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ANALYZING THE JURISPRUDENTIAL TRENDS AND LEGAL STANDARDS IN RAREST OF RARE RAPE CASES: A STUDY OF COMMONALITIES AND IMPLICATIONS FOR SENTENCING IN INDIA

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ABSTRACT

The doctrine of Rarest of Rare is a legal principle that states the death penalty would be given in such cases where it is so essential that no other punishment would be sufficient. Hence this doctrine has played a major role in determining the capital punishment for heinous crimes especially in cases of rape. This research paper focuses on the historical Evolution of the doctrine of Rarest of Rare. The doctrine is only followed while keeping in mind the aggravated and mitigating factors. The balance between the two is required to determine the doctrine. The research paper also discusses the judicial approach to rape cases and how they were dealt over the years. This research paper also focuses on the commonalities in Rarest of Rare rape cases. In the Nirbhaya judgment, the Supreme Court said that the 'rarest of the rare' case is one in which "the crime is committed… may result in intense and extreme indignation of the community and shock the collective conscience of the society". The research paper also covers the role of sentencing in such cases. It also focuses on the impact of such doctrines in our social and legal system and how it impacts the whole community. Ending the paper some of the recommendations are given for the way forward. Some measures are given which can be looked up to by our judicial authorities.

Keywords:

Evolution, Aggravating, Mitigating, Commonalities, Recommendations

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INTRODUCTION

The doctrine of "rarest of rare" represents a critical threshold in Indian criminal jurisprudence, wherein the imposition of the death penalty is deemed justified only when life imprisonment is unquestionably inadequate. Originating from the landmark judgment in Bachan Singh v. State of Punjab[2], the doctrine has evolved into a constitutional standard that requires a careful balance between aggravating and mitigating circumstances, particularly in cases involving heinous offences like rape-cum-murder.

This research paper seeks to analyze the evolving jurisprudential contours and legal standards that govern the application of this doctrine specifically in the context of rape cases. The increasing brutality and frequency of such offences, especially those involving minors or victims from marginalized communities, have challenged the conventional understanding of proportionality and retribution. In particular, the 2012 Nirbhaya case (Mukesh v. State (NCT of Delhi)[3] has become emblematic of judicial reliance on the rarest of rare principle, where the Supreme Court underscored that certain crimes "shock the collective conscience" of society.

This study aims to explore the trajectory of the rarest of rare doctrine, focusing on judicial reasoning, socio-legal influences, and the common factual and legal threads that lead courts to determine whether a particular rape case warrants the harshest sentence.[4] By examining a range of judgments and statutory developments, the paper assesses how Indian courts have interpreted this principle and the implications for justice, deterrence, and reformation. Furthermore, the study considers how this doctrine affects societal perception of justice and whether it truly serves as a deterrent,[5] or simply satisfies public outrage.

RESEARCH HYPOTHESIS

1. The "Rarest of Rare" Doctrine Lacks Standardized Application in Rape Cases

2. The Death Penalty in Rape Cases Does Not Necessarily Act as a Strong Deterrent

3. Testimonies from forensic evidence significantly influence the severity of sentencing decisions.

[2] Bachan Singh v. State of Punjab, (1980) 2 SCC 684 = AIR 1980 SC 898.
[3]Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1.
[4]Macchi Singh v. State of Punjab, (1983) 3 SCC 470.
[5] Law Commission of India, "262th Report on on Death Penalty" (August, 2015)

OBJECTIVES OF THE RESEARCH

1. To Analyze the Evolution and Application of the "Rarest of Rare" Doctrine in Rape Cases

2. To Identify Commonalities and Judicial Trends in Rarest of Rare Rape Cases

3. To Evaluate the Effectiveness of Sentencing Policies in Delivering Justice

RESEARCH METHODOLOGY

This is doctrinal research. The relevant material will be collected from secondary sources. All this existing information will be taken from legal sources such as legislations, court orders, books, high courts and supreme court, legal reports of reputed organizations, credible websites and also work of research eminent scholars as this is a multidisciplinary study.

Sample: Cases will be derived from the Supreme Court cases and High court cases.

1. HISTORICAL EVOLUTION OF THE "RAREST OF RARE" DOCTRINE

1.1 ORIGIN OF THE DOCTRINE IN INDIAN JURISPRUDENCE

The 'Rarest of Rare' doctrine is a significant legal principle in Indian law, specifically concerning the imposition of the death penalty. This doctrine was developed to serve as a guideline for judges in determining when capital punishment might be appropriate. It emerged in response to the need for a more structured approach to sentencing in cases involving the most heinous crimes. The origins of this doctrine can be traced back to a broader global discourse on human rights and criminal justice reform, where the emphasis was increasingly placed on the humane treatment of individuals, even those convicted of serious crimes. The principle behind the 'Rarest of Rare' doctrine is to ensure that the death penalty is not applied arbitrarily but is reserved for the most exceptional cases, reflecting societal values and the severity of the crime.

The inception of this doctrine came at a time when Indian society was grappling with high-profile violent crimes, and there was a growing public demand for justice and deterrence. The need for a legal framework that would prevent the misuse of the death penalty became evident, leading to the establishment of this critical doctrine. The 'Rarest of Rare' doctrine essentially underscores the importance of proportionality in sentencing, which means that the punishment must fit the crime and be justified under the circumstances of each case. This doctrine aims to strike a balance between the interests of justice, the rights of the accused, and the moral conscience of society.

The landmark case that firmly established the 'Rarest of Rare' doctrine in Indian jurisprudence was Bachan Singh vs State of Punjab in 1980[6]. In this case, the Supreme Court of India addressed the constitutionality of the death penalty, with the case revolving around a man convicted of murder. The court had to weigh the arguments for and against capital punishment, considering not only the nature of the crime but also the societal implications of such a punishment. The court's reasoning in this case was pivotal in shaping the future application of the death penalty in India.

The judges recognized the gravity of capital punishment, acknowledging that it is the most extreme form of punishment that a state can impose on an individual. They emphasized that, due to its irreversible nature, the death penalty should only be applied in cases that are "rarest of the rare," meaning that the circumstances surrounding the crime must be so extreme that the imposition of capital punishment is justified. The court laid down several criteria for determining what qualifies as "rarest of rare" cases, such as the brutality of the act, the motive behind the crime, and the impact on the victims and society at large. The decision in Bachan Singh vs State of Punjab[7] thus marked a significant turning point in Indian legal history, providing a framework that sought to limit the death penalty to the most egregious offenses.

