INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 6 AND ISSUE 1 OF 2026

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 6 and Issue 1 of 2026 (Access Full Issue on - https://ijlr.iledu.in/volume-6-and-issue-1-of-2026/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 - info@iledu.in / Chairman@iledu.in

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

RE-EVALUATING THE 'RAREST OF THE RARE' DOCTRINE IN THE FACE OF DEBILITATING MORALITY

AUTHOR - RASHI TANNA & MALLIKA MISHRA,

NMIMS, KIRIT P. MEHTA SCHOOL OF LAW, MUMBAI

BEST CITATION - RASHI TANNA & MALLIKA MISHRA, RE-EVALUATING THE 'RAREST OF THE RARE' DOCTRINE IN THE FACE OF DEBILITATING MORALITY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR),* 6 (1) OF 2026, PG. 19-30, APIS – 3920 – 0001 & ISSN - 2583-2344. DOI - https://doi.org/10.65393/ANKQ6002

ABSTRACT

This paper delves into the death penalty as both, a punitive measure and a conceptual framework, examining its historical evolution, philosophical base and its relevance in contemporary society.

The study aims to analyse the 'rarest of rare' doctrine, which has emerged in India through intricate and layered judicial interpretation, with regard to different socio-cultural and psychological factors regarding offenders, and assess its applicability in today's societal context.

The research aims to explore the paradox created by the increase in heinous crimes today, and the original intent of the judiciary in constructing the doctrine and through this, addressing the ground reality that the 'rarest of rare' is not rare anymore

The paper aims to highlight the imbalance created by the limited use of capital punishment to exceptional cases and how it has become increasingly inadequate in addressing contemporary issues with particular critique of its offender-centric approach, prioritising the rights of the convict over those of the victim.

Discourse also includes the historical background of capital punishment and the philosophical meanderings regarding it, its status under international law and the delicate balance between what *is* and what *is needed*, India's legal stance, through examination of various judgements, judicial orders and constitutional provisions and the systemic inefficiency of Indian prisons to positively reform prisoners, in the process often exacerbating criminal tendencies.

The authors advocate for a shift from the offender-centric approach to a victim-centric structure, since punishment serves as a necessary remedy for victims who have already suffered harm.

Scrutinising the challenges and altercations in awarding Capital Punishment, this paper questions whether the continued application of the death penalty under the existing framework is justiciable, or should it be reevaluated as per ground realities and modern jurisprudence.

Keywords: Capital Punishment, Rarest of the rare doctrine, Death Penalty, Legal analysis, Retributive theory.

1. Introduction

Capital Punishment or Death Penalty refers to the age-old penal measure that involves state sponsored killing of the offender. Punishments are based on two major objectives, firstly- that a wrongdoer should suffer for his acts, and secondly- to prevent others from repeating such behaviour, by showing them the consequences of it.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

In a civil society, an unsaid social contract is in place among all its members, that enables the Rule of Law to operate, providing to them a safe and harmonious life. At the same time, it holds them accountable for their acts and serves as a deterrent for wrongdoing.

The responsibility to uphold the ethical and moral standards lies with the people of the community, and when someone deviates from the same, exhibiting criminal conduct, it hampers the security of the entire society. Such behaviour must, hence, be penalised immediately.

Capital Punishment is a way of completely eliminating such evil from society. It is argued that the moment a person deprives another of his right, he ceases to have that right himself,

> *"An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a burn for a burn, a wound for a wound, a bruise for a bruise"*[48] and a life for a life.

1.1 International historical background

The earliest known history of death penalty laws dates back to the 18th century B.C., appearing in the *Code of King Hammurabi* of Babylon. This Code, which was engraved on stone tablets for members of the public to see, prescribed the death penalty for over 20 different offenses such as treason, blasphemy, murder, arson, sexual offenses, etc. This Code included many examples of retaliatory justice similar to the *Book of Exodus*' statement of taking an "eye for an eye" in situations of serious injury.[49]

Capital punishment for murder, treason, arson, and rape was widely employed in ancient Greece under the *laws of Draco* (fl. 7th century BCE), which made every crime punishable by death, though Plato argued that it should be used only for the incorrigible.[50] The ancient legal principle of Lex talionis was widely used in certain societies to ensure that capital punishment was applied in proportion to the offense committed.

