Volume II ISSUE III **ISSN NO : 2582-6034**

LEGALFOXES LAW TIMES

A CRITICAL ANALYSIS OF CAPITAL PUNISHMENT IN INDIA WITH PROCEDURAL RESPECT TO THE DOCTRINE OF RAREST OF RARE

By Angelina Thomas

ABSTRACT

The Death Penalty is a form of punishment that has coherently existed in every society ever since ancient times. It has been a highly debated subject of concern in modern justice systems all over the world in terms of the validity and the link to human life, rights and dignity. In India however, it is a system that continues to exist with the exception of the "Doctrine of Rarest of Rare". There has been multiple controversies and inconsistencies that have been identified with the application and practice of this Doctrine. This paper intends to study and analyze this Doctrine in the Indian context through the observation of various cases that have taken place in instances of brutal acts and crimes. The study is inclined to understand on what basis the judiciary terms a case to be eligible to fit the criteria of being the "rarest of rare". Further to observe whether a uniform approach has been used by courts in order to deem a case to be eligible for the death penalty and weather such uniformity is consistently used or if it has come out of personal reasoning or philosophy of the judges involved or whether it is highly influenced by public agitation and media influence. The research adapted is qualitatively based, as it deals with the study and observation of previous cases in the same arena. The object of the study comprehensively will be to identify weather the 'Doctrine of Rarest of Rare' used by the Indian Judicial System is inherently just and fair. A brief discussion on the idea of death penalty in the global arena along with the Doctrine of Rarest of Rare used by the Indian Supreme court has been discussed in this paper along with the various reasonings given by the Court in such cases as to attain the object of the study.

Key words: Death penalty, doctrine of rarest of rare, Indian judicial system, justice, fairness

INTRODUCTION

In a world where the talk of human rights and its importance only continues to grow, the topic or idea of capital punishment is one which is highly debated. India being a democratic country which highly professes the importance of human rights and being a very active member of the United Nations continues this practice on the grounds of what they formed as the Doctrine of rarest of rare. This doctrine was evolved in the case of Bacchan Singh v. State of Punjab[1] wherein the Supreme Court held that the constitutionality of the death penalty would be upheld for crimes of extreme brutal and heinous nature in the rarest of rare cases. The scope of this however was not discussed or made clear, thus, leaving space for ambiguity. The question here is that being an activist for human rights, how can a country like India constitutionalize and continue to practice such a means of punishment despite it being a violation of basic human rights. Multiple debates are happening throughout the worlds among jurists, lawyers, administrators, social activists, law commission and legal reformers to ascertain the need for the support or abolishment of capital punishment.[2]

The United Nations has internationally proclaimed the need for a fair and just system of capital punishment around the world.[3] The United Nations Economic and Social Council (UNESCO) in its resolution in 1996 encouraged all members to abolish capital punishment. Further, it stated that the member countries who use capital punishment to ensure a speedy and fair trial to the accused.[4] Under Article 5 of the Universal Declaration of Human Rights, 1984, it is provided that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In correlation to this, the constitution of India clearly provides for the right to life and personal liberty to every citizen under Article 21 and even further states that every citizen has the right to live and not to die. Under the various attempts and appeals made by the United Nations to eradicate this extreme form of punishment, 120 member countries have abolished capital punishment in their respective countries. However, 73 countries continue the practice of death penalty and India is one among them.

[1]Bacchan Singh v. State of Punjab AIR 1980 SC 653
[2] Ahmed, I.G. (2002) Death Sentence and Criminal Justice in Human Rights Perspective. Published in university of calcutta
[3] International Scenario of United Nation Charter (1948)
[4] United Nations Economic and Social Council (1996)

The practice of capital punishment has existed in all societies since ancient times. The initial concept was the survivals of the fittest, killing to attain the needs of the individual. As times evolved it was used in the punishment of crime, however, it was used even for petty crimes which were against the norms of human rights. In the present modern era, with a high crime rate, India uses the presence of capital punishment as a means to create a deterrent effect on potential criminals to avoids committing the crime with the existence of fear of such punishment. Thereby, to create a fairer means of utilizing such punishment they evolved the need to ensure that this is only used in the rarest of rare cases. In this paper, the researcher studies the different cases that took place upholding the doctrine of rarest of rare within the Indian courts. Further, to analyze whether the process of providing the death penalty within in India in the rarest of rare cases had been just and fair. The researcher will also include the question as to what basis the courts in India uses to term a case as the rarest of rare and the uniformity in the procedure of the same.