Following the establishment of the 'Rarest of Rare' doctrine, its initial application primarily involved cases concerning capital punishment. The intent was clear: to limit the circumstances under which the death penalty could be imposed and to ensure that it was reserved for only the most heinous crimes that shocked the collective conscience of society. The application of this doctrine required the judiciary to engage in a detailed analysis of each case, considering various factors that could elevate a crime to the status of being 'rarest of rare.'

The Supreme Court, in subsequent judgments, consistently referred back to the principles established in Bachan Singh, creating a legal precedent that guided lower courts in their sentencing decisions. One such significant judgment was Macchi Singh vs State of Punjab[8], where the Supreme Court not only reiterated the 'rarest of rare' doctrine but also provided a framework for its application in cases involving multiple murders stemming from deep-seated animosity. This was particularly important in a country where the death penalty had been a contentious issue, with ongoing debates regarding its morality and effectiveness as a deterrent against crime. However, the effectiveness of the death penalty as a deterrent remains a subject of debate.[9]The doctrine

[6] Bachan Singh v. State of Punjab, (1980) 2 SCC 684 = AIR 1980 SC 898.
[7] Ibid.
[8] Machhi Singh, *Supra* at note 5.
[9] P Batra, NN Kumar, P Lama, VH Asudani & RK Mukherje, "Death Penalty for Rape: Debate on Death as a Deterrent Sentencing Policy in India" 2023 11 3S Russian Law Journal 1–7.

served as a safeguard against arbitrary sentencing, ensuring that judges took into account the specific facts and circumstances of each case.

Moreover, the 'Rarest of Rare' doctrine also reflected a broader shift towards recognizing the importance of human rights and the dignity of individuals, even those accused or convicted of serious crimes. It aimed to protect against the potential for miscarriages of justice, reinforcing the need for fairness and due process within the legal system. As the application of this doctrine evolved, it began to influence not just capital punishment cases but also other severe offenses, including those involving sexual violence, thereby highlighting its expanding relevance in the Indian legal landscape.

1.2 EXPANSION BEYOND CAPITAL PUNISHMENT

The 'Rarest of Rare' doctrine, which initially was a judicial tool to limit the imposition of the death penalty to only the most egregious cases, has seen a significant evolution over the years. As societal norms shifted and the legal framework evolved, the application of this doctrine began to seep into other severe offenses beyond capital punishment. This development reflects an increasing recognition of the need to address particularly heinous crimes with a similar sense of gravity.

In the context of rape cases, for instance, courts have started to apply this doctrine to ensure that sentences are commensurate with the nature of the crime. The rationale behind such an extension is the acknowledgment that certain acts of violence, particularly sexual violence, are so horrific that they warrant a harsher.

1.3 THE BALANCE BETWEEN JUSTICE AND DETERRENCE

The 'Rarest of Rare' doctrine holds a pivotal place in Indian jurisprudence, especially in the context of balancing justice with the deterrence of heinous crimes. This doctrine, initially established in the landmark case of Bachan Singh vs State of Punjab (1980)[10], was developed to ensure that the death penalty is reserved for only the most egregious cases, thus serving both as a means of delivering justice and deterring future crimes.

The 'Rarest of Rare' doctrine aims to strike a balance between the need for justice—ensuring that the punishment fits the crime—and the need for deterrence, which serves as a preventative measure against the commission of similar offenses in the future. Deterrence is achieved by reserving the most severe punishment for the most heinous crimes, sending a strong message to

[10] Bachan Singh, *Supra* at note 5.

society about the consequences of such actions.[11]This balance is particularly crucial in cases involving heinous crimes such as rape and murder, where the societal demand for justice is often at its peak. The doctrine is not statutorily defined but has evolved through judicial interpretations, which consider the facts and circumstances of each case, the brutality of the crime, and the conduct of the offender[12]. This nuanced approach is essential because it allows the judiciary to tailor its decisions to the unique aspects of each case, thereby achieving a fair balance between justice and deterrence.

Deterrence, as a theory of punishment, operates on the principle that imposing severe penalties for grave offenses will discourage both the offender and potential offenders from engaging in similar criminal behavior. In the context of the 'Rarest of Rare' doctrine, deterrence is achieved by reserving the most severe punishment for the most heinous crimes, thereby sending a strong message to society about the consequences of such actions. This doctrine is particularly significant in a country like India, where the crime rates for offenses such as rape remain alarmingly high.[13]

The doctrine also embodies the principle of proportionality in sentencing, ensuring that the punishment is commensurate with the gravity of the crime. Proportionality is a fundamental principle in criminal justice, which dictates that the severity of the punishment should match the seriousness of the crime.[14] Proportionality is a fundamental principle in criminal justice, which dictates that the severity of the punishment should match the seriousness of the crime. The 'Rarest of Rare' doctrine ensures that this principle is upheld by stipulating that the death penalty, being the most severe form of punishment, should only be applied in cases where the crime committed is of an extraordinary nature, one that shocks the collective conscience of society.

This approach is crucial in maintaining the legitimacy of the criminal justice system, as it prevents the arbitrary or excessive use of severe punishments, thereby upholding the principles of fairness and justice [15]. Moreover, by adhering to the proportionality principle, the judiciary can ensure that the punishment not only serves as a deterrent but also achieves a sense of justice for the victims and society at large[16].

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[11] M Deshpande & S Gurpur, "Connecting the Dots in 'Rarest of Rare': Is Judicial Discretion the Perfection of Reason? Tracking Judicial Discretion in Death Penalty Cases in India" 2022 25 Cardiometry 360–367.
[12] R Raj, "Rarest of the Rare Doctrine—An Analysis" 2016 4(5) Law Mantra Online.
[13] P Paul, "A Critical Analysis of Rape, Its Psychological Impact on Victim's Mind, with a Study of Anti-Rape Law in India" 2020 20 *Supremo Amicus* 428.

[14] A Jain, "Unfounded Developments in the Indian Rape Laws" 2019 5(2) *Indian Journal of Law and Public Policy*.
[15] S Kandya, "Sentencing in Rape Cases in India: An Analysis" 2021 26 *Supremo Amicus* 411.
[16] K Jhunjhunwala, "A Case against the Death Penalty for Child Sexual Abuse" 2022 6(1) *Indian Law Review* 1–16.

Societal values and public sentiment play a significant role in shaping judicial reasoning and the application of the 'Rarest of Rare' doctrine. The judiciary, being an integral part of society, cannot operate in isolation from the prevailing social norms and expectations. In cases involving heinous crimes, there is often a strong public outcry for justice, which can influence judicial decisions.

