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RAREST OF RARE DOCTRINE FOR DEATH PENALTY SENTENCING: A CRITICAL ANALYSIS OF ASYMMETRIC REASONING IN EVIDENTIARY VALUE *VIS-A-VIS* AGGRAVATING AND MITIGATING CIRCUMSTANCES

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ABSTRACT

Whenever we hear of the death penalty, the term "rarest of the rare" comes to our mind, which was formulated by the landmark Bachan Singh judgement in the late 1980s. But with time, as noted by Law Commission of India Reports, and Death Penalty Reports by National Law University, Delhi, there have been several issues involved with the sentencing stage in cases which are qualified for the "rarest of the rare" category. The issue is inconsistency in weighing the pieces of evidence for aggravating and mitigating circumstances, where several inherent factors, biases, etc. decide the question of the life and death of a person. Even Supreme Court has in its various decisions held that it cannot rule out the possibility of errors and inherent deformities of the system which determines the question of the existence of a person. The big question for analysis in this paper is to highlight ifthe application of Rarest of the Rare doctrine follows asymmetric reasoning for its evidentiary value in the light of Aggravating and Mitigating circumstances. This paper focuses on knowingthe technicalities involved in the current regime governing the issue of Capital Punishment,highlighting the inherent inconsistencies in Judicial Determinations governing the issue of the Death Sentence and finding theconsiderations the Judiciary takes into account while calculating the balance of aggravating and mitigating circumstances.The author has analyzed the existing situation through doctrinal methods of research and has collected data from both primary as well as secondary sources. The primary source of research consists of the legislation, case laws and statistics from various authentic sources, such as National Crime Record Bureau, etc. Similarly, the secondary source includes the reports of various committees and commissions, legal commentaries and digests, journal articles, and lex lexicon. The

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conclusion has to be drawn from analyses and interpretation of data collected from the above-stated resources.

I. Introduction

"*I support the death penalty, but I also think there has to be no margin for error*."

-George H. Ryan, former American Politician

The aforesaid words are of immense relevance as they signify the superlative form of care that has to be exercised while severing someone with the greatest gift of God – Life. And the care has to satisfy a higher threshold when the life-taker is no one but the State. The question which emerges at this juncture is how to satisfy the aforesaid lofty benchmarks. The answer would be by uniform abidance of just, fair and reasonable principles which forms the basis of sentencing in cases of Capital Punishment. But if such principles are laid down, is that the end of the problem? The answer is again negative because there is no way out to combat the subjective human biases and inherent prejudices in persons applying those principles, who are Judges.

Although there has been a worldwide trend toward abolishing death punishment, India has not followed suit. The clear aspect of irrevocability associated with this kind of punishment distinguishes it from others. An individual who has been executed for a crime will never be resurrected.[1] As a result, if a mistake occurs during the decision-making process, it cannot be corrected later.[2]

The Supreme Court of India confirmed the legitimacy of the death sentence in *Bachan Singh v. State of Punjab*[3]. The judgement in *Bachan Singh v. State of Punjab*[4] was the Indian Supreme Court's inaugural effort to confine the use of capital punishment to the most severe circumstances, so to that object, the Court established a detailed sentencing framework for prospective death penalty trials. The Court's ruling in *Bachan Singh v. State of Punjab*[5] was based on the death penalty's perceived value, but it also recognised the necessity to restrict its usage and instil uniformity in its sentencing via an established mechanism.[6]

II. Developments in the death penalty jurisprudence in India

The Code of Criminal Procedure, 1898 applied to British India may be directly traced to the judicial and legislative origins of capital punishment in India. Section 367(5) of the Act made capital

1 Hood, Roger, and Carolyn Hoyle, "Abolishing the Death Penalty Worldwide: The Impact of a New Dynamic" 38(1) *Crime and Justice [The University of Chicago Press, University of Chicago]* 1 (2009).
2 Carol S. Steiker and Jordan M. Steiker, "Capital Punishment: A Century of Discontinuous Debate" 100(3) *The J. of Crim. L. and Criminology* 643 (1973).
3 (1980) 2 SCC 684.
4 *Ibid*.
5 *Ibid*.
6 W. J. Roberts, "The Abolition of Capital Punishment" 15(3) *International Journal of Ethics, University of Chicago Press* 263 (1905).

