case and requested reconsideration. The fact that India had acceded to the ICCPR, which had entered into force on December 16, 1976, and committed itself to the progressive eradication of the death sentence, was another reason that affected Bachan Singh's decision⁶.

The Court ruled that both the offence and the criminal must be taken into consideration when determining the sentence. The amicus curiae's recommendations were also given by the Court as some mitigating circumstances. The age of the accused, acute mental and emotional instability, and other mitigating circumstances must be taken into consideration when the court sentences someone to death.

Before exercising the option, a fair balance between the aggravating and mitigating circumstances must be struck, as instructed by the court. This must be done by drawing up a balance sheet of the aggravating and mitigating circumstances and giving weight to them. When the community's collective conscience is so startled that it will expect the people in positions of judicial authority to administer the punishment, the Court ruled that there are further aggravating conditions beyond those already mentioned in *Bachan Singh*.

FACTORS CONSIDERED FOR RAREST OF RARE

The following circumstances are aggravating:

1. Offences involving the commission of heinous crimes like murder, rape, armed dacoity,

AIR 1974 SC 799.

⁵ *Maneka Gandhi v. Union of India*, (1978) 2 SCR 621

⁶ S.Muralidhar, "Hang them now, hang them not: India's travails with death penalty", 145, 40 JILI 1998.

kidnapping, etc by the accused with a prior record of felony conviction or offences committed by the person having a significant history of serious assaults and criminal convictions.

2. While the criminal was already committing another significant crime, the infraction was committed.
3. The crime was conducted in a public setting with a weapon that was obviously harmful to more than one person, with the goal to instill fear in the general populace.
4. The murder was done in exchange for money or other financial rewards, such as ransom.
5. Hiring a killer to do the killing.
6. The victim was subjected to cruel treatment and torture while the offence was performed shamefully out of pure desperation.
7. Someone who was lawfully detained committed the crime.
8. The murder or other offence was committed in order to obstruct a person from lawfully performing their duties, such as being detained or arrested in a location where they may be lawfully detained or held captive, For instance, under Section 43 of the Criminal Procedure Code, murder is committed against a person who was acting in the course of his official duties
9. When a crime is particularly severe, such as when someone attempts to kill every member of a family or a whole community.
10. When the victim is a kid, a defenseless lady, a daughter or a niece living with a father, or another person who relies on relationships and social standards, and the crime is committed by such a trusted person.
11. When a murder is performed with absolute depravity and malice as its motivation.
12. When a murder is committed in cold blood without being provoked.

Following factors are Mitigating Factors:

1. The manner, setting, and conditions in which the offence was committed, such as acute mental or emotional instability or extreme provocation in contrast to all of these factors occurring normally.
2. The accused's age is a pertinent consideration, but it is not by itself a deciding factor.
3. The likelihood that the accused will refrain from committing the act again and that they will be changed and given a second opportunity.
4. The accused's condition demonstrates that he was mentally ill, and that illness prevented him from understanding the circumstances surrounding his illegal behaviour.

5. "The conditions that, under normal circumstances, would make the accused's behaviour possible and could lead to mental instability in that particular situation, such as persistent harassment, or that, in the facts and circumstances of the case, brought about human behaviour to the point where the accused felt morally justified in committing the crime".

In addition to the aforementioned factors in considering whether to impose the death penalty or not, the Court must adhere to specific principles while making decisions regarding sentencing policy.

Principle 1: In order to evaluate whether a death sentence should be imposed, the court must use the "rarest of rare" standard.

2. The Court believes that imposing any other punishment, such as life in prison, would be wholly insufficient and would not serve the interests of justice.
 3. The death penalty is an anomaly rather than the rule.
 4. Taking into account the nature, circumstances, and other pertinent factors, the decision to impose a sentence of life imprisonment cannot be carefully exercised.
 5. The way the crime was committed (whether it was planned or not, the level of cruelty and inhumanity, etc.), as well as the circumstances that led to the conduct of such a horrible crime.
- Justice can only be done based on the facts of each case; the precepts that may regulate the use of judicial discretion can only be partially stated by judicial declarations. These are the factors that the Court may take into account while making its decision.

CONCLUSION

Following that, the Court would create a balance sheet of aggravating and mitigating factors. It is necessary to give each factor its proper weight. The Court must strike a balance between the two and determine which party is being treated more fairly. Every criminal sentence that is justifiable is built on the 'just deserts' principle, which stipulates that the penalty must be proportionate to the offence. In other words, the Indian criminal jurisprudence's sentencing guidelines can benefit from the "doctrine of proportionality." In light of the implications for society as a whole, the court will need to consider both what is just and what the accused deserves.

In addition, the court stated the following in *Ramnaresh & Ors. v. State of Chhattisgarh*⁷ when explaining the sentencing pattern and the application of the death penalty: "Despite the transformation of approach and radical changes in sentencing principles across the world, it has not been possible to put to rest the divergent viewpoints on sentencing policy. The courts have been called upon to address the sentencing policy since it is a significant and integral aspect of criminal law. This is done in order to provide it more stability and clarity. The issue of the death penalty has generated a lot of debate and discussion in society and the legal system.

Giving someone a death sentence amounts to taking away their life, which is the most precious right you can have, whether you're looking at it from a constitutional or human rights perspective, The requirement of presenting special justifications for the death sentence is not to be interpreted linguistically, but rather to satisfy the fundamental elements of a justification that supports and renders the death penalty decision unarguable, The offence should have been committed in such a way that it pricked the court's moral conscience to the point that the death penalty was the only and obvious course of action.

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⁷ *Ramnaresh & Ors. v. State of Chhattisgarh* (2012) 4SCC257