Public sentiment, particularly in high-profile cases, can act as a catalyst for the application of the 'Rarest of Rare' doctrine. For instance, in the Nirbhaya case[17], the brutality of the crime and the subsequent public outcry led to the application of this doctrine, resulting in the imposition of the death penalty for the perpetrators. This case highlights how societal values and public opinion can impact judicial reasoning, prompting the judiciary to apply the doctrine in a manner that aligns with the collective conscience of society.

However, the influence of societal values and public sentiment must be balanced with the need to uphold the principles of justice and fairness. The judiciary must ensure that its decisions are not solely driven by public opinion but are grounded in legal principles and the facts of the case. This balance is crucial in maintaining the integrity and independence of the judiciary while also addressing the demands of justice and deterrence.[18]

The 'Rarest of Rare' doctrine was established as a judicial tool to prevent the arbitrary and excessive application of the death penalty. In a legal landscape where the death penalty remains a contentious issue, the doctrine serves as a critical check against its misuse. By stipulating that capital punishment should only be applied in cases that are exceptionally severe, the doctrine aligns with international human rights standards, particularly those outlined in documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

International human rights law emphasizes the necessity of proportionality in punishment, advocating that penalties should be commensurate with the gravity of the crime. The 'Rarest of Rare' doctrine embodies this principle by ensuring that the death penalty is not a default sentence but rather a last resort for offenses that are so heinous that they shock the collective conscience of society. This is particularly pertinent in a country like India, where the socio-cultural context can sometimes lead to populist pressures for harsher penalties, often overriding the principles of justice and fairness.

[17] Mukesh, *Supra* at note 2.
[18] S Bedi, "The Indian Rape Law: Vocabulary of Protest, Reactionary Legislations and Quality of Equality Culture" 2023 7(1) *Udayana Journal of Law and Culture* 1–24.

Additionally, the doctrine has been instrumental in fostering a judicial environment that encourages thorough scrutiny of each case before the imposition of the death penalty. Courts are tasked with evaluating the facts of each case meticulously, considering various mitigating factors that could influence the severity of the punishment. This comprehensive approach is vital in ensuring that the death penalty is not handed down arbitrarily, as it requires judges to engage with the complexities of each situation, taking into account the circumstances surrounding the crime and the characteristics of the offender.

As a result, the doctrine not only serves to protect individuals from the capricious nature of the judicial process but also reinforces the commitment of the Indian legal system to uphold international human rights norms. By doing so, it promotes a more equitable system that respects human dignity, even in the pursuit of justice for the most grievous offenses.

Judicial efforts to uphold fairness and due process in the application of the 'Rarest of Rare' doctrine have been pivotal in shaping its interpretation and implementation. The Indian judiciary has consistently emphasized the importance of a fair trial and the need for rigorous standards when dealing with cases that could result in the death penalty. This commitment is evident in several landmark judgments where the courts have articulated the necessity for comprehensive evidentiary standards and procedural safeguards to protect the rights of the accused.

For instance, in the case of Bachan Singh vs. State of Punjab[19], the Supreme Court not only established the 'Rarest of Rare' doctrine but also laid down guidelines to ensure that the imposition of the death penalty was subject to strict scrutiny. The court asserted that the sentencing process must be fair and just, requiring judges to consider all relevant factors, including the nature of the crime, the character of the criminal, and the impact on the victims and society. This holistic approach is essential for ensuring that the application of the doctrine does not devolve into a mere exercise of punitive power but remains grounded in principles of justice and equity.

Moreover, the judiciary has actively worked to ensure that legal representation is available to defendants facing the death penalty. Access to competent legal counsel is a fundamental aspect of due process, and the courts have recognized that the stakes in capital cases are incredibly high. In several decisions, the judiciary has highlighted the need for legal aid and representation, particularly for marginalized and economically disadvantaged individuals, ensuring that they can present a robust defense.

[19]Bachan Singh, *Supra* at note 5.

Additionally, the role of appellate courts in reviewing death penalty cases has been emphasized to prevent miscarriages of justice. The higher courts serve as a crucial mechanism for oversight, allowing for the examination of lower court decisions and ensuring that the application of the 'Rarest of Rare' doctrine adheres to established legal standards. This appellate scrutiny is vital in maintaining public confidence in the justice system and in reinforcing the notion that every individual deserves a fair chance to contest their sentence.

1.4 CRITICISM AND CONTROVERSIES SURROUNDING THE DOCTRINE

The 'Rarest of Rare' doctrine, while aimed at ensuring that the death penalty is only applied in the most exceptional circumstances, has faced significant criticism since its inception. One of the most prominent critiques revolves around its subjective application. The phrase "rarest of rare" is inherently vague, leading to varying interpretations among judges and legal practitioners. This subjectivity can result in inconsistent rulings, where similar cases may receive drastically different outcomes based on the personal biases and perceptions of the judges involved.

For instance, studies have shown that judges may allow their own beliefs about morality, justice, and societal norms to influence their decisions, leading to a lack of uniformity in how the doctrine is applied across different jurisdictions. Such disparities undermine the legal principle of equality before the law, which is a cornerstone of justice in any democratic society. Furthermore, in rape cases, where emotional and societal pressures are often high, the subjective nature of the doctrine can lead to a disproportionate response that may not align with the actual severity of the crime or the circumstances surrounding it.

Additionally, the doctrine has been criticized for creating an environment where the focus shifts from the individual circumstances of each case to a more generalized view of heinous crimes. Critics argue that this can lead to a form of legal determinism, where the law becomes inflexible and rigid in its application, disregarding the nuances and complexities inherent in each case. This has led to calls for clearer legal standards that would provide more guidance to judges and ensure a fairer application of justice.

The application of the 'Rarest of Rare' doctrine in rape cases has ignited intense debates surrounding justice, retribution, and human rights. One of the core controversies is whether the application of the death penalty in such cases serves as an effective deterrent against sexual violence. Critics argue that evidence supporting the death penalty as a deterrent is inconclusive at best. According to a comprehensive study by the National Institute of Justice, jurisdictions that

employ the death penalty do not necessarily see lower rates of violent crimes, including rape. This raises questions about whether the severe punishment aligns with the goals of reducing crime and enhancing public safety.

Moreover, the application of the doctrine can sometimes lead to an oversimplification of the complexities surrounding sexual violence. Rape is often a crime rooted in power dynamics, societal norms, and psychological factors, and applying the death penalty may not address these underlying issues. Instead of focusing on rehabilitation or preventive measures, the doctrine's punitive approach could perpetuate a cycle of violence and societal fear without addressing the root causes of the problem.