punishment the preferred sentence for murder, and it obliged the sentencing court to present written justifications if it chose life over death. This was interpreted to suggest that the legislature believed capital punishment to be the rule rather than the exception. Following that, in 1955, an update to the 1898 Code was made, which removed Section 367(5) totally and replaced it with a new sub-section dealing with a completely unrelated issue. This trend has been seen as reflecting a movement away from the death penalty as the "typical" or "default" sanction for murder, or, at the very minimum, a dearth of legislative inclination between the two punishments of death and life.[7] The first constitutional challenge against the death sentence, in the case of *Jagmohan Singh v. State of U.P.*[8], was defeated by the Indian Supreme Court within this legal structure. The Court acknowledged that the 1955 Amendment put the decision between life and death to a sentencing judge's discretion, but believed that any improper use of that prerogative could be addressed within the pre-existing appellate and procedural structures. However, due to a substantial legislative shift, this ruling was quickly overturned. A new Criminal Procedure Code was enacted in 1973. It replaced the 1898 Code and now regulates India's criminal proceedings. Section 354(3) of 1973 Code mandated that "special reasons" be documented by a sentencing judge when a court chooses the death penalty over life imprisonment or a period of years in jail if the offence allows for these options. This necessity of "special grounds" for the death penalty was seen to indicate a revised legislative strategy. life imprisonment had become the default punishment for murder, with the capital penalty being an exemption. As a result, the 1973 Code marked a full inversion of the 1898 Code's viewpoint.

The Supreme Court first explored the extent of the word "special reasons" under Section 354(3) in *Rajendra Prasad v. State Of Uttar Pradesh*[9]. In deciding if to apply the death penalty, the Court concluded that "special reasons" implied that courts must examine only the criminal's situation, not the crime itself (i.e., only mitigating factors, not exacerbating ones). This was overturned when a fresh challenge to the death penalty's legitimacy was filed in *Bachan Singh v. State of Punjab*[10]. While maintaining the death penalty, the Court noted that the aggravating and mitigating factors must be balanced for each other, laying the framework for evaluating both aggravating and alleviating factors. More crucially, the Court recognised that the need of "special reasons" meant that it was the parliamentary policy to restrict the use of the capital punishment to "exceptionally grave" or "extreme" circumstances. The Court made the inaugural major endeavour in Indian capital sentencing jurisprudence to draw out a complete sentencing framework for prospective courts in order to assist sentencing judges in dispensing the death penalty in this manner.

Nonetheless, before getting into the details of the framework, it's worth noting that the third and last objection to the legitimacy of the death penalty was undertaken in the matter of *Smt. Shashi Nayar v.*

7 Project 39A, National Law University, Delhi, "Death Penalty India Report Summary"22 (2016).
8 1973 SCR (2) 541
9 (1979) 3 SCC 646.
10 (1980) 2 SCC 684.

Union of India and Ors.[11], in which the petitioner sought that *Bachan Singh v. State of Punjab*[12] sentence be reconsidered. The Highest Court, on the other hand, was unconvinced. It simply stated that "the death penalty has a deterrent effect and it does serve a social purpose", notwithstanding the nation's deteriorating law and order condition. With the last constitutional challenge to the capital punishment defeated, the sentencing system established in *Bachan Singh v. State of Punjab*[13] came to an end.

III. The Disbalance of Aggravating and Mitigating Circumstances

Since what all can constitute Aggravating and Mitigating Circumstances would be the main point of contention of the instant research work, the same needs to be looked into its raw form, as laid down firstly in *Bachan Singh v. State of Punjab*[14]:

Some of the Aggravating Circumstances as laid down in the case, were briefly as follows: previous planning and severe brutality of the act of murder coupled with extraordinary barbarism, causing death of member of armed forces/police forces/public servant while on duty, murder of person who was lawfully discharging his duty or gave assistance to Magistrate, etc. [15]

On the other hand, some of the Mitigating Circumstances laid down were: offender's extreme emotional and mental turbulence while committing offence, youth or old age of accused, chances of abstaining from crime in future, accused acted under coercion, moral justification of accused, etc.[16]

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11 (1992) 1 SCC 96.

