DOCTRINE OF "RAREST OF RARE" AND INDIAN LEGAL SYSTEM

*Written by **Kiran Ranganath Kale***

Assistant Professor, Symbiosis Law School

Abstract

Once upon time in Indian judiciary that the Hon'ble supreme court of India propounded the doctrine of "Rarest of rare" and since then, hence the Indian legal system has taken view that, "The life sentence is the rule and the death penalty is an exception." But legislature has not enacted yet "What is the rarest of the rare" hence absence of any salutary definition for application of this doctrine for that doctrine our legal system talks like 'It dependent upon the facts and the circumstances of the case', brutality of the crime, conduct of the offender previous history of his involvement in a crime, chances of reforming and integrating him in to the society etc. Hence with due respect but it becomes very confusing and conflicting for its application in criminal justice system of India The generally applied test while sentencing a convict to death is whether the survival of an orderly society demands extinction of life of the person who has committed the offence and whether failure to impose death sentence on him would bring to naught the sentence of death provided under Section 302 of IPC. Pre-planned, brutal, cold-blooded and sordid nature of a crime, without giving any chance to the victim, are generally taken into account to decide whether a particular case falls within the parameters of "rarest of rare". In this regard the Hon'ble supreme court of India is saying that "Death penalty should be imposed when collective conscience of the society is so shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability of otherwise of retaining death penalty," said the Supreme Court in, Bachan Singh Vs. State of Punjab[i].The crime has to be viewed from various angles – manner of commission of murder, motive for commission of murder, anti-social or socially abhorrent nature of crime and magnitude and personality of victim of murder. But the manner in which death penalty is being given in a large number of cases raises a serious question. Are trial courts in India giving a go by to the 'rarest of rare' doctrine? The question becomes all the more relevant because not all convicts awarded death penalty are executed in India. The number of

death sentences pronounced has been very high despite the "rarest of rare" doctrine that limits the scope of awarding capital punishment.

Keywords: Rarest of the rare, capital punishment and facts and circumstances of the case.

Introduction:

Indian judiciary has pointed out its views regarding death penalty by ruling out in Bacchan singh vs state of Punjab[ii] that the death penalty must be restricted to the "rarest of rare" cases, this view of Supreme Court was very much favoring to minimize the use of capital punishment to penalize the criminals, but this view of highest court was contradicted by the legislation by increasing the number of crimes for which capital punishment is awarded. In Bachan singh case Supreme Court expressed some outstanding reasons relating wrongdoing and criminal in which. In section 163, Bacchan Singh further noted: "….in settling the level of discipline or settling on the decision of sentence for different offenses, including one under Section 302 of Penal Code, the court ought not bind its thought "chiefly[iii]" or just to the circumstances associated with the specific wrongdoing, additionally give due attention to the circumstances of the criminal. Later on as per the chances in the society and change in the nature and manner of doing a crime. Because of that in this regard law could have taken different shape in criminal justice system of India. It was an opportunity to the supreme court of India to further explain in the case of Santosh Kumar Bariyar vs State of Maharashtra[iv]. To explain this further: "The rarest of rare dictum serves as a guideline in enforcing Section 354(3) and entrenches the policy that life imprisonment is the rule and death punishment is an exception. It is a settled law of interpretation that exceptions are to be construed narrowly. That being the case, the rarest of rare dictum places an extraordinary burden on the court, in case it selects death penalty as the favored penalty, to carry out an objective assessment of facts to satisfy the exceptions ingrained in the rarest of rare dictum." Constitution clearly states that "No person shall be deprived of Right to life unless done following due process of law"[v] but Capital punishment denies due process of law. Its imposition is always irrevocable – forever depriving an individual of the opportunity to benefit from new evidence or new laws that might warrant the reversal of a conviction, or the setting aside of a death sentence. When the consequences are life and death, we need to demand the same standard for our system of justice as we would for our airlines. It is central pillars of our criminal justice system that it is better that many guilty people go free