Human rights activists have also voiced concerns about the doctrine's implications for the dignity and rights of individuals accused of rape. The presumption of innocence until proven guilty is a fundamental principle in any legal system. However, the push for harsher penalties in rape cases, especially under the 'Rarest of Rare' doctrine, can create an environment where the accused are presumed guilty in the eyes of the public, undermining their right to a fair trial. This can lead to mob justice and societal stigmatization, further complicating the issue of justice for both victims and accused individuals.

2. JUDICIAL APPROACH TO RAPE CASES

2.1 PUNISHMENT UNDER IPC AND BNS

Rape is a crime under the Indian Penal Code (IPC). The IPC sections related to rape are 375 and 376.

Section 375: Defines rape of a woman as an offense

Section 376: Specifies the punishment for rape

States that the punishment for rape is rigorous imprisonment for a minimum of 10 years, or life imprisonment, and a fine also states that the punishment for rape of a woman under 16 years of age is rigorous imprisonment for a minimum of 20 years, or life imprisonment, and a fine

Other IPC sections related to rape Section 376D specifies gang rape.

Rape of minors

The Criminal Law (Amendment) Ordinance, 2018 increased the minimum punishment for rape of girls below 12 years to 20 years, or life imprisonment or death

Consent

Consent is a voluntary agreement to participate in a sexual act. A woman who doesn't physically resist penetration shouldn't be considered to have consented

Exceptions to rape

Medical procedures or interventions don't constitute rape. Sexual intercourse between a man and his wife who is not under 15 years of age is not rape

Under BNS

The Bhartiya Nyaya Sanhita (BNS) and the Indian Penal Code (IPC) both define rape as an offense, but the BNS has added more severe penalties for rape of children.

Provides for rigorous imprisonment for at least 20 years, or life imprisonment, for rape of a woman under 16 years of age.

"We have never seen such brutality all over lives" was the statement of the doctors in Nirbhaya's case who was brutally gang raped which led to multiple organ failure and ultimately to her untimely death. The death of this 23 year old physiotherapy student raised the question, "Is a woman's dignity and life worth anything in this country?" The answer to this is in negative. Because first of all, our laws are lax and secondly there is lack of intention to implement these laws properly. Only judiciary has taken some stringent measures from time to time to lay down the landmark judgments.

Verma Committee Report had noted the dire need of fast track courts for the prompt action against the rapists. It is heartening to note that the constitutional courts in India have developed a fine feminine jurisprudence but unfortunately, the principles and rules developed by the courts for the protection of women against sexual assault have not been implemented in true letter and spirit.

2.2 ROLE OF JUDICIARY

The judiciary is considered to have a two-fold role

i) to adjudicate justice

ii) to make laws under judicial activism which helps them to exceed discretionary powers to provide justice.

Justice K. Subba Rao explains the function of the judiciary as thus:
"It is balancing wheel of the federation; It keeps equilibrium between fundamental rights and social justice; it forms all forms of authorities within the bounds; It controls the Administrative Tribunals."

Setting aside one acquittal by a Ludhiana court that labeled the victim with 'loose character' while interpreting her consent to sex, the Supreme Court in a 1996 judgment said, "The trial court interpreted that the victim was habituated to sexual intercourse just because the speculum the doctor used entered her vagina easily and hence she was of loose character. These observations lack sobriety expected of a judge. No stigma should be cast against a victim of sex crime who is on trial".

Another problem is with the interpretation of consent by the courts. The current law and the amended version consider non-consensual penetration for sexual purpose as sexual assault. But determination of consent is hampering justice. The term consent has itself been subjected to numerous interpretations. Most infamously in the case of Tuka Ram v. State of Maharashtra[20] the Supreme Court observed that, 'no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false.' Though Tuka Ram has not been expressly overruled, the Court in other cases has not equated the presence of injury marks to the proof of consent.

In Mohd. Habib v. State[21], the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis- which the High Court presumed was an indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye- witnesses who witnessed this ghastly act, could not sway the High Court's judgment.

Apart from the non-existent of monitoring system of judicial system which has acquitted many rapists and molesters, we can see many states government also making the damage for the justice for women by awarding cash compensation. This was although a good method to give legal aid and rehabilitate the victims but with time the manner of implementation is distorted the former intent.

The Supreme Court in various landmark judgements have changed their ruling and this has led to various discrepancy in judgement related to rape cases. Some have been criticized while others have been lauded.

[20] Tuka Ram v. State of Maharashtra, AIR 1979 SC 185.
[21] Mohd. Habib v. State, 1989 Cri LJ 137 (Del).

Mathura case[22], which led to the amendment of Evidence Act in 1983, (114-A), which allowed the woman's word to be trusted for her non-consent; there has been no monitoring of judgments, if the reformed law is followed to the word. Mathure was a sixteen-year-old tribal girl, who was allegedly raped by two policemen on the compound of Desai Ganj Police Station in Chandrapur, Maharashtra, while her relatives sat outside to file a police report against a theft. Both the High Court and later Supreme Court acquitted the policemen on the ground that Mathura was habitual of sexual activities and did not raise alarm.

It was only in post 1983, SC rulings clarified, "Even if a rape victim has been promiscuous in the past, she has the right to refuse to submit herself for a sexual intercourse to anyone and everyone because she is not an object". Custodial rape was also introduced.

In 1992, Vishakha guidelines[23] were introduced by the Supreme Court where it defined 'Sexual Harassment at work place'

In State of Punjab v. Gurmit Singh[24], the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

In Chairman, Railway Board v. Chandrima Das,[25] in which a Bangladesh woman was raped by the railway security men, the Supreme Court observed: "Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be avoidable under public law. It was more so, when it was not a mere violation of any ordinary right, but the violation of fundamental rights was involved- as the petitioner was a victim of rape, which a violation of fundamental right of every person guaranteed under Article.21 of the Constitution." The court also said that relief can be granted on two grounds- a) ground of domestic jurisprudence based on the Constitutional provisions; b) ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948.

Suo Motto v. State of Rajasthan[26] popularly known as German Lady rape case. It is a landmark judgment laying down principles and guidelines for the protection of dignity of the women. Hon'ble Mr. Justice N.N. Mathur, who wrote the judgment, took Suo Motto cognizance of a rape case of a foreign tourist in Rajasthan in May 2005 which had hit the headlines of State and national

[22] Mathura Rape Case Tuka Ram, *Supra* at note 20.
[23] Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
[24] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.
[25] Chairman, Railway Board v. Chandrima Das, AIR 2000 SC 988.
[26] Suo Motu v. State of Rajasthan, RLW 2005 (2) Raj 1385.

newspapers. In this case, court laid down certain highly relevant guidelines for criminal investigation and trial of offences against women in rape cases. The court opined: "In order to combat the increasing crime against women and to ensure protection and preservation of their human rights – the criminal justice system needs to be addressed from the point of view of systemic victim support service. There is need to promote proactive role of police as well as trial courts".