12 (1980) 2 SCC 684.

13 *Ibid*.

14 *Ibid*.

15 *Id.* at 202.
"(a) if the murder has been committed after previous planning and involves extreme brutality"
"(b) if the murder involves exceptional depravity"
"(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed while such member or public servant was on duty OR in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant"
"(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code "

16 *Id.* at 206
"(a) That the offence was committed under the influence of extreme mental or emotional disturbance"
"(b) The age of the accused. If the accused is young or old, he shall not be sentenced to death" "(c) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society"
"(d) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions c and d above"
"(e) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence"
"(f) That the accused acted under the duress or domination of another person"
"(g) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

The "rarest of rare" theory established in *Bachan Singh v. State of Punjab*[17]case compels judges to weigh aggravating and mitigating factors when deciding if a death penalty is justified. *Bachan Singh v. State of Punjab*[18] case compels courts to evaluate not only the heinousness of the act,[19] but also the prospect of prisoner rehabilitation and to guarantee that the other option (life sentence) is categorically excluded.[20] For their Death Penalty India Report, Project 39A of National Law University Delhi conducted primary inmate interviews, which demonstrated that the method in which sentencing proceedings are handled, appears to be a simple ritual after the guilt has been reached. The issues interviewers encountered includes advocates being absent for sentencing hearings, such hearings being carried out on the very day of conviction (without ample duration and opportunity given to put before court every relevant sentencing content), defence lawyers portraying very cursory punishment considerations restricted to the inmate's age, poverty, and amount of dependents, and judges illustrating a disinterest in sentencing reasonings.[21]

Furthermore, the research points out that the rarest of rare philosophy proposed by *Bachan Singh v. State of Punjab*[22]case has completely failed to be applied. The topic of reformation remained unaddressed in the judgements for 34 of the 50 offenders in the research whose death sentences had been affirmed by the Apex Court (68%).[23] The Supreme Court ruled out whatever hope of reformation forthe remaining offenders based solely on the character of the offence in issue. Furthermore, the death penalties of 62 percent of these inmates were upheld by several High Courts sans regarding for the potential of rehabilitation. The research points out that the trial courts' effectiveness on this point is deteriorating. Only 28 of these 50 offenders' trial court judgements were available to the interviewers.[24] In this study, judges have a tendency to rule out the potential of reformation based on pretty strange premises without offering any genuine justification as to why these factors are significant and comprehensive for ruling out the prospect of reformation. Persons fleeing during a police investigation, committing future crimes before being captured, and showing no evident signs of guilt during the trial were among the most often cited causes.[25]

Bachan Singh v. State of Punjab[26]case sentencing framework is unquestionably sound, and it is likely the finest that can be asked for in a retentionist setting. Nevertheless, there's been a total collapse in the execution of *Bachan Singh v. State of Punjab*[27] 'rarest of rare' philosophy. This breakdown isn't

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17 (1980) 2 SCC 684.
18 *Ibid*.
19 *Id.* at 202.
20 *Id.* at 209.
21 Project 39A, National Law University, Delhi, "Death Penalty India Report Summary"34 (2016).
22 (1980) 2 SCC 684.
23 *Supra* Note 21 at pg. 35.
24 *Ibid.*
25 *Ibid.*
26 (1980) 2 SCC 684.
27 *Ibid*.