In Islamic law, as outlined in the *Qurʾān*, capital punishment was permitted, and continues to prevail even now. While the *Qurʾān* mandates the death penalty for certain ḥadd (fixed) crimes, such as robbery, adultery, and apostasy, murder is not included among them. Instead, murder was regarded as a civil crime governed by the law of *qiṣās* (retaliation), allowing the victim's relatives to choose whether the offender should be executed by the authorities or pay *diyah* (compensation). [51]

It is also pertinent to note that beginning from the ancient times, executions were carried out in public, hence proving to be an effective tool of deterrence. Deterrent theory of punishment primarily advocated by thinkers like *Jeremy Bentham, Thomas Hobbes and John Locke*, aims to prevent future crimes by imparting harsh and severe punishment before the public at large. Bentham's idea of *Hedonism*, stating that 'individuals seek pleasure and avoid pain' and by making the pain i.e. punishment greater than the pleasure i.e. the crime, further such actions can be prevented. Further, the Social Contract theory of Thomas Hobbes and John Locke argues that a robust legal and social framework, with clear consequences for wrongdoings is important for maintaining law and order, and every person, by virtue of being part of the community is bound by it. [52]

1.2 Historical Background in India

The debates of British India's Legislative Assembly see no mention of 'capital punishment' until the issue was raised for the first time in the Assembly in 1931 by Shri Gaya Prasad Singh, a member from Bihar, who sought to introduce a Bill to abolish the punishment of death for the offences under the Indian Penal

[48] Exodus 21:24-27 NLT, The Holy Bible
[49] John Mascolo, *History of Death Penalties*, FINDLAW, (Dec 13, 11:11 p.m.) https://www.findlaw.com/criminal/criminal-procedure/history-of-death-penalty-laws.html
[50] Roger Hood, *Capital Punishment*, BRITANICA, (Dec. 13, 11:20 p.m.) https://www.britannica.com/topic/capital-punishment
[51] *Id.*
[52] Mrinal Mukul, *Deterrent Theory of Punishment,* IPLEADERS BLOG, (Dec 13, 11:29 p.m.) *https://blog.ipleaders.in/deterrent-theory-of-punishment/*

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Code. However, the motion was negatived after the then Home Minister replied to the motion.

The Government's policy on capital punishment in British India prior to Independence was clearly stated twice in 1946 by the then Home Minister, Sir John Thorne, in the debates of the Legislative Assembly. "The Government does not think it wise to abolish capital punishment for any type of crime for which that punishment is now provided"[53]

Post Colonial India has in various judgements, stood by the constitutionality of the capital punishment, although reserving it for the 'Rarest of Rare' cases.

At the time of independence, India had retained several laws that were put in place by the British colonial government, including the Code of Criminal Procedure, and the Indian Penal Code, 1860 which had been framed to suit the interests of the British Government and included penal and procedural provisions accordingly.

Section 367(5) of the CrPC 1898 at the time, required the courts to record in writing, reasons for not granting a death sentence, if such was the nature of the offence of the convict, that death as a punishment was prescribed.

Additionally, when in 1973 the CrPC was amended and reenacted, several changes were made, including that, to Section 354(3) which made life imprisonment the default punishment and death penalty the exception, requiring judges to provide 'special reasons' justifying the imposition of the death sentence.

The stance shifted in 1955, when the Parliament repealed Section 367(5), CrPC 1898, significantly altering the position of the death sentence. The death penalty was no longer the norm, and courts did not need special reasons for why they were not imposing the death penalty in cases where it was a prescribed punishment.

In subsequent cases, the nature of Capital Punishment itself was challenged and the layered judicial understanding with regard to fundamental human rights, public morality, social contract and death penalty was developed. The judgement of *Bachan Singh v. State of Punjab, (1980)*[54] stands as a pivotal cornerstone embodying the stance of the courts, affirming the constitutionality of the death penalty and also introduced significant constraints on its application through the "*rarest of rare*" doctrine.

2. Literature Review

The current debate surrounding Death Penalty is dominated by discourses on human rights, constitutional safeguards, and the protection of the accused. Much of the existing scholarship emphasizes the inherent dignity of human life, due process guarantees, and the potential for wrongful conviction, thereby situating the death penalty primarily as a violation of fundamental rights. While this discourse is highly important, the other side of this complex problem, that is the nature and gravity of crimes that give rise to demands for capital punishment, remains underexplored. The argument for death penalty, as discussed in this paper, is to explore and acknowledge the perspective that certain crimes are so extreme in brutality, scale, or impact on society that they evoke a legitimate call for the severest form of retribution.

The death penalty continues to generate scholarly debate across deterrence, constitutional validity, judicial practice, and international human rights. Deterrence has historically been its strongest justification, yet empirical support remains weak. A paper, in 1996, found criminologists overwhelmingly sceptical of deterrence claims, [55] while another in 2023 shows that contemporary U.S. debates increasingly revolve around arbitrariness, cost, innocence, and race rather than deterrence.[56] Several papers, similarly argue that rising crime in India undermines the assumption that

[53] Subhash C. Gupta, *Capital Punishment in India,* 1, (2001)

[54] Bachan Singh vs. State of Punjab (1982) 3SCC24

[55] Michael L. Radelet et al., Deterrence and the Death Penalty: *The Views of the Experts*, 87, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY (1996)

[56] Talia Roitberg Harmon et al., *A Reflection on Contemporary Issues Regarding the Death Penalty*, 6, JCJL, (2023)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

severity reduces offending. [57] [58] By contrast, a paper in 2005 controversially contend that if executions demonstrably saved lives, states might be morally required to retain them, a perspective that underscores the philosophical divide. [59]