In State of Punjab v. Gurmit Singh & Ors[27], "The expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in sub- section (2) of Section 327 Cr. P.C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc. invariably "in camera". The Courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr. P.C. and hold the trial of rape cases in camera."

Additionally, it would be essential to enforce the guidelines imposed in Sakshi v. Union of India (UOI) And Ors[28]. "In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required."

The apex court has directed trial courts to effectively control the recording of evidence in rape trials and not let defence counsels intimidate the victim with offensive questions. "A murderer destroys the physical body of a victim but a rapist degrades her very soul," former CJI A.S. Anand said in one judgment.

On the raging clamors for new laws and death penalty for rapists, Justice Anand (retd) says, "Socially sensitized judges are better statutory armors than long clauses of penal provisions containing complex exceptions. While the larger debate on capital punishment would continue,

[27] State of Punjab, *Supra* at note 24.
[28] Sakshi v. Union of India, AIR 2004 SC 3566.

the courts can impose imprisonment for life as the sentence for heinous crimes like gang rape and clarify the expression shall mean imprisonment for the rest of the life"

The government's inactiveness to this issue can be seen by the report of NCRB on rapes. In the very first year, in 1971, there were 2043 reported cases of rape, the NCRB report said. These numbers jumped to 24,206 cases in 2011, an incredible increase of 873% from 1971. The NCRB has also concluded that only one in 69 rape cases get reported and only 20 percent of the reported cases result in some kind of conviction.[29]

We can see that there is a huge rise in rape cases over the years but the sad part is that the conviction rates are very low. This shows the very ineffectiveness of our judicial system and their insensitivity to such crimes. But as we discussed above also, over the years there has been amend to this in judiciary and there have been many repairs to the system through judges.

Thus, it is observed that Judiciary being the third pillar of the Constitution has played a vital role in finding the proper solution in rape cases. Sometimes through wide interpretation of provisions of various legislation and Constitution and sometimes by laying down landmark judgments where there are no specific laws, the judiciary has tried to strike a balance and equilibrium in the society. The judiciary has tried to fulfill the gap between fast changing society and rigid laws (because of the long and time taking procedure of enactments of laws by legislature, it's not easy to amend these laws with the fast-changing society). Nirbhaya's case has once again raised the question of inadequacy and lack of proper implementation of the laws, however, Anti-rape Bill- Criminal Law (Amendment) Bill, 2013 has been passed. The laws relating to rape victim's has been enacted after much public cry or through judicial intervention only. This Amendment Bill also came after losing Nirbhaya and mass protests. It has rightly been observed by the judge in Nishan Singh's case that Court can only lay down the guidelines but important role has to be played by the society in its implementation.

3. COMMONALITIES IN RAREST OF RARE RAPE CASES

3.1 NATURE OF THE CRIME

The case "Mohd. Chaman vs State (N.C.T. of Delhi)" is of year 1995, in which appellant Mohd. Chaman was 30 years old. Victim girl Ritu Kumari was one and a half years old at the time of crime. Victim's father Bindu shah owned a tailoring factory in locality. On 10th April 1995 when Bindu shah was working, his wife Smt. Lalita had gone out for some work in market leaving behind

[29] Mohd. Chaman v. State (NCT of Delhi), AIR 2001 SC 1917.

her 2 daughters with some neighbor. When she returned, she found her younger daughter missing. On searching for a while, she noticed that the door of the room of the appellant was half open, she found Ritu lying on the floor unconscious. The appellant was present in the room at that moment and then on beholding Lalita, scooped Ritu from the ground and handed over to Lalita. Her mother discovered her sans undergarment, only frock. Besides that some she realized Ritu's cheek and other parts of her body had numerous bite wounds from bleeding teeth. When she asked about Ritu's status, the appellant told her to go silently since if she did so, she would meet the same end and the police could not do anything to him. When sent to hospital on doctor's advice, she was brought dead. The persons who were present at the place reported the matter to the police that Ritu was raped and murdered by the appellant. Trial court after weighing the facts held the appellant guilty under section 3028 and 3769 of Indian Penal Code and convicted him with rigorous punishment of death. Such crimes wherein a cruel act of rape is done with an innocent girl who was a mere 1 ½ years old and which resulted in causing her death due to injuries that were given on her liver can deserve nothing lesser than a punishment of death. High court also concurred with lower court's decision. An innocent girl had fallen prey to monster-like thirsty 30-year-old man and such man raped and murdered her in worst possible manner, causing outrage and extreme intense indignation of community. Such instances would qualify in the range of the rarest of rare category, opined the court by taking into account that such would shock the conscience of society.[30]

3.2 JUDICIAL DETERMINANTS OF HEINOUSNESS

The courts have often cited different case laws while dealing with the classification of murder offences, but laying down rigid guidelines to predetermine the culpability or punishment is practically impossible and ineffective. While some broad standards can be suggested, their application must involve prudent judicial discretion rather than blind adherence.

Aggravating circumstances generally pertain to the nature and gravity of the crime, such as repeat offences, heinousness, extreme brutality, or planned execution.

Mitigating circumstances, on the other hand, are more concerned with the offender's background or mental state, including acting under provocation or emotional distress, being a juvenile or mentally unsound, being under coercion or influence or the possibility of reform and rehabilitation.

[30] https://www.mondaq.com/india/crime/1439912/rape-death-penalty-and-the-doctrine-of-rarest-of-rare-in-india

In Ram Naresh & Ors. v. State of Chhattisgarh[31], the Court emphasized that sentencing must be individualized and sensitive to both the crime and the criminal. The Court held that a careful balance between aggravating and mitigating circumstances must be maintained and that a mechanical application of death penalty violates the principles of justice.

Similarly, in Shankar Kisan Rao Khade v. State of Maharashtra[32], the Supreme Court conducted a detailed sentencing analysis and reiterated the importance of a "crime test", "criminal test", and finally a "Rarest of Rare test". It clarified that the death penalty should not be based merely on the brutality of the crime but must also consider whether the convict is beyond reform.

In Santosh Kumar Satish Bhushan Bariyar v. State of Maharashtra[33], the Supreme Court strongly criticized the casual approach adopted in awarding death sentences without considering mitigating factors. The Court also held that awarding a death sentence in the absence of proper application of mitigating factors violates Article 21 of the Constitution.