RESEARCH QUESTION

- On what basis does the Indian Judiciary deem a case to come under the criteria of rarest of rare?
- Is there a uniform procedure used, or is it based on the personal whim of the judge, or is it influenced by the public and media?
- Is the Doctrine of Rarest of Rare used by the Indian judiciary for the practice of capital punishment just and fair?

LITERATURE REVIEW

1. LEGAL THEORY

- Deterrence Theory
- Retributive Theory
- The Utility Theory by Bentham
- Theory of Social Engineering by Roscoe Pound
- Doctrine of 'Struggle for existence'
- Ahimsa by Mahatma Gandhi

2. CONSTITUTIONAL BACKGROUND

- Article 21 – Protection of life and Personal Liberty
- Article 19 – Guarantees individual rights to all
- Article 14 – Equality before law

3. MUNICIPAL LAW

- Section 120B, 121, 132, 194, 302, 303, 305, 364A, 376A, 396 of the Indian Penal Code
- The Code of Criminal Procedure, 1973
- The AIR Force Act, 1950
- The Arms Act, 1950
- The Navy Act, 1957
- Sec. 376A, Criminal law amendment act, 2013
- Part II, Section 4 of The Commission of Sati (Prevention) Act, 1987
- Sec. 31(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985
- The Criminal Law (Amendment) Ordinance, 2018 - Death penalty for rapists of girls below 12 years of age
- Maharashtra Prisons Rule, 1971

4. INTERNATIONAL LAW

- International Covenant on Civil and Political Rights (1966), Article 6 – "No one shall be subjected to torture, cruel, inhuman and degrading treatment and punishment"
- "Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty" published by Economic and Social Council of United Nations in 1984
- United Nations Economic and Social Council (1996), 15th Resolution – encouraging abolition of capital punishment and speedy trials for accused
- Universal Declaration of Human Rights (1947), Article 5 – "No one shall be subjected to torture and cruel inhuman and degrading treatment and punishment"
- International Commission against death penalty (2010)

5. JOURNAL ARTICLES

- Ahmad, I.G., "Death Penalty and Criminal Justice System in Human rights perspective", Ban. L.J., Vol.35 & 36, (2006-2007).
- Sharma, Sobharam, "Execution of Death Penalty in India : Need to Change the Law", Nyaya Deep, Issue-1, Vol. XII, Jan. 2011.
- Mudur, Ganapati, "India to Introduce Death Penalty for Peddling Fake Drugs", British Medical Journal, August 2003.
- Henderson, Charles Richmond, "Control of Crime in India", Journal of American Institute of Criminal Law and Criminology, Vol. 4, No. 3, Sep. 1913.
- Mahapatroa, S (2013) Rarest of Rare doctrine and concept of social engineering, Journal of international academic research for multidisciplinary – A global society for Multidisciplinary research, Volume – 1. Issue 5

6. BOOKS

- Baxi, Upendra, The Indian Supreme Court and Politics, Eastern Book Company, 1980

- Dhavan, Rajiv, The Supreme Court of India: A Socio- Legal Analysis of its Juristic Techniques, N.M. Tripathi, 1997.

7. OTHER POLICIES/SCHEMES, ETC

- The 35th Report of The Law Commission of India, 1967
- The 41st Report of The Law Commission of India, 1969
- The 187th Report of The Law Commission of India, 2003
- The 262 Report of The Law commission of India, 2015
- Verma Committee Report, 2013
- Anti-Hijacking (Amendment) Bill, 2014

THE DOCTRINE OF RAREST OF RARE

There are a certain number of landmark American cases that have paved the way for certain ideas in this sphere i.e. the doctrine of rarest of rare, these include the following:

In the case of Rooper v. Simmons[5], the Supreme Court laid down the grounds that an individual under 18 years of age cannot be awarded the death penalty. Thus through this case came the evolution of setting the age limit for a death penalty.

In the case of Uttecht v. Brown case[6], The Supreme Court laid down the provision of the need for two separate trials for an accused of death penalty. The two phases of the trial include the first in which the jury will analyses and conclude whether the accused is truly guilty of the crime of murder and if so the second phase of the trial the jury will propose if the accused is proven guilty in the first phase of the trial then it is to be found whether the death penalty is an appropriate measure of punishment for the accused. The Supreme Court held that the jury must also consider both the aggravating and mitigating factors based on the circumstances of the case. Previous criminal records and violent crimes of the accused must be looked into, in such a case if the accused never had a bad previous record of any sort of violence or an extreme sense of murder that took place at the particular crime then he is not eligible for a death penalty. It was strongly stated that such punishment cannot be given routinely in nature but must be preserved for the worst of worst crimes.[7]

In India, the cases and the provision of death penalty always existed, however there were changes to reduce the ambiguity based on the seriousness of the case and the seriousness of the crime in relation to such detrimental punishment of ending life.