In India, constitutional challenges have been repeatedly dismissed, with the Supreme Court upholding capital punishment under Article 21 so long as it is restricted to the "rarest of rare" cases. Yet application of this doctrine has been criticised as vague and arbitrary. A paper describes "legislative expansion and judicial confusion": Parliament has extended death to non-homicidal crimes such as sexual offences, even as courts impose procedural safeguards. [60] Trial courts continue to award numerous death sentences, but higher courts commute most of them.[61] The "collective conscience" rationale broadens the doctrine's scope, [62] while systemic issues such as overcrowded prisons weaken the case for life imprisonment.[63] Furthermore, prolonged delays and inconsistent administration erode deterrence and legitimacy.[64] Explicitly pro-retention scholarship is limited, with a paper in 2019 emphasising public order and judicial safeguards as justifications.[65]

Comparative and International Perspectives

A paper examining Vietnam, situates capital punishment within the human rights framework, noting that international pressure has led to a narrowing of its scope. Yet Vietnam, like many Asian states, continues to retain the punishment, justified as a means of deterrence against serious crimes.[66] A contrast is seen in the experiences of Singapore and the Philippines: while Singapore maintains the death penalty as a marker of state authority and deterrence, the Philippines has oscillated between abolition and reinstatement depending on political and social pressures.[67]

A comparative analysis of India, the United States, and the United Kingdom, shows how methods of execution and constitutional challenges have evolved differently across jurisdictions. In the U.K., abolition reflected shifting societal norms, while in the U.S., constitutional debates around "cruel and unusual punishment" continue. India remains an outlier, constitutionally upholding the death penalty despite international trends towards abolition.[68]

At the global level, a paper in 2023, traces abolitionist momentum to the post–World War II human rights movement. Instruments like the ICCPR and UN Safeguards have progressively restricted executions to the "most serious crimes" and prohibited their use against juveniles, pregnant women, and people with mental disabilities. Nevertheless, it observes that sovereignty claims in Asia and the Middle East remain powerful, with governments resisting abolition in the name of deterrence and public order.[69]

3. Hypothesis

The legal principles established through judicial precedents for the imposition of the death penalty are inconsistent with the socio-legal realities of contemporary India, necessitating a revaluation of their applicability.

[57] Sushil Kumar Singh et al. *A Study of Capital Punishment in India,* JOUR, (2022)

[58] Kadian, *Capital Punishment and Its Relevancy in Modern Indian Society,* IJFMR (2020)

[59] Cass R. Sunstein et al., *Is Capital Punishment Morally Required? The Relevance of Life-Life Tradeoffs,* CHICAGO UNBOUND, 2005

[60] Anup Surendranath et al., *Legislative Expansion and Judicial Confusion: Uncertain Trajectories of the Death Penalty in India*, 11 (3), International Journal for Crime, Justice and Social Democracy (2021)

[61] R. Venkata Rao et al., *Death sentence in India: is it rare yet arbitrary?* SSRN, (2022)

[62] Akanksha Madaan, *Capital Punishment in Rarest of Rare Case: Is it Just and Fair*

[63] *comprehensive study,* MANUPATRA (2014)

[64] Tejaswa Mohanta, *Capital Punishment – When and Why Is It Justified?* SSRN (2021)

[65] Apurva Prabhakar, *Why Must Death Penalty Continue to Exist*, 2, International Journal of Humanities and Social Science Invention (2019)

[66] Pham Thanh Nga, *Death Penalty Under A View Of Human Right Law: A Case Study Of Vietnam,* MJIL

[67] Tran Dang Ngoc Son et al., *Death Penalty: Maintenance or removal? Access from Singapore and Philippines Experience,* MJIL

[68] Nikhil Raghav, *Comparative Analysis of The Death Penalty: The Historical Perspective and The Methods of Execution,* 6, International Journal of Law Management & Humanities (2023)

[69] Carolyn Hoyle, *Efforts towards abolition of the death penalty: Challenges and prospects*, University of Oxford DPRU (2023)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

4. Discussion

4.1 International stance on capital punishment:

The International Amnesty has recorded 1153+ executions worldwide solely in the year of 2023. "*A total of 1,153 executions took place in 2023, which does not include the thousands believed to have been carried out in China, marking an increase of more than 30% from 2022. It was the highest figure recorded by Amnesty International since 2015, when 1,634 people were known to have been executed.*"[70] The huge spike in number of executions is believed to be due to a soar in the number of executions given in Iran. ""*The huge spike in recorded executions was primarily down to Iran. The Iranian authorities showed complete disregard for human life and ramped up executions for drug-related offences, further highlighting the discriminatory impact of the death penalty on Iran's most marginalized and impoverished communities*," said Agnès Callamard, Amnesty International's Secretary General." [71] Reports systematic unfair trials in 2023, citing arbitrary detentions, denial of legal counsel, use of torture-induced confessions, and summary trials leading to imprisonment, flogging, and death sentences. The highest execution rates were in China, Iran, Saudi Arabia, Somalia, and the USA. [72]