just about uneven administration of the doctrine in considerations of results; it goes right to the heart of how sentencing proceedings are held. The *Bachan Singh v. State of Punjab*[28]case decision reinforces the idea that taking someone's life with the permission of the law has to be difficult. If the death sentence is to be used, it must be proven that the person whose existence the law intends to end is without redeeming qualities. The considerations evaluated in respect of mitigating circumstances can be divided into two types. The first group of variables explains (rather than 'justifies') certain aspects of a person's life building up to the crime.[29] The second group is concerned with the lives of individuals who portray an identity other than that of an offender. It serves to humanise the offender and show the court that a person's identity must not be limited to the offence he did. It'd be good to search for elements that influence behaviour prior to the offense in the first group. The objective must be to show that a person's general conduct and personality are impacted by a complex web of circumstances that intersect in a variety of manners on which the person has limited influence. It allows the person to be punished to be seen as more than merely a criminal, but as a totality of her life's influences. Only the offence is on show when this full picture is not presented to the sentencing court.[30]

IV. Justice in Death Penalty Cases *vis-à-vis* Judicial Discretion

Another study was conducted by the National Law University of Delhi and Bangladesh Institute of Law and International Affairs, in which 60 former Supreme Court of India Justices were interviewed.[31] In discussions, it was found that the rarest of rare idea failed to organise discretion power in capital sentence instances and consistency in sentencing. Furthermore, eight justices agreed that the doctrine's ambiguity was the most important aspect in allowing unrestricted discretion: "It's totally unfettered discretion. Where to choose?… What should the yardstick be?… The disparity is so huge! …there is no sound sentencing policy. It can be safely said that the Bachan Singh threshold of rarest of rare cases has been most variedly and inconsistently applied [giving] rise to a state of uncertainty in capital sentencing law which clearly falls foul of constitutional due process and equality principle."[32]Those Indian justices who made their understanding of the rarest of rare notions explicitly (as well as who had considered 80 capital cases and affirmed 41 death penalties) stated a wide range of meanings, frequently at odds with the *Bachan Singh v. State of Punjab*[33] paradigm. A few, incorrectly, took the view that the rarest of the rare was a matter of crime categorization (for instance, the rape and homicide of a minor). Another set of judges believed that some aggravating

[28] *Ibid*.
[29] Craig Haney, "The Social Context of Capital Murder: Social Histories and the Logic of Mitigation" 35 *Santa Clara Law Review*547 (1994–1995).
[30]Project 39A, National Law University, Delhi, "Death Penalty India Report Summary"59 (2016).
[31] Carolyn Hoyle & Saul Lehrfreund, "Contradictions in Judicial Support for Capital Punishment in India and Bangladesh: Utilitarian Rationales" 15 *Asian Journal of Criminology, Springer* 141 (2020)
[32]*Id.* at 154.
[33] (1980) 2 SCC 684.

facts, like the number of casualties or weapons employed, would satisfy the *Bachan Singh v. State of Punjab*[34] doctrine's standards, allowing no space for atonement.[35]

Whilst *Bachan Singh v. State of Punjab*[36]judgement gives an example of aggravating and mitigating elements, judges had vastly differing opinions on what comprised aggravation and mitigation, as well as how to balance them. Judges in India preferred to prioritise aggravating issues while ignoring some mitigating aspects. They accorded disproportionate weight not just to the severity and horrific character of crimes, and also to the victim's fragility. In the study[37], six judges, in direct opposition to *Bachan Singh v. State of Punjab*[38] judgement, proposed a blanket dismissal of mitigation as a condition in death sentencing. Others said that mitigation is only an explanation for the offence or that it is completely meaningless in the case of extremely horrific crimes. Likewise, exceptionally heinous crimes may prevent Indian courts from giving due regard to the potential of the defendant's rehabilitation. More ominously, 14 justices declared that the option of change should not apply to situations involving the death penalty: "A man who is determined to kill innocent persons…how do you expect to reform him?… and reform him for what purpose and how … and what will happen after he's reformed in the jail? Are we going to release him?"[39] Whereas the *Bachan Singh v. State of Punjab*[40] decision forbids sentencing judges from taking public opinion into account, 11 judges—who had affirmed 41 death sentences between them—explicitly mentioned "collective conscience" as a significant aggravating element: "[the collective conscience] is a relevant consideration so far as punishment is concerned because punishment has to be proportionate… It can only be judged with respect to … how the public feels about it, and what the public thinks about it."[41]