In the case of Jagmohan Singh v. State of Uttar Pradesh[8], the Supreme Court upheld the constitutionality of the death penalty. The Court held that death penalty is a needed form of punishment to ensure prevention of crimes as well as safety and overall well-being of the society. The court deemed that in a country like India, it is not worth the risk to take the death penalty out of the statute and abolishing it as a whole, however it is to be ensured that the death penalty is

[5]Roopers v. Simmons 543 US 551, 578 app. 579-580 (2005)
[6]Uttecht v. Brown 127 S. Ct. 2218 (2007)
[7] Kansas v. Marsh, 126 S. Ct. 2516, 2543 (2006)
[8]Jagmohan Singh v. State of U.P. AIR 1973 SC 947

only used in exceptional situations fully according to the circumstances of the case and not as a direct sentence as it is done for the protection of the state and security of the people. [9] Section 235 and section 354 of the Criminal Procedure Code provides the right of pre-sentence hearing for the accused under Section 235(2) and compels the court to give specific reason for awarding the death penalty instead of imprisonment for life given under section 354(3).[10]

In the case of Bacchan Singh v. State of Punjab[11], the Supreme court had improved the standing of section 302 of the Indian Penal code as it made it clear that the awarding of such capital punishment may only take place in the rarest of rare cases and where any other remedy is unquestionable.[12] Section 302 of the Indian Penal code prescribes the provision of death penalty or life imprisonment for a penalty for murder. However, it should be noted that the provision of death penalty for murder cannot be held unconstitutional or against the greater good of the public. This is because the conviction of death penalty in a particular situation is not a direct penalty for any crime, instead it is incidental based on the seriousness and extent of the crime. It is not a direct or inevitable consequence of the penal law. Therefore, it cannot be stated or deemed that the provision of section 302 is violative of Article 19(1) of the Constitution of India, 1950.[13]

In the Bacchan Singh case[14], the question as to the constitutionality of the death penalty came into question wherein the supreme court laid down two question or grounds by which a case may be considered for the death penalty and this included uncommon nature of crime and circumstances of the crime are brutal to such an extent that the accused must be penalized with death penalty.[15] These two questions evolved the doctrine of rarest of rare case wherein the court concluded that on such a situation wherein the question of death penalty may be considered under the doctrine the court has to consider uncommon nature of crime and brutal circumstance of crime.

[9] Ibid
[10] Ibid
[11]Bacchan Singh v. State of Punjab, 1980 Sc 898
[12]Bacchan Singh v. State of Punjab, 1980 Sc 898
[13] Ibid.
[14] Ibid.
[15] Ibid.

A better clarification of the Doctrine of Rarest of Rare came into picture in the case of Macchi Singh and ors. v. State of Punjab[16]. This case highlighted the question of brutality of the circumstances of the crime. In this case the accused 11 individuals had killed 17 people in one night during a random raid of homes. The court laid down certain questions that were raised to ascertain the seriousness of the crime. The public response pointed towards the awarding of death penalty and the judiciary wanted to support the public at large. The conditions that were to be considered was laid down by the court in the judgement and these were necessary conditions to be fulfilled for the awarding of a death penalty[17]:

a) When the murder is extremely brutal in nature and creates intense and extreme indication of the community
b) When the murder is committed for a motive which evinces total depravity and meanness
c) Dowry death or killings due to infatuation with another woman, being a member of a scheduled tribe or scheduled caste on the grounds of him being a member of the caste/tribe, offences to terrorize people to give up property and other benefits in order to reverse past injustices and to restore social balance
d) Cases of multiple murders of members of a particular family, caste, community, or locality
e) When the victim is an innocent child, helpless woman, aged or infirm person, a public figure whose murder is committed other than for personal reasons.