As of nomenclature in 2024, 114 countries have completely abolished death penalty as of now, 9 countries have reserved it only for heinous crimes, 23 countries are abolitionist in practice, i.e. haven't awarded a death sentence in at least 10 years and 56 countries have retained death penalties. This marks the highest number of countries that have ever abolished the death penalty in law.[73] Methods used for executing people worldwide include Beheading, Hanging, Lethal injection and Shooting.[74]

Article 6 of ICCPR (International Covenant on Civil and Political Rights) states:

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."[75]

"Article 6 demands a fair trial before the imposition of the death penalty under two

---

[70] *Death Penalty and Executions in 2023,* AMNESTY INTERNATIONAL, (Jul 11, 5:34 p.m.) https://www.amnesty.org.uk/resources/death-penalty-report-2023

[71] *Id.*

[72] *Death Penalty,* AMNESTY INTERNATIONAL (Dec 13, 11:34 p.m.) https://www.amnesty.org/en/what-we-do/death-penalty/

[73] *Facts and Figures,* WORLD COALITION AGAINST THE DEATH PENALTY, (Dec 11, 11:38 p.m.) https://worldcoalition.org/wp-content/uploads/2022/06/FactsFigures2023_EN-v2.pdf

[74] *Supra note 10*

[75] International Covenant on Civil and Political Rights, art. 6, Dec 16, 1996, U.S.T. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

heads: the protection against being 'arbitrarily deprived' of one's life; and the requirement that the death penalty not be imposed when the Covenant is otherwise breached. This has been interpreted by the Human Rights Committee (the body responsible for monitoring States Parties compliance with the ICCPR), to mean that in all capital trials a fair trial that observes all the provisions of the ICCPR must be held, without which the death penalty may not be imposed." [76]

In furtherance of this, the European Court of Human Rights found the following in the case of *Ocalan vs. Turkey*:

"In the Court's view, to impose a death sentence on a person after an unfair trial is to subject that person wrongfully to the fear that he will be executed… Such anguish cannot be dissociated from the unfairness of the proceedings underlying the sentence which, given that human life is at stake, becomes unlawful under the Convention. Having regard to the rejection by the Contracting Parties of capital punishment, which is no longer seen as having any legitimate place in a democratic society, the imposition of a capital sentence in such circumstances must be considered, in itself, to amount to a form of inhuman treatment."[77] This judgement highlights that the circumstance in which capital punishment may not always be just and fair. The biasness may be due to dysfunctional practises adopted by and imbibed in the law itself, or through unethical and illegal practises adopted during the course of the trial by parties to the trial, in order to get a favourable outcome.

Either of these situations end up jeopardising the merits of the case itself and lead to unjust trial. In this case, Turkish authorities had already overridden several procedural provisions before the commencement of the trial. Furthermore, after the trial, Tuncan was convicted and punished with death. Later, however a change in the Turkish constitution made awarding death penalty during peacetimes (in times when there is no war) unconstitutional. This led to commutation of his sentence from death to life imprisonment. The European Court of Human Rights held that in this case, the applicant was put in the apprehension that he will be punished with death. It was only at a later point in time that this punishment was commuted. This was also criticised by the European Court as putting someone in the apprehension of being given capital punishment was deemed to be inhuman.

The question then becomes that in spite of the existence of such a convention along with plenty supporting case laws, why it is widely followed or why does it not hold as much weight as other international conventions. The answer to this is simple, the interpretation of many phrases of this article are contested by several countries. For instance, the phrase 'most serious crimes' was interpreted by 'Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty,' published by the Economic and the Social council. It stipulated that the most serious crimes should not go beyond intentional crimes with lethal or other extremely grave consequences.[78] A similar principle was upheld by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, which stated that, "the death penalty should be eliminated for crimes such as economic crimes and drug-related offences. The Special Rapporteur has also stated that the restrictions set out in Safeguard 1 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty exclude the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature - including acts of treason, espionage and other vaguely defined acts

[76] Louise Arbour, *In the Matter of Sentencing of Taha Yassin Ramadan,* Application for Leave to Intervene as Amicus Curiae and Application in Intervention of Amicus Curiae of United Nations High Commissioner for Human Rights
[77] Ocalan v Turkey European Court of Human Rights (First Section) (ECHR) is Application No. 46221/99, Para169

[78] Safeguards guaranteeing protection of the rights of those facing the death penalty, May 25, 1984, U.S.T. https://www.ohchr.org/en/instruments-mechanisms/instruments/safeguards-guaranteeing-protection-rights-those-facing-death

usually described as crimes against the State or disloyalty and that "*Similarly, this principle would exclude actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation.*"[79]

However, these interpretations are widely contested by several countries. This contention is mainly because different countries believe different crimes to be 'most serious.' While countries like Singapore believe drug related offences are one of the most serious crimes, [80] other countries such as Brazil, may differ.[81] This disagreement or misalignment of views of countries causes this article to not be universally accepted.