Further, in Sangeet v. State of Haryana[34], the Court held that there is no coherent sentencing policy in India and that courts often deviate from established principles. The judgment questioned the consistency of the "rarest of rare" doctrine's application and stressed the need for a more structured and principled sentencing framework.

Public emotion or societal outrage may lead people to desire the harshest punishment when they are shocked or deeply agitated by the crime. However, as held in State of Maharashtra v. Milind s/o Shravan Kolhe[35], public sentiment should not substitute due process or judicial objectivity.

Thus, even in cases like rape and murder, where trial courts may lean toward awarding the death penalty due to the shocking nature of the offence, the Supreme Court has often re-examined whether the sentence was justified after giving full weight to the mitigating circumstances. The ultimate question is: even in the face of heinousness, is the convict truly beyond reform, and does the case unquestionably fall within the "rarest of rare" bracket?

[31] Ramnaresh & Ors. v. State of Chhattisgarh, (2012) 4 SCC 257.
[32] Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546.
[33] Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498.
[34] Sangeet v. State of Haryana, (2013) 2 SCC 452.
[35] State of Maharashtra v. Milind s/o Shravan Kolhe, (2011) 1 SCC 535.

4. ROLE OF SENTENCING IN RAREST OF RARE CASES

4.1 OBJECTIVES OF SENTENCING IN RAPE CASES

In rape sentencing, Indian courts applies its judicial discretion on the basis of two considerations. The first consideration by courts for applying judicial discretion in rape sentencing is on some factors like facts and circumstances of the case, consent of the victim, marital status, acquaintance of accused etc. In cases of rape, victim's consent is taken as one of the sentence reducing mitigating factors which has been seen in Tukaram v. State of Maharashtra[36], where the Supreme Court decreased the sentence by stating that the victim was sexually active and she had offered her passive consent because there is no injury on her body. In general, the courts decide whether the rape victim had given her consent or not based on the medical report except in certain rapes such as custodial rape, gang rape, rape on pregnant women etc., the courts presume there is absence of consent, if the victim states in her testimony that she did not give her consent. But according to the World Health Organization (WHO) Report – 2019, victims of rape have visible injuries on their bodies only in 30% of the rape cases. So the courts will look into other factors while determining the issue of victim's consent or not. The second consideration is the dominating school of punishment thought in the nation. In India, the Supreme Court was not implementing any specific theory of punishment invariably while convicting the rape criminals. But typically Indian Courts use reformative theory of punishment in case of rape i.e., the courts determine whether there is any hope of accused being reformed or not, if yes then the courts lower the sentence of accused. According to this theory, young age, social background of accused could be treated as mitigating circumstances. Such reducing factors appears unfair and would provide leniency to the accused and other individuals to commit sexual offenses. The courts have to choose any one of the theories of punishment and also consider various factors to be included in reducing and aggravating the sentence. This research aims to extensively study the prevailing disparities which exist within the Indian Criminal Justice System and therefore, lay greater stress upon implementing uniform sentences for crimes in cases of crimes committed against children and women.[37]

4.2 SENTENCING TRENDS.

The 1978 figure of 1,243 reported rapes is 5 times the direct post-war total of 251 in 1946. The rape totals have increased twice as quickly as totals for other sex offenses. Figures for sex violent crime have risen nearly 22 times the 1946 totals. Clearance rates for rape have been around 75 to

[36] Tukaram, *supra* at note 20.
[37] https://ijlmh.com/paper/rape-sentencing-in-india-need-for-uniform-sentencing-guidelines/

80 percent since 1946. The rate of prosecution for rape appears to be persistently around 80 percent. The use of cautioning the offender for rape is negligible. Yearly variation in the acquittal rate is very large, but roughly 30 percent of individuals initially charged at a magistrates' court for rape are acquitted completely and a further 5 percent acquitted of rape but convicted of indecent assault. The majority of convicted rape perpetrators are aged 17 to 29. Nearly half the victims are aged 13 to 18, a further 35 percent are 18 to 35. More custodial sentences are imposed for rape than for any other offence except murder. Approximately 90 percent of adult offenders convicted of full rape or attempted rape receive a custodial sentence. Sentences are between 2 years or less (15-20 percent), 2 to 3 years (30 percent), 3 to 4 years (20 percent), and more than 5 years (30-35 percent). Half of those convicted know their victims only as strangers, 27 percent, acquaintances, and 23 percent, familiar to their victims. Three other variables are linked to the imposition of lengthy sentences: the severity of the attack, the offender's criminal history, and advanced victim age. Six references are cited.[38]

4.3 ROLE OF DEATH PENALTY IN RAPE CASES

Many feminist scholars and women's rights groups argue that capital punishment for rape neither deters the crime nor ensures justice for survivors. They contend that the imposition of the death penalty serves more as a populist measure than a genuine step toward eradicating sexual violence.

One of the major concerns raised by activists is that focusing on execution diverts attention from the systemic, structural issues—notably, the institutionalized gender discrimination that underlies and perpetuates rape culture. In a 2020 press conference, Kavita Krishnan, Secretary of the All India Progressive Women's Association, stated that the widely publicized executions of rape convicts "rather than deter rape, actually deter our society and our government from addressing and taking responsibility for rape culture." She added that rape is not an isolated act by strangers, but a socially ingrained product of patriarchy, with the majority of perpetrators being known to the victims.

This perspective was echoed in Ankush Maruti Shinde v. State of Maharashtra[39], where the Court emphasized the necessity of reliable evidence and a fair trial in rape cases. The case highlighted the danger of hasty convictions and death sentences, particularly in emotionally charged cases, and the irreversible consequences of miscarriages of justice.

[38] https://www.ojp.gov/ncjrs/virtual-library/abstracts/rape-rates-trends-and-sentencing-practice
[39] Ankush Maruti Shinde v. State of Maharashtra, (2009) 6 SCC 667.

Psychiatrist Jaydip Sarkar argues that "blaming and punishing the perpetrator alone will not address the underlying belief systems based in patriarchal culture" that sustain sexual violence. This sentiment resonates with the observations in Delhi Domestic Working Women's Forum v. Union of India[40], where the Court recognized the need for victim-centric approaches and proposed the establishment of support structures like legal aid, counseling, and compensation, moving away from a purely punitive model.

Secondly, feminists argue that executing rapists does not serve the real needs of survivors. Scholar Branham observes that many victims have needs beyond securing a death sentence, such as emotional healing, social reintegration, and dignity restoration. Tagu Sari, examining the Japanese perspective, warns that a punishment-focused approach may even negate the victim's recovery.