For the consideration of the Doctrine of Rarest of Rare the court had evolved five categories of murder[18]:

1) Motive
2) Manner of Commission
3) Extent of Crime
4) Anti-social or repugnant nature of crime
5) Personality of victim

[16]Macchi Singh and ors v. State of Punjab AIR 1980 SC 898
[17] Ibid.
[18]Macchi Singh and ors v. State of Punjab AIR 1983 SC 957

It is based on these guidelines that through this landmark judgement it was stated that the courts are to provide and decide the punishment.[19]

In the case of Ramnares and ors v. State of Chattisgarh[20], the Supreme Court was asked to hold the accused guilty for the crimes of rape and murder and to be awarded the death penalty. In this case the victim was gang raped by her brother-in-law and his friends when they were drunk and was subsequently murdered. The doctrine of rarest of rare was imposed keeping in mind the different principles andguidelinesin relation to the nature of the crime, the brutality of the offence, the specific circumstances, the motive, etc. However, it was concluded that although through the underlying facts the crime may be deemed as one which is heinous and brutal in nature it doesn't exactly become eligible or a sufficient enough reason to be awarded death penalty as different cases are different. Based on the doctrine of rarest of rare it is to be understood that the cases should be exceptional in nature, the principles governing this includes both aggravating and mitigating factors or circumstances.[21]

Under the term Aggravating factors, Courts can impose death penalty only on the grounds that[22]:

- the was pre-planning involved before the commission of the murder and it involves extreme brutality
- the murder involves exceptional immorality
- the murder is committed to a member of the armed forces, of the union or of the police or of any public servant when such a member was on duty
- Any consequence done by a public servant during the lawful discharge of duty under section 43 of Code of Criminal Procedure, 1973

Under the Mitigating factors or circumstances, the courts shall take into consideration the following circumstances before awarding capital punishment[23]:

- The offence is committed under a mental or emotional disturbance.

[19] Ibid.
[20]Rmanares and ors v. State of Chattisgarh AIR 2012 SC 1357
[21] Ibid.
[22]Mahapatroa, S (2013) Rarest of Rare doctrine and concept of social engineering. Journal of international academic research for multidisciplinary – A global society for Multidisciplinary research. Volume – 1. Issue 5. ISSN: 2320 - 5083
[23] Ibid.

- When the accused is of a certain young age or below the age of 18 years, they cannot be penalized with death penalty.
- The possibility or probability of the accused not committing the crime again or against the society.
- If the facts and circumstances lead to the accused being morally justified for the commission of the crime.
- If the act was done under duress.
- If the condition of the accused is proven that is mentally weak.

The Supreme court held that those convicted under mitigating factors are not to be awarded capital punishment. In this particular case on balancing both the aggravating as well as mitigating factors, the Supreme Court held that the accused be charged and penalized with life imprisonment being more appropriate for the particular situation on the grounds that the accused were actually quite young, the death was caused by strangulation and further, the victim was not a lawfully married individual and was having extra marital affairs with her brother-in-law.[24]

In the case of Bacchan Sing v State of Punjab[25], Justice Bhagwati was a critic and dissented to the idea of the doctrine of rarest of rare cases that was evolved due to his concern that this would lead to a person's life in the hands of the decision of the bench rather than the constitutional provisions of Article 14 and 21. Further, he stated that the terms used to express the concept of rarest of rare such as brutal, etc was very vague and doesn't give clear idea which may not be uniform for all judges. Therefore, if one judge is in support of the awarding of death penalty it is not certain that the others may think the same and it creates ambiguousness and unclear interpretation of the law.[26]

In the case of State of U.P. v. Satish[27], the court convicted the individual with the sentence of death penalty. In this case, the accused had raped and subsequently murdered a 6-year-old girl. The court held that the rape of such a young child is an act which is deemed to be abnormal and inhumane as it deals with such an innocent individual who is helpless and doesn't even know

[24]Ramnares and ors v. State of Chattisgarh AIR 2012 SC 1357
[25]Bacchan Singh v. State of Punjab AIR 1980 Cr.L.J.653 SC
[26] Ibid.
[27] U.P v. Satish AIR 2005 3 SCC 114

what is happening to him/her which is an act in the lowest level of humanity when it is subsequently followed by the murder of the child.

However, in another context taking into consideration the case of Surendra Pal Shivbalakpal v. State of Gujarat[28], the accused was convicted for raping a teenage girl and subsequently murdering her. The accused was initially awarded death penalty but on appeal it was removed by the Supreme Court of India as this was not to be considered a rarest of rare case. There was clear evidence that the accused did not have a previous criminal record of any sort, further h was a migrant worker from U.P. and did not show any signs of creating future problems or criminal behavior towards the society and therefore does not deserve the sentence of a death penalty and was given life imprisonment instead.