4.2 Indian Stance on Death Penalty

India is one of the 78 retentionist countries which have retained death penalty on the ground that it will be awarded only in the 'rarest of rare cases' and for 'special reasons.' [82] According to the Project 39A data, carried out by the National Law University, 354 executions were carried out in Uttar Pradesh since Independence, followed by 90 in Haryana, 73 in Madhya Pradesh, 57 in Maharashtra, 36 in Karnataka, 30 in West Bengal, 27 in Andhra Pradesh, 24 in Delhi, and 10 in Punjab, contributing to at least 720 executions nationwide since independence.[83] Currently, India follows a principle developed by Indian courts is to award someone with the death penalty when the crime falls under the category of the 'rarest of rare cases.' This principle, though not defined, has garnered a nuanced meaning through judicial precedents.

The contentions regarding the constitutional validity of capital punishment started in 1973 with the case of *Jagmohan Singh vs. The State of Uttar Pradesh (1973)*[84] where the constitutional validity of capital punishment was upheld.

The legislature, in the new criminal code, has increased the number of crimes which are punishable with death from 11 to 15.[85] Interestingly, however, a contrasting opinion of the Indian Judiciary is observed regarding capital punishment. "The apex court has been observed to acquit nearly 55% of the death row prisoners (six prisoners) in the cases it heard in 2023."[86] This suggests a potential shift in Indian jurisprudence toward the gradual mitigation of capital punishment as a whole. Several judicial decisions support this perspective, reflecting an offender-centric approach by the Supreme Court in cases concerning the death penalty. To evaluate the validity and extent of this claim, a review of recent Supreme Court judgments is undertaken.

1. In the case of *Accused X vs. The State of Maharashtra (2019)*[87], the court analysed whether post-conviction mental illness could be a mitigating factor in case of death-row convicts. The court held that post-conviction mental-illness is a mitigating factor in the analysis of 'rarest of rare' doctrine. The court established a guideline for evaluating what kind of mental illness' can be considered a mitigating factor.

It held the following:

[79] *International Standards on Death Penalty,* AMNESTY INTERNATIONAL, 10, (2006) https://www.amnesty.org/en/wp-content/uploads/2021/07/act500012006en.pdf

[80] Wong Shiyang ET. AL., *More S'pore residents agree with death penalty for serious crimes like drug trafficking,* THESTRAITSTIMES, (Dec 14, 10:12 a.m.) www.straitstimes.com/singapore/more-s-pore-residents-agree-with-using-death-penalty-for-serious-crimes-like-drug-trafficking-mha

[81] *Brazil: Reject Bill That Entrenches Failed Drug Policy,* HUMAN RIGHTS WATCH, (Dec. 14, 10:18 a.m.)

[82] Tatheer Fatina, *Constitutionality of Death Penalty,* INDIAN NATIONAL BAR ASSOCIATION, (Dec 14, 10:26 a.m.) https://www.indianbarassociation.org/constitutionality-of-death-penalty/

[83] *At least 720 executions in India since 1947,* THE ECONOMIC TIMES, (Dec 14, 10:43 a.m.) https://economictimes.indiatimes.com/news/politics-and-nation/at-least-720-executions-in-india-since-1947/articleshow/74728787.cms?from=mdr

[84] *The constitutionality of the Death Penalty,* ADVOCATE KHOJ, (Dec 14, 10:58 a.m.) https://www.advocatekhoj.com/library/lawreports/deathpenalty/17.php?Title=Death%20Penalty&STitle=From%20Jagmohan%20to%20Bachan%20Singh#:~:text=1%20The%20first%20challenge%20to,of%20the%20Constitution%20of%20India.

[85] Ben Joseph, *India's new criminal code increases death penalty crimes,* UCANEWS, (Dec 14, 11:05 a.m.) https://www.ucanews.com/news/indias-new-criminal-code-increases-death-penalty-crimes/105586

[86] Lakshmi Menon ET. AL., *India's burgeoning death penalty crisis,* THE HINDU, (Dec 14, 11:09 a.m.) https://www.thehindu.com/opinion/op-ed/indias-burgeoning-death-penalty-crisis/article67904333.ece

[87] Accused X vs. The State of Maharashtra, 6 S.C.R. 38, 59.

a. Post-conviction severe mental illness should be considered as a mitigating factor by appellate courts in appropriate death penalty cases.

b. Assessment of such disability must be conducted by a multi-disciplinary team, including experts in the accused's specific mental illness.

c. The accused bears the burden of proving severe mental illness through clear evidence, demonstrating active, residual, or prodromal symptoms.

d. The State may present evidence to rebut the accused's claim.

e. Courts may establish a panel to provide an expert report in relevant cases.

f. The 'test of severity' requires that the offender's mental illness be so severe that they cannot comprehend the nature or purpose of the punishment.