than that one innocent should suffer. Let us reflect to ensure that we are being just. Let us pause to be certain we do not kill a single innocent person. This is really not too much to ask for a civilized society." Since the reinstatement of the modern death penalty, many people have been freed from death row because they were. Hence I think it is very difficult to go in detail that what lead to the variations in sentence in such cases. What it should be" is it crime"? Or "criminal" or the "judge"? In the 1982 Supreme Court considered all circumstances relating to both crime and criminal[vi]. Again in 1983 the Supreme Court has changed its dimension and declared for rarestrs of the rare that court should focus on the crime and not on the criminal[vii]. As far as concern to the statutory definition of the rarest of the rare doctrine Indian legislative system has not changed but supreme court of India has turned its view and took another path it has commuted the death sentence for rape and murder of a 1 year and 6 months old girl to life sentence[viii]. Also there are different assumptions of this doctrine as to when the collective conscience of society is shocked; which differs from judge to judge or benches to benches which constitute case to case... When the consequences are life and death, we need to demand the same standard for our system of justice. It is central pillars of our criminal justice system that it is better that "many guilty people go free than that one innocent should suffer.

Meaning of the Doctrine of Rarest of rare:

The Doctrine "rarest of rare case" has its origin in 1983 in a Supreme Court Decision, Machhi Singh v. State of Punjab438[ix]. This judgment tailed the court's earlier decision in Bachan Singh v. State of Punjab439 [x](1982), where it supported the constitutional validity of capital punishment but added a caveat that is now famous, if perhaps impossible to pin down precisely that death sentences would be accorded only in the "rarest of rare cases".. The supreme court of India has discussed the formula for the rarest of the rare case from time to time some guidelines has given in identification of rarest of rare cases like; "The reasons why the community as a whole does not approve the humanistic method reflected in death sentence in no case doctrine are not far to seek[xi]."

Firstly, the very humanistic group is constructed on the foundation of reverence for life principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the fetters of this doctrine.

Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community

and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those 'who have no scruples in killing others if it suits their ends.

Scope:

As per Indian legal system till 1973, Judges were required to state reasons for not awarding a death Sentence and preferring the alternate sentence of life imprisonment, in a capital offence[xii]. Hence judges were making death sentence the 'rule' and life imprisonment the 'exception In Jag Mohan Singh v. State of U.P[xiii] "The Supreme Court upheld the death penalties Constitutionality, finding that it was not merely a deterrent, but a token of emphatic Disapproval of the crime by the society. In this case Hon'ble the Court felt that India could not risk Experimenting with the abolition of death penalty; and any errors in sentencing could be corrected by appeals to higher courts. But, the Court articulated a standard that the death penalty was the narrow exception, and not the rule in sentencing. The circumstances of the case had to compel it, to protect state security, public order or public interest." Thereafter as per new changes in Indian legal system the accused has right of pre-sentence hearing[xiv] and obliged the court to state special reasons for awarding the death penalty rather than alternative term of life imprisonment[xv]. The reduction of death sentence to life in the Priyadarshini Mattoo[xvi] case reflects the churning within the Supreme Court in recent years on the sheer uncertainty of its own "rarest of rare" doctrine. Even as death sentences are being imposed in a variety of murder cases ostensibly in tune with "society's cry for justice", there has been a spate of verdicts from the Supreme Court admitting that the administration of the "rarest of rare" doctrine is riddled with "chaos", "subjectivity" and "arbitrariness"[xvii]. Under this doctrine, the court could take recourse to death penalty only in the rarest of rare situation when the alternative option of life sentence, after drawing up a balance sheet of "mitigating and aggravating factors", is "unquestionably foreclosed". In the Mattoo case[xviii], the Supreme Court spared Santosh Kumar Singh from going to the gallows on the basis of its conclusion that mitigating factors outweighed aggravating factors. Given the inherent subjectivity in the weight accorded to each of those factors, murmurs of self-doubt from the Supreme Court have grown louder in recent years as a reaction to an increasingly blood-thirsty public opinion, reflected by a hyper ventilating media.