In the case of U.P. v. M.K. Anthony[29], the accused had committed the murder of his wife and two children as he was unable to meet the expenses required to take care of them as well as for the medical treatment of his wife. The court held that this case was not a case that comes under the doctrine of rarest of rare as the accused here had committed the crime due to poverty and not ill-intention and did not have any other means of being a threat to the society.

In the case of AbsarAlam v. State of Bihar[30], the accused had committed the murder of his wife by beheading her. The High court in this particular case awarded the accused death penalty stating that the crime was an act inhumane in nature and comes under the prospect of extreme brutality. However, the Supreme Court accepted the appeal and set aside the verdict given by the High court stating that the conditions and individual prospect of the accused must be considered to the fact that the accused was an illiterate villager who was a cultivator and he had no control over his emotions and acted out in the situation therefore does not really create a threat to the society and cannot be considered as a rarest of rare case.

RESULTS AND FINDINGS

Through the analysis and research made, the researcher has attained certain insights in this sphere. Firstly, the practice of capital punishment in India does not violate the Fundamental

[28]Surendra Pal Shivbalakpal v. State of Gujarat 2005 3 SCC 127
[29] State of U.P. v. M.K. Anthony AIR 1985 SC48
[30]AbsarAlam v. State of Bihar AIR 2012 SC 968

Right to life and personal liberty provided under Article 21 of the constitution of India, based on the principle by which the Supreme Court awards such punishment on the doctrine of rarest of rare.

In the case of Mithu Singh v State of Punjab[31], the constitutionality of Section 303 of the Indian Penal Code was questioned. In this case the court held that the said section 303 of the Indian Penal code is in fact unconstitutional on the grounds that it violates both Article 19 as well as Article 21 of the constitution of India. However, the Supreme Court held that the practice of capital punishment is not a violation of Article 21. The said article provides the fundamental right to life and personal liberty, however, it is clearly stated that this right may be maintained except through procedure established by law. That is to say that state has the right to take away the life of a person according to law if it is for the overall benefit and safety of the people at large and is done only in the rarest of rare cases.

In the case of Jagmohan Singh v. State of U.P.[32], the constitutional validity of capital punishment was upheld. It was argued that the said punishment was a violation of the fundamental right to life provided under Article 21 of the constitution of India. However, it was held by the Supreme court that capital punishment cannot be held as a violation of Article 21 as it is clearly given that procedure established by law is a restriction to the said right.

In the case of Rajendra Prasad v. State of U.P[33], former Justice Krishna Iyer was in support of the abolition of capital punishment in India and that it should only be reserved for white collar crimes. However, in the case of Bacchan Singh v. State of U.P.[34], the ruling given in the Rajendra Prasad case[35] was overruled by the Supreme court. It was held that capital punishment given under section 303 of the Indian Penal code is not violative of the fundamental right to life provided under Article21 of the Indian constitution. It was held that capital punishment in India is only given in the rarest of rare cases and conducted in a reasonable manner and is not done arbitrarily.

[31]Mithu Singh v. State of Punjab 1983 2 SCC 277
[32]Jagmohan v. State of U.P AIR 1973 SC 947 Cr.LJ 3301973 SCC 162
[33]Rajendra Prasad v. State of U.P. AIR 1979 SC 916
[34]Bacchan Singh v. State of Punjab AIR 1980 Cr.L.J.653 SC
[35]Rajendra Prasad v. State of U.P AIR 1979 SC 916

The Supreme Court, in the Menka Gandhi v. Union of India[36] case, provided certain guidelines and procedure as to how capital punishment would take place within the country. It stated that those states who practice capital punishment must adhere to procedural law and ensure that it takes place in a just, fair and reasonable manner.

Therefore, through the understanding of these cases and many more it is understood that capital punishment in India is not violative of its constitutional provisions and is further not a violation of the right to life provided under Article 21 of the Constitution of India.

Secondly, although capital punishment may be internationally proclaimed to be a violation of human rights, it is for the greater good of the society.