The court expressed dissatisfaction with the relevant doctor's testimony regarding the mental state of the accused, highlighting its lack of a complete and conclusive assessment regarding the accused's mental illness and the extent of its influence on his actions. It underscored the heinous nature of the crime, deeming the accused permanently unfit for reintegration into society due to his evident tendency to reoffend. However, despite the gravity of these circumstances, the court ultimately commuted the sentence from death to life imprisonment.

1. In the case of *Shatrughan Chauhan vs. The Union of India (2014),* [88] the court commuted the death sentence of the accused for the sole reason of delay caused while evaluation and subsequent rejection of the mercy petition filed before the President of India. It is pertinent to note that petitioners were indicted under Section 302 of the Indian Penal Code for the murder of five relatives of the main candidate's sibling for which they were granted capital punishment. The apex court analysed the situation of a substantial delay on the part of the President to reject the mercy petition and held that such substantial delay alone can be a mitigating factor to commute the punishment from death to life imprisonment irrespective of the graveness and the situation of the crime committed.

2. In furtherance of this, the Supreme Court on December 9, 2024 issued guidelines to dedicate a particular cell to process mercy petitions in the case of *State of Maharashtra and Ors. v. Pradeep Yashwant Kokade and Anr. (2024).* [89] The court laid down the following guidelines which is issued to all States and Union Territories;

(i) A dedicated cell shall be established by the Home or Prison Department of each State or Union Territory to handle mercy petitions promptly and efficiently. This cell will be managed by an officer-in-charge responsible for overseeing operations and communications. A legal representative from the Law and Judiciary or Justice Department will be attached to the cell to ensure proper legal guidance. All prisons shall be informed of the officer-in-charge's designation, address, and email to facilitate smooth communication.

(ii) When a mercy petition is received, the prison superintendent must immediately forward it to the dedicated cell while requesting details from the concerned Police Station or investigation agency. These details include the convict's criminal background, family information, economic condition, and incarceration history. The Police Station is obligated to provide this information promptly. Subsequently, the jail authorities shall compile all required documents, including the FIR, chargesheets, trial evidence, judicial orders, and conduct reports, ensuring translations where necessary, and submit them to the dedicated cell and the Home Department.

(iii) The dedicated cell shall promptly forward mercy petitions to the Secretariats of

[88] Shatrughan Chauhan vs. Union of India, 2014 AIR SCW 793

[89] State of Maharashtra vs. Pradeep Yashwant Kokade MANU/SC/1305/2024

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

the Governor or President for further action. To ensure a seamless process, communication related to mercy petitions should primarily occur via email unless confidentiality is required.

(iv) To standardize and streamline the handling of mercy petitions, the State Government must issue comprehensive guidelines through office orders or executive directions.

Furthermore, the abovementioned study suggests that out of 13 judgments passed on post-mercy petitions, 6 judgments allowed commutation of the penalty, 6 judgments dismissed it and 1 judgment remitted it to the High Court. This led to commutation of the death sentence of 22 out of 28 total prisoners, upholding of death sentence of 5 out of 28 prisoners and reemission of the decision to the High Court for 2 prisoners. [90]

These judgements and statistics further prove that the Supreme Court may be gradually moving towards mitigation of capital punishment. However, a common notion we tend to notice in all the above-mentioned judgment is a hyper-focus on the convicts' rights. This view and how it may pose a threat to the victims' rights are discussed in detail further in this paper.

4.3 Examining the 'Rarest of Rare' principle

The 'Rarest of Rare' doctrine refers to the framework judicially developed by Indian Courts that lays down the essentials of a crime that warrant a Death Sentence. Through analysing cases and judgements, a pattern can be noticed, and comprehensive list of requirements produced. These were instances where grave and heinous crimes were committed by convicts in extraordinarily violent and cruel manner.

This paper argues that the nature and frequency of such crimes in contemporary society are so recurrent that labelling them as 'Rarest of Rare' is inadequate. Therefore, there is a need to develop a new framework that better addresses these issues.

To evaluate the situation, a review of certain landmark judgments is undertaken:

1. In the case of *Bachan Singh v. State of Punjab (1980)*[91], while upholding the constitutionality of the death penalty for murder, interpreted 'special reasons' to mean "exceptional reasons, based on exceptionally grave circumstances relating to both the crime and the criminal".

The moral and ethical meanderings discussed in this case, lead to the sentence individualising the circumstances of the offence as well as the offender and laying the groundwork for 'rarest of rare' as instances where the offender's culpability assumes proportions of extreme depravity, and the alternative of life imprisonment is unquestionably foreclosed.

2. The case of *Machi Singh v. State of Punjab (1983)*[92] further explored the doctrine of 'rarest of rare' in the criminal justice system, and especially in murder cases.