It has already been demonstrated that in India capital crime sentencing is judge-centric, with comparable instances yielding vastly different results. In the lack of defined sentencing criteria and uncertainty regarding what might be considered mitigating or aggravating factors, more than half of Indian judges said that their origins, especially their class, sociocultural position, and religious views, influenced their discretion markedly: "at the end of the day, every judge has his own concept of what is rarest of rare. Some people like to give the death sentence, some people say no, I have no right to take somebody's life. That depends on … a judge's background."[42] One judge who had decided 90 cases in the appellate courts summed up concerns expressed by many others: "On the same considerations, different people react differently. And that is the strongest reason why I am against the death penalty. I find it horrible and terrifying, the subjective element in death penalty sentencing. If X

[34] *Ibid.*
[35] Project 39A, National Law University, Delhi, "Matters of Judgement"26 (2018).
[36] (1980) 2 SCC 684.
[37] *Supra* Note 31 at 155.
[38] (1980) 2 SCC 684.
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Supra*note 31 at 156.

is hearing my case, I will end up hanging from a rope, but if Y is hearing it instead, I'll live…. What Amnesty International has said in the Lethal Lottery report describes it very well, really."[43]

In the survey, several judges believed that arbitrary death sentence administration, particularly judge-centric punishment, was solid argument for repeal. Others had fundamental objections to the value of human life or the ability of convicts to be rehabilitated, while some believed the death sentence served no penological function.

A number of Indian judges agreed that the 'Indian mentality' was still not prepared for repeal. In a separate case, two judges said that abolishing the death penalty would be contradictory to public norms. One thought the goal was to preserve social peace, while another said it was to keep people's faith in the legal system: "In our country, the people support the retention of the death penalty. They believe that society loses its balance if the death penalty is not awarded for serious offences."[44] In a disorderly or broken legal system, many judges believed the death sentence might hold perpetrators accountable. While there was not a strong consequentialist justification for preservation, it was a demonstration of confidence in the most severe penalty to maintain people 's trust in the judicial system, even though they knew it was untrustworthy. The great majority, on the other hand, cited purely utilitarian grounds for their preservation: "The main purpose of awarding the death penalty is to prevent people from committing heinous crimes. It works as an effective deterrent. I think the death penalty should be retained as a deterrent punishment so that no person in society has the audacity to kill any other person illegally. … a death sentence reduces the tendency of killing."[45]

Disparity in specific Apex Court Cases

Despite the fact that consecutive constitutional benches of the Apex Court have preferred judicial discretion over the establishment of comprehensive sentencing standards, judicial discretion has proven insufficient as a protection against absurdity and subjectivity.[46] In a number of cases, the judges, including that of the Supreme Court, have shown that they have not consistently followed the current law and jurisprudence on capital punishment cases uniformly. Several Supreme Court benches have handled comparable cases unevenly in the very same month, ostensibly showing their personal proor anti-death penalty views. While the accused's young age may be a mitigating factor enough to reduce the sentence of death in one instance, it may be disregarded in another. In one instance, the horrible seriousness of the incident may be adequate for the Court to overlook mitigating elements, whereas in another comparable murder was simply not terrible enough. Dhananjoy Chatterjee was hanged in August 2004 for the murder and rape of a girl at the housing complex where

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43 *Ibid.*
44 *Supra*note 31 at 158.
45 *Ibid.*
46 Pranav Verma, "The Inevitable Inconsistency of the Death Penalty in India" 6(2) *Cambridge Law Review* 27(2021).

he served as a security guard in 1990.[47] He was the only person in nearly six years to be hung in the nation, breaking a de facto halt on executions.