The United Nations in many of its spheres and conferences have tried to promote the total abolition of death penalty all over the world as a human rights violation as they recognize capital punishment as a cruel, degrading and inhumane treatment or punishment which infringes the basic human rights of the accused[37]. The United Nations continues to stress on the importance of a fair trial and procedure to be established and practiced for countries who continue the practice of capital punishment. The Universal Declaration of Human Rights emphasizes in Article 5, the provision that 'no one shall be subjected to torture of cruel, inhuman or degrading treatment of punishment'[38]. However, the United Nations Economic and Social Council[39] has provided a number of guidelines and procedures to be established and noted by countries who continue the practice of capital punishment to ensure that they take place in a just and reasonable manner. The Indian judiciary has strictly abided by and ensured to adhere to these international guidelines, thereby awarding capital punishment in the rarest of rare cases in a just, fair and reasonable manner. As mentioned earlier, Article 21 of the India constitution provide for the right to life and personal liberty with the exception, however, of procedure established by law[40] and is therefore not a violation.

The existence of the said provision is to ensure safety and protection to the public at large and the provision to remove a threat to the society keeping in mind all considerations and guidelines.

[36]Menka Gandhi v. Union of India AIR 1978 SC 597
[37] European Convention of Human Right 1953 Article 3
[38] United Declaration on Human Rights 1947 Article 5
[39] United Nations Economic and Social Council 1996
[40] The Constitution of India 1950 Article 21

In a country with a large crime rate, the judiciary aims to create a deterrent effect to reduce the possibility of crime from taking place to ensure the safety and peaceful well-being of its citizens, by taking matters into the states hands rather than victims taking them into their own hands. Therefore, it can be understood that even though capital punishment from a third perspective looks like a human rights violation, within the country it is for the betterment of the public at large.

Thirdly, the Indian judiciary does have discretionary power while deciding death penalty cases, however keeping in mind the guidelines set and the welfare of the public at large.

It is to be noted that certain guideline and understanding of the doctrine of rarest of rare has been established by the Supreme Court. However, the circumstances of different cases differ, and thereby the judiciary does have a discretionary power while deciding such case. The Court had established 5 categories of murder which must be considered while dealing with a death penalty case in respect to the doctrine of rarest of rare and these include motive, manner of commission, extent of crime, anti-social or repugnant nature of crime and personality of victim[41]. The discretionary power of the judiciary is not considered as a harm as they do take into account the different guidelines that have been established by preceding cases and keeping in mind the overall greater welfare and security of the public.

CONCLUSION

India, as a country in the international sphere is a large proponent of human rights. As an active member of the United Nations and its treaties along with being a supporter of a majority of its Human Rights initiatives and international instruments, it is one of the few countries who continues the practice of capital punishment. In its constitution, India offers and guarantees many rights to its citizens along with duties; once an individual infringes the rights of another citizen, he/ she will be held accountable by law. Although capital punishment is seen as cruel and inhumane in certain jurisdictions, it is important to consider that in India it is used as a deterrent to reduce and instill a sense of fear in the minds of the criminal.

[41]Macchi Singh and ors. V. State of Punjab AIR 1983 SC 957

The law in India prevails for the greater good and overall betterment and protection of the society. Therefore, the law is created to ensure that certain criminals and their acts which could potentially be a threat to the society at large will be executed by law but only in the rarest of rare cases. The law is not used in an arbitrary manner but is based on the Doctrine of rarest of rare to ensure a just and fair procedure. The Indian judiciary does strictly abide to the international guidelines provided by the International Covenant on Civil and Political Rights for those countries who continue the practice of capital punishment. The Indian judiciary framed its own guidelines and follows the Doctrine of Rarest of Rare when dealing with such cases, keeping in mind the rare circumstances of the case and the over-all greater good of the public at large. The guidelines were framed by the court in the Macchi Singh case[42] and subsequently in the Bacchan Singh case[43] which creates a basis and set of principles by which the courts adhere to ensure a just, fair and reasonable process.

Although these guidelines are in place there is an extent of personal discretionary power that the judges possess into coming into terms with such a case, however, this is quite necessary as a rigid means cannot be framed in such a situation as different cases have different circumstances and different individuals with different intentions which must be widely put together and analyzed by the judges and the bench before them.

Thus, it can be concluded that awarding capital punishment in the rarest of rare case in India is just and fair and is done so in accordance with the welfare of the public and the law of the land ensuring the adherence to international standards and law.However, it is to be considered that the amount of vagueness and generalization of the law does create a certain space for ambiguity which could prove to be a problem in unfortunate situations wherein judges could be confused and create discretionary judgements wherein there is space for manipulation to take place. Further, if death penalty exists to create a deterrent effect in the minds of criminals the punishment should be in accordance with the act then only will it create a sense of fear in the minds of criminals.

[42]Macchi Singh v. State of Punjab AIR 1983 SC 957
[43]Bacchan Singh v. State of Punjab AIR 1980 SC 653