In Mohd. Ajmal Amir Kasab v. State of Maharashtra[41], while the death penalty was upheld, the Court acknowledged that death sentences are not necessarily healing for victims' families, especially when delays and procedural complications prolong their trauma. Sister Helen Prejean, a globally known anti-death penalty advocate, noted that "grieving families can never be healed by watching as the government kills the perpetrator."

A 2021 survey by Equality Now and Dignity Alliance International (DAI) revealed that rape survivors' concept of justice rarely includes the death penalty. Instead, they prioritize: Expeditious and fair trials, conclusive convictions, respect and concern from the legal system, and a shift in societal attitudes.

This view aligns with the principles laid down in State of Punjab v. Gurmit Singh[42], where the Supreme Court stressed the importance of dignity and sensitivity in handling rape survivors, rather than focusing exclusively on retributive justice.

Additionally, in Re: Assessment of the Criminal Justice System in response to Sexual Offences[43], the Court emphasized that rehabilitative and survivor-centric responses are crucial. The Court observed that procedural justice and institutional accountability are central to achieving true justice in sexual assault cases.

[40] Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14.
[41] Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1.
[42] State of Punjab *supra* at note 24.
[43] Re: Assessment of the Criminal Justice System in response to Sexual Offences, (2020) 17 SCC 540.

To truly advance women's rights, the focus must shift from executions to dismantling the structures that permit and perpetuate sexual violence. Instead of allocating substantial resources to capital punishment, the State should invest in Legal and psychological support for survivors, Fast-track courts with survivor-sensitive procedures, Public awareness programs to challenge rape myths and victim-blaming.

The Justice Verma Committee Report (2013), formed after the Nirbhaya case[44], also rejected the death penalty as a solution to rape. It recommended systemic reforms such as police accountability, judicial sensitivity, and educational changes to combat the deeply rooted misogyny that fuels sexual violence. [45]

4.4 CHALLENGES IN SENTENCING REAREST OF RARE CASES

Until 1973 in the Indian Legal System, In the case of a capital offense, the judge has to justify his or her grounds for not giving the death penalty and opting for the alternative punishment of life imprisonment. But in "Jag Mohan Singh v State of U.P[46]," the Apex Court held the validity of the death penalty, knowing that it was not only a hindrance but also a manifestation of power. In this regard, the Court took into account that India did not have a luxury to play with the abrogation of the death sentence and that appeal could remedy defects in sentencing to higher courts. But the Court established standards under which, in sentencing, the death penalty was the exception rather than the rule. The facts of the case necessitated that it protect state security, public interest, or public order.

Subsequent to that, as per recent amendments in the Indian legal system, a pre-sentence hearing is a right accorded to the accused. The court has to set definite reasons for imposing the death penalty instead of a life sentence. The death penalty was commuted to life in the "Priyadarshini Mattoo[47]" case, demonstrating the Supreme Court's recent concern regarding the sheer vagueness of its own "rarest of rare" doctrine. While death sentences are being awarded in a number of murder cases, seemingly in recompense to "society's cry for justice," the Supreme Court, conceding that the application of the "rarest of rare" doctrine is plagued by "chaos," "subjectivity," and "arbitrariness," has delivered a series of judgments. According to this doctrine, the court could employ the death penalty in the most exceptional cases, where the option of life imprisonment is

[44] Mukesh, *Supra* at note 2.
[45] https://deathpenaltyinfo.org/policy-issues/biases-and-vulnerabilities/race/race-rape-and-the-death-penalty
[46] Jagmohan Singh v. State of U.P., (1973) 1 SCC 20: AIR 1973 SC 947.
[47] Priyadarshini Mattoo Case, (2010) 9 SCC 747.

"unquestionably foreclosed" after weighing the balance sheet of "mitigating and aggravating circumstances."

It can be understood that the general principle of sentencing a convict to death is to analyze whether the presence of an ordered society necessitates the elimination of the person who perpetrated the crime. In considering a case as "rarest of rare", the intent, cruel, cold-blooded, and wicked nature of a crime committed without regard for the victim is often taken into account.

But some judges such as P.N. Bhagwati have pointed out the vagueness and ambiguity involved in interpreting and enforcing this concept. According to him, personal biases and subjectivity would play a crucial role in interpreting the doctrine and handing out the death penalty, establishing a system whereby people would live or die based on the judicial perspective. Judgment and dependence upon the attitude of the judges would violate the fundamental rights provided under Articles 14 and 21 of the Indian Constitution.

As there are two sides to every coin, similarly, every law and system has two sides: positives and negatives. In a nation like India, the abolition of the death penalty should not be attempted or abolished because that would give the confidence to the law violators, and that can result in any situation which can turn out to be a dangerous weapon to the law violators. But simultaneously, giving the death penalty is also not the correct choice. Every individual has the right to liberty and life, so without knowing their capacity to rehab and heal, giving an individual a death sentence is nothing but murdering an individual who could have transformed and been a benefit to society. Even in this 21st century, individuals are seeking an "Eye for Eye"; it's nothing but revenge rather than justice.[48]

5. RECOMMENDATIONS AND THE WAY FORWARD

The evolution of India's criminal justice system, particularly post-enactment of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, offers a timely opportunity to recalibrate how the "rarest of rare" doctrine is applied to rape cases. The gravity of sexual offences, especially when accompanied by extreme brutality or murder, demands a sentencing system that is not only constitutionally compliant but also socially responsive and victim-centric. The following recommendations aim to enhance clarity, consistency, and justice in the sentencing of such heinous crimes.

[48] https://www.ylfkashmir.com/Projects/law-journal/critical-analysis-of-the-doctrine-rarest-of-the-rare

5.1. CODIFICATION OF SENTENCING GUIDELINES UNDER BNS

While the Bhartiya Nyaya Sanhita, 2023 replaces the Indian Penal Code, it continues to prescribe varying degrees of punishment for rape and aggravated sexual offences (e.g., Sections 63 to 70 of the BNS). However, the discretion granted to judges in determining whether a case falls within the "rarest of rare" category remains subjective.

To address this, the legislature should enact a Sentencing Guidelines Code either as a separate statute akin to the UK's Sentencing Council[49] or as a schedule to the BNS. This framework should provide:

5.1.1. Categorization of rape offences based on aggravating factors such as the age of the victim, premeditation, cruelty, and whether the offence resulted in death.