Here, 5 criterions were laid down for classifying a case as the 'Rarest of Rare', which are as follows-

a) Manner of Commission of Murder: When the murder is committed in an extremely brutal, grotesque, diabolical. revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

b) Motive for Commission of murder: When the murder is committed for a motive which evince total depravity and meanness.

c) Anti-Social or Socially abhorrent nature of the crime

d) Magnitude of the crime when the crime is enormous in proportion

e) Personality of victim of murder

Since the establishment of categorisation of crimes as 'rarest of rare' according to the

[90] Zeba Sikora ET. AL., Death Penalty and the Indian Supreme Court, PROJECT 39A, 110, (2022) https://www.project39a.com/death-penalty-and-the-indian-supreme-court

[91] *Supra note 7*

[92] Machhi Singh v. State of Punjab [(1983) 3 SCC 470]

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

guidelines laid down in this case, much emphasis has been laid on whether a crime invokes the collective conscience of society.

Backed by the principles of Rule of Law in society, this judgement has created society-centric penological goals, which have been frequently applied in the Supreme Court's capital sentencing jurisprudence.

"Killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty." [93]

In 2008, a 3-judge bench explicitly addressed *Machhi Singh's* [94] departure from *Bachan Singh* [95]; stating that, by naming five categories effectively having translated a 'relative category' of 'rarest of rare' cases into an absolute category of cases where the death penalty would be the only appropriate punishment, consequently expanding the scope of the death penalty.

3. The case of *Mukesh & Anr. v State for NCT of Delhi & Ors (2012)*[96] famously known as the *Nirbhaya Rape Incident* is another case that shook public conscience and invoked fear and outrage over the extent of inhumane and abhorrent deviance of certain criminal minds, and was held to be of egregious nature.

The Supreme Court awarded death penalty to four of the accused among six. One of them being a juvenile was convicted by the Juvenile Justice Board and sent to the correctional home. The other one committed suicide before the judgment was delivered. Post this case, penal measures for committing rape were made much more stringent and cases where rape led to the death of the victim or entered into a vegetative state the punishment of life imprisonment extending to death was prescribed.

4.4 Why the Indian court's approach is not apt in the contemporary world

The authors believe that the view taken by Indian Judiciary and judicial precedents set thereby are not completely apt in the contemporary world. This assertion is supported by a three-pronged rationale.

1. The judicial system is predominantly offender centric.
2. Heinous crimes are not necessarily rare any more.
3. Indian Prisons are unsuccessful in reforming prisoners

Detailed discussion of all the aforementioned reasons is explored below.

4.4.1 The judicial system is predominantly offender centric:

An analysis of the cases discussed above shows that courts pass judgements which are overtly offender centric. All of these judgments revolve majorly around one central theme, the supposed violation of the offender's rights. While giving such an importance to the offender's rights, the plight of the victim and their family is often forgotten.

Taking as an illustration, to detail discuss in detail how offender centric the system has become over time, are the facts and the corresponding judgment of *Accused X vs. The State of Maharashtra*. While the judgment, in brief, has been mentioned above, it's true context can only be understood once the facts are elucidated.

Brief facts of the case are as follows: two girls, one studying in first grade (i.e. around the age of 6 years) and the other in fourth grade (i.e. around the age of four years), were led by the

[93] *Id.*
[94] *Id.*
[95] *Supra note 7*
[96] Mukesh & Anr vs State For NCT Of Delhi & Ors on 5 May, 2017 AIR 2017 SC 2161

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

accused to accompany him on pretext of giving them sweets. Later on, the two were raped and murdered by him, disposing the first victim's body in a well situated in a field that belonged to a neighbour and the second victim's body in a "kalkache bet" (place where bamboo trees and shrubs grow together thickly). It is pertinent to note that both of these girls lived in a locality of homeless people (beghar vasti) in Gulumb, Maharashtra, making them even more vulnerable. The governing law for rape of minors below twelve years at the time, i.e. 2019, was Section 376AB of the Indian Penal Code, 1860 stated Person committing an offence of rape of on a woman under twelve years of age is to be punished with Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death. [97] The accused was initially awarded the death penalty; however, the punishment was commuted to life imprisonment. This is an accurate display of the fact that the system is more concerned with the offender's rights than those of the victims. In this forty paged judgment, the entire discussion is solely based on how the awarding of death penalty affects the offender and his rights. There is no consideration whatsoever, of the rights of the victim. The entire conversation is so focused on the offender, that the victim, their rights and the plight of their family is sidelined entirely.

4.4.2 Heinous crimes are not necessarily rare any more

The majorly followed legal principle in India is the principle of 'Rarest of rare' as established first by the case of *Bachan Singh vs. The State of Punjab (1980)*[98]. Apart from establishing other things, the crux of the principle states that only the rarest crimes are to be punished with death. It was originally designed to ensure the death penalty was reserved for the most shocking and exceptional crimes. At the time, this principle served an important purpose, preventing arbitrary or excessive punishments. However, with time, the evolution of the society has led this principle to become redundant.