Application:

The formulation of rarest of rare has definitely resolute the course of judicial Declarations on the penalty of death in India. But it is not free from criticism**.** By saying" the question may well be asked by the accused: Am I to live or die depending on the way in which the Benches are constituted from time to time? Is that not clearly violated of the fundamental guarantees enshrined in Articles 14 and 21?"[xix] Now days The court is also criticized for ignoring the background of the criminal and the chances of his reformation and rehabilitation, at least in some cases. In most of the cases, it is argued, punishment awarded invariably depended upon the nature of the crime and the role of the offender in the crime. In a 1983 decision, the court declined to show any mercy towards the Accused who has committed the murder of one woman and three kids. According to the court he committed the brutal crime on defenseless and helpless victims and acted like a demon. He was awarded penalty of death categorizing it as a case of rarest of rear[xx] "was also categorized by the court as rarest of rare. Here two brothers murdered their two nieces to take revenge upon the mother of the deceased on account of long pending land dispute. The court awarded the extreme penalty on the ground that the act of the accused was heinous and committed out of Greed and personal vengeance.[xxi]" In Karan Singh v. State of U.P[xxii] "where the accused killed five members of a family, the Supreme Court affirmed the death sentence awarded by the High Court on the ground that the murders were committed in a dastardly manner and that the accused wanted to exterminate the entire family". Similarly in Ravji v. State of Rajasthan[xxiii] "The accused murdered his pregnant wife and three minor children. He also murdered an old man who was coming on his way while he was fleeing from the scene of crime. The court categorized it as a heinous crime and said that there is no justification for commuting death penalty". Again in Surja Ram v- State of Rajasthan[xxiv] "the accused murdered his brother, his two minor sons and his aged aunt by cutting their throat when they were fast asleep. He attempted the same with his brother's wife and daughter and critically injured them. The court took note of the innocence and helplessness of the victims and also the fact that the murder was committed in a cruel and calculated manner. The court observed that such incidents would shock the conscience of the society and ruled that it would come under the rarest of rare category." In Govindaswami v. State of Tamil Nadu[xxv] the court upheld death penalty for the accused who killed five members of his uncle's family who was sleeping, in a cruel and calculated manner for the purpose of grabbing his property. In Holiram Bardolai v. State[xxvi] where the accused had committed multiple murders in a premeditated, brutal and vicious manner, the Supreme Court has held it to be a case of rarest of rare and awarded death. Another interesting decision is that of State of Maharashtra v. Suresh[xxvii] in this

case is related to the rape and murder of a four year old girl. Though, the court considered it to be a "rarest of rare case", it refused to award penalty of death on the ground that the death sentence imposed by the trail court was altered by the High court. In Amrit Singh v. State of Punjab[xxviii] "A girl of 2nd standard was brutally raped. She died subsequently due to excessive bleeding. Both the trial and High court convicted the accused under section 302 and sentenced him to death. But the Supreme Court held that the death was not intentional though the rape was brutal. In recent time Indian judiciary has taken progressive step towards the honour killing. In one case the prosecution is that the appellant is very annoyed with his daughter, who had left her husband and was living with an incestuous relationship with her uncle. This infuriated the appellant he thought this conduct of his daughter had dishonored his family and hence he strangled her with an electric wire the court convicted the applicant[xxix]. Now a days many people fell that they are dishonored of behavior of young man/woman who is related to them or belonging to their caste is marrying against them or having an affair with someone and hence they take law in their own hands and kill or physically assault such person or commit some other atrocities on them instead of ignoring or not keeping distance from them. Again supreme court of Indian has declared in the case Lata sing V State of UP[xxx] that is wholly illegal if someone is not happy with the behavior of their daughter or other person who is his relation or his caste maximum he can do his cut off his social relation with her or him but he cannot take the law in his hand by committing violence or threating violence. In this way for the application of the doctrine of rarest of the rare supreme court can ignore the act of cut of social relationship by the relatives or parents of the wrongdoer which itself is not acceptable (boycotting) even as per the circumstantial evidence rarest of the rare case can be established[xxxi].