5.1.2 Presumptive sentencing bands for each category, with judicial discretion allowed only within defined limits.

5.1.3 Consideration of mitigating factors such as the mental health of the offender, absence of prior criminal record, and scope for rehabilitation.

This would bring consistency across trial and appellate courts and reduce arbitrariness in the application of capital punishment.

5.2. HARMONIZATION OF JUDICIAL DISCRETION AND STATUTORY MANDATES

Some provisions under the BNS, like Section 70(2), prescribe mandatory death penalty or life imprisonment for gang rape of minors below 12 years. However, this has created legal ambiguity when read in conjunction with the doctrine of "rarest of rare", which derives from constitutional principles under Articles 14 and 21.

The Supreme Court must clarify, possibly through a Constitution Bench, whether judicial discretion under the rarest of rare standard remains applicable despite legislative mandates. [50]Alternatively, the legislature may issue explanatory notes to the BNS, affirming that courts may evaluate each case's facts before applying the maximum punishment, thereby preserving judicial independence.

[49] Sentencing Council of England and Wales, https://www.sentencingcouncil.org.uk
[50] Mithu v. State of Punjab, (1983) 2 SCC 277.

This would prevent a mechanical or populist imposition of death penalties and ensure decisions are made based on jurisprudential reasoning.

5.3. ESTABLISHMENT OF SENTENCING REVIEW BOARDS UNDER BNSS

Given the irreversible nature of the death penalty, especially in borderline cases, a multi-disciplinary Sentencing Review Board (SRB) should be instituted under the Bhartiya Nagarik Suraksha Sanhita, 2023[51]. This Board, functioning at the state or zonal level, should comprise:

5.3.1. A retired High Court judge

5.3.2. A forensic psychologist

5.3.3. A criminologist

5.3.4. A representative from the National Commission for Women or similar body

5.3.5. A victim's advocate

Before confirming a death sentence under BNS, the trial court should refer the case to this SRB for a comprehensive review. This safeguard ensures a broader evaluation of reformation potential, impact on the victim, and proportionality.

5.4. INSTITUTIONALIZATION OF VICTIM IMPACT STATEMENTS UNDER BNSS

Under the BNSS (which replaces the CrPC), provisions related to victim participation must be expanded to mandate Victim Impact Statements (VIS) during sentencing in heinous sexual offences. These statements should detail:

5.4.1. Physical and psychological trauma

5.4.2. Socio-economic consequences

5.4.3. Victim's perspective on sentencing

VIS can humanize the case and offer courts a deeper understanding of the societal and personal harm, as upheld in State of Punjab v. Gurmit Singh[52], where victim dignity was emphasized.

[51] Law Commission of India, Draft Sentencing Policy Guidelines (2003), and suggestions in 4. Shankar Kisanrao Khade *supra* at note 32.
[52] State of Punjab, *Supra* at note 24.

5.5. INTEGRATION OF PSYCHOLOGICAL ASSESSMENTS IN SENTENCING

Before determining that a convict is beyond reformation and deserving of capital punishment, courts should mandatorily seek professional psychological evaluations, particularly in rape-murder cases. This would support the reformative theory of punishment as articulated in Shraddananda v. State of Karnataka[53].

The BNSS may be amended to direct lower courts to obtain such assessments before sentencing, and to give them due weight in judgment.

5.6. PUBLIC LEGAL LITERACY AND MEDIA ACCOUNTABILITY

The "collective conscience" of society must be based on informed understanding, not media sensationalism. Legal awareness campaigns should be institutionalized at national and state levels to educate the public on:

5.6.1. Sentencing processes under BNS and BNSS

5.6.2. Constitutional safeguards against arbitrary punishment

5.6.3. The rarest of rare doctrine and its application, reducing pressure from public outrage.[54]

Further, the Press Council of India or a similar regulatory body should develop ethical guidelines on reporting sexual offences and trials, to prevent public trials from influencing judicial objectivity.

5.7. MANDATORY JUDICIAL AND PROSECUTORIAL TRAINING

The judicial officers and public prosecutors dealing with sexual offences under BNS must undergo periodic training modules on:

5.7.1. Trauma-informed adjudication

5.7.2. Gender sensitivity

5.7.3. Victim psychology

5.7.4. Sentencing jurisprudence

The National Judicial Academy and state judicial academies should incorporate such modules to ensure that judgments remain legally robust and socially empathetic.[55]

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[53] Shraddananda v. State of Karnataka, (2008) 13 SCC 767.
[54] J.S. Verma Committee Report 2013, available at mha.gov.in
[55] National Judicial Academy, Training Curriculum for Judges 2023

5.8. EMPIRICAL EVALUATION OF DEATH PENALTY'S EFFICACY

In light of the Law Commission of India's 262nd Report[56] and other global studies, the deterrent effect of capital punishment in rape cases remains contested. The Ministry of Law and Justice or the NITI Aayog should commission periodic studies to:

5.8.1. Assess recidivism rates

5.8.2. Measure public perception of justice.

5.8.3. Evaluate the deterrence achieved through death sentencing

Policy based on data will strengthen the legal framework and help determine whether alternatives like life imprisonment without remission serve justice more effectively.

6. CONCLUSION

The doctrine of "rarest of rare" has been a crucial part of India's criminal justice system, especially in cases of brutal and inhumane crimes like rape. This paper has explored how this doctrine has developed over time and how it is applied by courts to decide when the death penalty is truly necessary. While the doctrine aims to protect society and deliver justice in the harshest of crimes, its inconsistent application and subjective interpretation by different judges remain a concern. This inconsistency can sometimes lead to unfair sentencing, either too harsh or too lenient, depending on how each case is viewed.

Through an analysis of landmark cases, legal reforms, and victim experiences, it is clear that the justice system must not only punish but also protect and support victims. Rape survivors often face trauma, social stigma, and long legal battles, which can be worsened by the lack of sensitivity in investigations and trials. On the other hand, relying only on harsh punishment like the death penalty may not truly prevent such crimes. What is needed is a balanced approach—one that includes strict laws, timely justice, psychological support for victims, and public awareness.

Furthermore, the media, society, and judiciary must work together to build a justice system that is fair, transparent, and victim-friendly. There is a strong need for judicial training, clearer sentencing guidelines, and policies based on data and research rather than public pressure or outrage.

In conclusion, while the "rarest of rare" doctrine serves as a strong legal measure against heinous crimes, it must evolve with changing times. True justice lies not just in punishing the guilty but in

[56] Law Commission of India, 262nd Report on the Death Penalty 2015.

creating a society where such crimes are prevented, victims are respected, and the legal system responds with both firmness and compassion.