Consider crimes like rape or gang-rape followed by murder for instance. Section 66 of The Bhartiya Nyaya Sanhita, 2023, prescribes offender to be punished with "rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death." Unfortunately, courts are still bound by the "rarest of rare" principle when deciding whether to impose the death sentence.

This is where the problem lies. Between 2014 and 2022, statistics reveal an average of nearly five cases of rape or gang-rape followed by murder reported every week.[99] This frequency is deeply troubling. Crimes that were once rare have become shockingly common. Yet the legal framework insists on rarity as a prerequisite for the harshest punishment. This often results in offenders escaping the death penalty, even for crimes that are undeniably heinous. It is this rigidity that prevents the justice system from delivering the level of accountability that victims and their families deserve. Moreover, the harm caused by such crimes extends far beyond the victims themselves. Entire communities are left shaken, grappling with fear and insecurity. Public trust in the justice system weakens when people see that it struggles to respond adequately to such horrific acts. The "rarest of rare" principle does not consider this larger societal damage. Instead, it focuses narrowly on whether the crime is statistically rare, when in actuality it is the heinousness of the crime that should be taken into consideration.

The principle's original intent—to avoid the excessive use of the death penalty remains

[97] The Indian Penal Code, 1860 § 376AB, No. 45, Acts of Parliament, 1860 https://www.mha.gov.in/sites/default/files/2023-02/CSdivTheCriminalLawAct_27022023.pdf

[98] *Supra note 7*

[99] *Rape and Rape/Gangrape with Murder in India Incidence of Cases,* HUMAN RIGHTS INITIATIVE, (Dec 14, 12:06 p.m.) https://www.humanrightsinitiative.org/download/CHRI-NCRBData-RapeStats-Analysis-Part1-Sep24.pdf

important and relevant. Yet, its strict application in today's context has unintended consequences. The justice system must evolve to focus not on how uncommon a crime is but on its sheer brutality and the harm it causes. A more flexible and realistic interpretation of this principle would ensure that punishments are proportional to the severity of the crime. Such an approach would restore public faith in the justice system and reinforce its role as a deterrent against the gravest offenses.

4.4.3. Inability of Indian Prisons to effectively rehabilitate prisoners

A survey conducted by the Delhi central Jail in 2022 showed that around 32% of the prison population admitted during the year comprised of repeaters/habitual offenders.[100] This means that 32% of newly admitted prisoners were not actually new offenders, but repeat offenders having landed in prison for new crimes.

These prisoners are kept separate from first time offenders from the very first day of their admission, and are not allowed to come in contact with other prisoners initially, professedly to prevent them from corrupting newly convicted prisoners presumably having a scope for reformation.

In a judgement given by Justice V.R Krishna Iyer in the case of *Phul Singh v. State of Haryana (1979)* it was observed that the offender, having committed rape, should be released earlier than warranted by his sentence owing to the odious company and atmosphere of the prison.

"We regard a four-year term of rigorous imprisonment more hardening than habilitative,"[101]

"The incriminating company of lifers and others for long may be counter-productive"[102]

While the reasoning of the quoted judgement is compelling and well-constructed, it does not align with the conclusions drawn from it. A prisoner who has committed a grave offense cannot be permitted to evade accountability for their actions. It is imperative that such individuals face appropriate consequences, not only to uphold justice but also to serve as a deterrent and a precedent for potential offenders in the future.

5. Conclusion

To conclude, this paper highlights the need for a shift in the current system of criminal justice from a rehabilitative approach to a retributive and deterrent approach for crimes of heinous nature, especially now more than ever, owing to the realities of contemporary society.

The 'Rarest of Rare' Principle has been rendered inefficient and should now be put to rest replaced by a new system which must, Firstly, address the rights and emotional suffering of victims of abominable crimes and not be offender centric in approach and Secondly, restore the paradox created by the increase in heinous crimes today, and the original intent of the judiciary in constructing the doctrine and through this, addressing the ground reality that the 'rarest of rare' is not rare anymore.

Furthermore, there is a need to acknowledge systemic inefficiencies of Indian prisons to rehabilitate offenders and reinstate them as productive members of society as reflected by high and increasing rates of recidivism.

In civil society, Rule of Law must reign supreme and the responsibility to uphold the ethical and moral standards lies with the people of the community, guided by the judiciary. When a person deviates from the norm, engaging criminal conduct, and disturbing the security of the entire society, it is the responsibility of the Judiciary, hence, to reinstate social order.

[100] *Recidivism during the year 2022,* GOVERNMENT OF NCT DELHI, (Dec 14, 11:53 a.m.) https://tiharprisons.delhi.gov.in/tiharprisons/recidivism-during-year-2022
[101] Phul Singh vs. State of Haryana, 1980 AIR 249
[102] *Id.*