It is interesting to note that just three days after this execution, the Top Court adjudicated over an appeal in *Rahul alias Raosaheb v. State of Maharashtra*[48], a matter of rape and killing of a child, . Neither one of these offenders had a prior criminal record, and there was no evidence of wrongdoing while in jail in either case. Nonetheless, the Supreme Court found Dhanajoy Chatterjee a threat to society, and his punishment was not only maintained, but he was also executed. Rahul's sentence was modified to life imprisonment since he was no longer considered a threat. Even though the Supreme Court upheld Dhananjoy Chatterjee's capital punishment in 1994, Justice Anand acknowledged that there were enormous inequalities in sentencing. He mentioned, "Some criminals get very harsh sentences while many receive grossly different sentences for an essentially equivalent crime and a shockingly large number even go unpunished thereby weakening the system's credibility."[49]

The reality that most capital verdicts in India are founded only on circumstantial evidence is surprising. Bhagwati, J., noted a multitude of challenges with the criminal justice process in his contrasting opinion in *Bachan Singh v. State of Punjab*[50] case: "Our convictions are based largely on oral evidence of witnesses. Often, witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Sometimes they are even got up by the police to prove what the police believe to be a true case. Sometimes there is also mistaken eyewitness identification and this evidence is almost always difficult to shake in cross-examination. Then there is also the possibility of a frame-up of innocent men by their enemies. There are also cases where an overzealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defence. The possibility of error in judgment cannot, therefore, be ruled out on any theoretical considerations. It is indeed a very live possibility."[51]"The manner in which the investigating agency acted, in this case, causes concern for us" the Court remarked in *Rampal PithwaRahidas v. State of Maharashtra*[52]. In every civilised nation, the police force is given the authority to investigate crimes in order to assure the perpetrator's punishment, and it is in the best interests of societal structure for the investigating agency to act fairly and honestly, rather than fabricating evidence or making artificial clues solely to prove guilt, because such acts undermine the common man's trust not just in investigating agency but, in the end, in the machinery of justice dispensation.

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47 (1994) 2 SCC 220.
48 (2005) 10 SCC 322.
49 *Supra* Note 47 at ¶14.
50 (1980) 2 SCC 684.
51 (1982) 3 SCC 24, 61.
52 1994 Supp. (2) SCC 478.

In *Sudama Pandey and others v. State of Bihar*[53], the trial court had convicted five persons to execution for attempting murder and rape of a 12-year-old kid, and the High Court had mitigated the penalties, but the Constitutional Court recognised that the High Court had failed to correctly assess the evidence, as it relied solely on circumstantial evidence, leading to a travesty of justice. The Supreme Court stated in an indictment of the subordinate judiciary: "The learned Sessions Judge found the appellants guilty on fanciful reasons based purely on conjectures and surmises. It is all the more painful to note that the learned Sessions Judge, on the basis of the scanty, discrepant and fragile evidence, found the appellants guilty and had chosen to impose capital punishment on the appellants."[54] A three-judge court differed over the punishment given on one of the appellants in *Krishna Mochi and others v State of Bihar*[55], but concurred on the conviction and upheld the capital punishment given to three other appellants. In a differing view, Justice Shah noted that due to flaws in the probe and evidence that merely showed the accused's appearance at the site of the crime, this cannot be a suitable case for the death sentence to be imposed. He remarked, "This case illustrates how faulty, delayed, casual, unscientific investigation and lapse of a long period of trial affects the administration of justice which in turn shakes the public confidence in the system."[56]

The Supreme Court has admitted that the death sentence is applied in a discretionary and arbitrary manner: "even though Bachan Singh case intended principled sentencing, sentencing has now really become judge- centric"[57]Thus, "the confirmation of death sentence or its commutation by this Court depends a good deal on the personal predilection of the judges constituting the Bench."[58] Identifying this to be a "serious admission"[59] on its end, the Court in *Santosh Bariyar v. State of Maharashtra*[60] conceded that "there is inconsistency in how Bachan Singh case has been implemented, as Bachan Singh case mandated principled sentencing and not judge-centric sentencing."[61] Noting that "the Bachan Singh case threshold of the rarest of rare cases has been most variedly and inconsistently applied,"[62] the Apex Court has accepted that "the balance sheet of aggravating and mitigating circumstances approach invoked on a case-by case basis has not worked sufficiently well so as to remove the vice of arbitrariness from our capital sentencing system."[63] Whereas *Bachan Singh v. State of Punjab*[64] argued that well-established principles derived from judicial precedent would lead courts to capital punishment, the Supreme Court accepted in Mohd. Farooq that well-established principles