Conclusion:

It is evident that the "rarest of rare" doctrine is a double-edged sword. Jag Mohan Singh[xxxii] and Bachan Singh[xxxiii]. Held against standardization of cases and circumstances, thereby paving the way for judicial discretion and for subjectivity and arbitrariness in application, which varies from case to case. The taking away of human life then depends on every judge's conception of what constitutes aggravating and mitigating circumstances as well as his motive towards the commission of crime The Aspect of Rarest of rare doctrine, which needs serious consideration, is interpretation of latter part of the dictum – 'that ought not to be done save in the rarest of

rare cases when the alternative option is unquestionably foreclosed.' Bachan Singh (supra) suggested selection of death punishment as the penalty of last resort when, alternative punishment of life imprisonment will be futile and serves no purpose. Death punishment, as will be discussed in detail a little later, qualitatively stands on a very different footing from other types of punishments. It is unique in its total irrevocability[xxxiv].In Alok Nath Dutt and Ors. V. State of West Bengal[xxxv] in this case the Court after examining various judgments over the past two decades in which the issues of rarest of rare fell for consideration, The Shatrughan judgment[xxxvi] is a progressive step in Indian death penalty jurisprudence. Perhaps it is best to leave the last word to the Court, in its penultimate paragraph, suggesting not just that the death penalty should be administered humanely, but that the very idea – say it softly – of State-sanctioned killing of human beings has no place in a civilized democracy: "Remember, retribution has no Constitutional value in our largest democratic country."

[i] AIR 1980 SC 898
[ii] AIR 1980
[iii] (At page 738 of the judgment: Bachhan sing V state of Panjab. AIR 1980 SC 898
[iv] 2009) 6 SCC 498
[v] Art.21 of the Indian constitution
[vi] Id
[vii] Machhi Singh And Others vs State Of Punjab on 20 July, 1983
[viii] Mohd.Chaman vs State (N.C.T.Of Delhi) on 11 December, 2000
[ix] Id
[x] AIR 1980 SC 276
[xi] Yakub Abdul Razak Memon case decided on 2015
[xii] Section 367(5) Code Criminal Procedure, 1973
[xiii] AIR 1973 SC 947
[xiv] Code of Criminal Procedure S. 235,
[xv] Code Criminal Procedure S. 354 (3)
[xvi] Criminal Appeal No. 233 of 2000 decided on October 17, 2006
[xvii] Times of india Oct 7, 2010
[xviii] State V Santosh kumar sing AIR 2006
[xix] Hon'ble Justice Bhagwati in Bachhan sing V state of Panjab
[xx] Javed Ahmed Pawala v. State of Maharashtra, (1983) 3 SCC 39
[xxi] (1987) 3 SCC 224
[xxii]AIR 2006 SC 210
[xxiii] (1996) 2 SCC 175
[xxiv] (1996) 6 SCC 175
[xxv] (1998) 4 SCC 531
[xxvi] 2005 Cr.LJ 2174 (SC)
[xxvii] (2000) i see 471
[xxviii] (2007) 1 SCC (Cri) 41
[xxix] Bhagwan das V State (NCT) Delhi
[xxx] (2006 SCC 456)
[xxxi] Trimukh Maroti Kiran V State of Maharashtra (2006 SCC 681)
[xxxii] Id

[xxxiii] Id
[xxxiv] (2009) 6 SCC 498
[xxxv] (1983) SCR (2) 690
[xxxvi] Shatrughan Chauhan v. Union of India (2014) 3 SCC 1