53 (2002) 1 SCC 679.
54 *Id.* at 685.
55 (2002) 6 SCC 81.
56 *Id.* at 116.
57 *Sangeet v. State of Haryana*, (2013) 2 SCC 452, 33.
58 *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767, 51.
59 *Santosh Bariyar v. State of Maharashtra*, (2009) 6 SCC 498, 54.
60 *Ibid.*
61 *Ibid.*
62 *Id*. at 109.
63 *Ibid.*
64 (1980) 2 SCC 684.

derived from judicial precedent should assist courts in death sentencing: "the precedent on death penalty … is [itself] crumbling down under the weight of disparate interpretations."[65]The Supreme Court has issued a list of situations in which different Benches have reached dramatically opposed conclusions in cases with comparable facts and circumstances. It has called "lack of consistency"[66] and "want of uniformity"[67] in capital sentencing, "a poor reflection of the system of criminal administration of justice."[68] The Court has expressed its worry that the "extremely uneven application of Bachan Singh has given rise to a state of uncertainty in capital sentencing law which clearly falls foul of constitutional due process and equality principle."[69]

In *State of U.P. v. Satish*[70], The defendant was found guilty of raping and murdering a youngster. After reviewing rulings that established principles for the application of the death penalty, the Court said that it had "no hesitation in holding that the case at hand falls in rarest of rare category and death sentence awarded by the trial Court was appropriate."[71] The ruling is utterly quiet on the case's aggravating and mitigating factors, and it makes no mention of why the case merited the imposition of death. This isn't a one-off occurrence. Following *Bachan Singh v. State of Punjab*[72] case, for instance, there has been a slew of similar cases, like *Lok Pal Singh v. State of MP*[73], *Darshan Singh v. State of Punjab*[74], *and Ranjeet Singh v. State of Rajasthan*[75], have upheld the death sentence without referring to the "rarest of rare" formulation at all. In some other cases, such as *Mukund v. State of MP*[76], *Ashok Kumar Pandey v. State of Delhi*[77], *Farooq v. State of Kerala*[78], *and Acharaparambath Pradeepan v. State of Kerala*[79], to name a few, the Court referred to the "rarest of rare" dicta, but did not apply it in imposing/commuting the death sentence, thereby paying mere lip service to the "rarest of the rare" test.

V. Conclusion and Suggestions

These talks highlight fundamental questions regarding the current judicial-centric application of capital punishment and the fashion in which judges exercise their discretion. They convey a tale of the various contradictions and inconsistencies that exist not just across precedents, but even inside the same decision. Even if the government creates standards to guide judicial discretion, the system's

65 *Mohd. Farooq Abdul Gafur v. State of Maharashtra*, (2010) 14 SCC 641, ¶165.
66 *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC. 767, ¶ 52.
67 *Ibid.*
68 *Ibid.*
69 *Santosh Bariyar v. State of Maharashtra*, (2009) 6 SCC 498, ¶ 110.
70 (2005) 3 SCC 114.
71 *Ibid.*
72 (1980) 2 SCC 684.
73 AIR 1985 SC 891.
74 (1988) 1 SCC 618.
75 (1980) 1 SCC 683.
76 (1997) 10 SCC 130.
77 (2002) 4 SCC 76.
78 (2002) 4 SCC 697.
79 (2006) 13 SCC 643.

inherent defects will persist to obstruct its fair use. This argument was stated by the Supreme Court of South Africa in *The State v. T Makwanyane and M Mchunu*[80]when it noted that "the differences that exist between rich and poor, between good and bad prosecutions, between good and bad defense, between severe and lenient judges…by factors such as race and class… (are) almost certainly present to some degree in all court systems."[81] The possibility of rehabilitation is an important aspect of death sentencing because it gives an accused person one final chance to make amends before their life is taken away. Nevertheless, there is no means of correctly forecasting a person's potential to transform in a nation like India with diverse socioeconomic realities and individual circumstances, insufficient legal help, and distinct cultural values.[82] As a result, it is unavoidable that in matters of death and life, the former is unfairly applied to the unfortunate few.[83]

When Justice Samuel Alito wrote the majority view in*Richard E. Glossip, Et Al. v. Kevin J. Gross, Et Al*[84], which supported the use of lethal injections as a form of execution for death row inmates. He stated"because capital punishment is constitutional, there must be a constitutional means of carrying it out."[85] Today, India's death penalty jurisprudence reflects this faulty use of reverse reasoning. In 1980, four Supreme Court judges established a standard to ensure that the death penalty is carried out with appropriate procedural protections. They had no idea that 40 years later, judges would use a muddled and twisted version of that criteria to take numerous lives in innumerable cases. In*Channu Lal Verma v. State of Chhattisgarh*[86], Justice Kurian Joseph referred to this inability to properly enforce procedural protections while presenting a persuasive argument for a re-examination of the necessity for capital punishment in India. Its continued existence serves as a sombre reminder of a system of justice that inappropriately incorporates society's retaliatory inclinations into an unjustified legal procedure. Probably the clearest reason for its repeal is because judges in the criminal justice process cannot consistently interpret precedents while issuing such a lifelong sentence.

The sentencing paradigm adopted in *Bachan Singh v. State of Punjab*[87]case requires that the choice to end a person's life be made with the ethical and legal obligation of establishing that the prisoner has no chance of redemption and that the person's life has no future worth. In death penalty instances, the restricted factors of age, poverty, and surviving family members can't be deemed a rigorous sentencing process. It is critical that a considerably more comprehensive strategy for presenting the worth of a person's life be adopted in the march towards terminating a person's life through the

80 1995 SCC OnLine ZACC 2.
81 *Id.* at 54.
82 Law Commission of India,"262nd Report on The Death Penalty" 69 (2015)
83 Ashna D, "Death Penalty Law in India: A Case of Consistent Inconsistencies"*Columbia Public Policy Review*(2019),*available at:*https://www.columbiapublicpolicyreview.org/2020/07/death-penalty-law-in-india-a-case-of-consistent-inconsistencies/ (last visited on April 21, 2023).
84 2015 SCC OnLine US SC 5.
85 *Id.* at 44.
86 (2019) 4 SCC (Cri) 402.
87 (1980) 2 SCC 684.

legislation. This comprehensive approach must include the physiological, psychological, social, economic, and emotional aspects that may have influenced the individual's development before the judge. Nevertheless, such a strategy cannot be restricted to knowing the individual before the act in issue; it must also take into account the person's existence in jail from a variety of angles.

Sentencing hearings can provide a chance to show the judge that the accused is more than simply the perpetrator of the crime. In order to aid the court in tackling the prospect of reformation, certain aspects of his existence must be addressed. It is critical for defence attorneys to provide material at the sentencing phase that indicates the accused's conduct and contributions in various situations. Information on the offender's conduct and attitude from her residence, co-workers, and prison officers would be crucial in assisting the court in determining the likelihood of reformation. Another important feature of the Indian death penalty law that is absolutely missing is a consideration of "future dangerousness" as a sentencing criterion. This is a problem that necessitates contextual study and sophisticated expert judgement at a level that the Indian criminal justice system now appears to be far away from. Hence what can be said at the end of the debate is that the subjectivity in capital punishment can never be abolished, so there are only two ways out. Firstly, the courts should dwell more deeply into an offender's life and its related aspects and follow a tailored approach in every case to ascertain which punishment is befitting for the offender, and apart from this, the spirit of *Bachan Singh v. State of Punjab*[88] case must be complied with more stringently. And secondly, if this is also a possibility, then the legislature must look into the issue of either reducing the death sentence for a number of crimes or abolishingit completely.

[88] *Ibid*.