

Judicial Discretion and the Death Penalty: Revisiting Bachan Singh in the Context of India and the U.S.



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Abstract: *Judicial discretion in death penalty adjudication is inextricably linked with constitutional mandates, moral challenges, and international human rights norms. This study aims to undertake a critical analysis of the path of such discretion in the Indian legal tradition, particularly in the context of the jurisprudential shift indicated by Bachan Singh v. State of Punjab (1980), which articulated the "rarest of rare" doctrine as a bulwark against arbitrary capital punishment. While the said judgment sought to establish principled checks, subsequent judicial perceptions have revealed contradictions, demonstrating the continuity of tension between normative principles and real adjudication. Employing a doctrinal research methodology, the study examines the theoretical underpinnings and functional efficacy of the Bachan Singh model. It supplements it with an empirical review of trial court sentencing practices. It also identifies procedural deficits that impede the doctrine's consistent application, such as incoherent sentencing and neglecting to consider extenuating factors appropriately. Moreover, with a comparative analysis of the capital sentencing system in the United States characterized by statutory limitations and jury participation—the study draws implications regarding the mechanisms through which controlled discretion can enhance transparency and reduce arbitrariness. This paper finally calls for reviewing India's sentencing policy to include greater judicial accountability, implementation consistency, and compatibility with prevailing human rights standards. This paper contends that reforms are necessary to preserve the constitutional doctrine of substantive due process in capital cases.*

Keywords: *Bachan Singh, Comparative Criminal Law, Death Penalty Jurisprudence, Judicial Discretion.*

Abbreviations:

SC: Supreme Court's

CrPC: Code of Criminal Procedure

I. INTRODUCTION

As per Black's Law Dictionary, Judicial discretion can be described as "The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right" [1].

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Judicial discretion plays a significant role in death sentencing, as the power vested in the judge to assess the gravity of the crime and decide whether the death penalty is appropriate or not, which triggers or raises debate over its ethical, legal, and human rights implications.

Before the landmark case of "*Bachan Singh vs. State of Punjab*" [2], no appropriate guidelines were prescribed for death penalty imposition cases; therefore, judges were granted broad discretionary power in determining its enforcement, which led to issues over its application's consistency and fairness. The ruling established the "Rarest of Rare" doctrine, which courts must adhere to when imposing death sentences, and redefined the extent of judicial discretion in such cases.

Despite having significant guidelines for death penalty cases, the question remains the same regarding the fairness, consistency, and application of the 'Rarest of Rare' doctrine. However, the goal of the Supreme Court's (SC) ruling in this case was to ensure that the death penalty would only be applied in the most life-threatening circumstances. Determining whether it's appropriate can be challenging.

Focusing on the Bachan Singh case framework, the research attempts to critically assess the development and efficacy of judicial discretion in death sentencing. It also examines how the guidelines established in the ruling have been applied in subsequent cases and why the role of judicial discretion in death sentencing remains a topic of debate. Additionally, the study examines sentencing guidelines, judicial rationale, and consistency to evaluate judges' discretion in death penalty cases in India and the U.S. By evaluating the structured guidelines and jury involvement in the U.S, the research derives insights for refining India's judicial discretion framework.

The research addresses some of the key issues:

- How has the Bachan Singh case redefined the imposition of the death sentence in India?
- What challenges arise from the procedural flaws that affect the application of judicial discretion in death sentencing?
- How has the 'rarest of rare' principle evolved since Bachan Singh, and is it being consistently followed?
- How does the judicial discretion differ between India and the USA in the imposition of the death penalty, and what lessons can be drawn from this comparison?

The study employs a Doctrinal Research Methodology, analysing the Bachan Singh judgment, subsequent case law, and relevant legal measures to evaluate the role of judicial discretion in implementation. It also examines empirical studies on the application of the death penalty, including sentencing



patterns observed by trial courts. Additionally, the study undertakes a comparative analysis of judicial discretion in death sentencing between India and the U.S., examining the differences in legal frameworks, judicial reasoning, and sentencing patterns.

The study first highlights the Bachan Singh Sentencing framework before pointing out any discrepancies between the theory and the way death sentences are applied in India. It then follows a comparative analysis of judicial discretion in death sentencing between India and the United States. Ultimately, the study provides recommendations for addressing the identified gaps between theory and practice.

II. THE BACHAN SINGH SENTENCING FRAMEWORK

According to legislative policy described in the CrPC Section 354(3), it mandates that "special reasons" for deciding on the death penalty instead of life in prison or a period of years in jail be documented by the sentencing court [3]. If the offence allows for such alternative sentences, the court in Bachan Singh established complete sentencing guidelines to help judges apply their discretion when determining whether to use the death penalty or not.

Examining the choice to use the death penalty, the S.C. first reviewed the significance of the phrase "special reasons" under "Section 354(3)" in the "Rajendra Prasad vs. State of Uttar Pradesh" [4]. According to the Court, "special reasons" indicated that courts may only consider the criminal's circumstances—only aggravating aspects, not mitigating ones—rather than the actual crime.

The "Bachan Singh" sentencing framework introduced the concept of weighing mitigating elements (related to the criminal) against aggravating ones (related to the crime). In actuality, the Court's list of aggravating and mitigating factors is intended to be indicative rather than exhaustive to preserve judicial discretion.

A. The Aggravating Factors Include:

- i. Extreme brutality and prior planning
- ii. Exceptional depravity
- iii. Murder of members of the Armed Forces or Public Servants
- iv. Murder of a Person Acting in Lawful Duty

B. Among the Mitigating Factors Are:

- i. The accused's age
- ii. Reformation and Rehabilitation
- iii. Extreme Mental or Emotional Disturbances
- iv. Probability of non-reoffending
- v. Moral justification
- vi. Acted Under Duress or Domination
- vii. Mental Defect

In the last phase, the Court will decide whether any penalties other than death would be appropriate in cases where the contributing factors outweigh the mitigating ones. If the Court finds that no other sentencing option is adequate to punish the crime, the case is classified as "rarest of rare". The death sentence is only appropriate in these circumstances [5].

III. INTERPRETATION OF GUIDELINES & CHALLENGES FACED BY INDIAN TRIAL COURTS

The S.C. has considered the "rarest of rare" theory in the "*Machhi Singh v. State of Punjab*," stating that the death penalty is only effective when society demands it, regardless of individual opinions. To determine the appropriate sentence, the Court has also specified elements including the victim's name and the level of the offence [6].

The Contradictory point of the Supreme Court's view had been noted in the case of "*Rajvi v. State of Rajasthan*" where the Court has prioritized the nature of the offence over the circumstances of the offender, considering the death penalty, which directly contradicts the Bachan Singh principle, which requires considering the offender's background [7].

A Conflicting View on the Offender's Age was seen in the case of "*Ramnaresh v. State of Chhattisgarh*" where the Court has imposed life imprisonment for gang rape and murder considering the young age (20-30 years) of the offenders as there is a chance for reform. However, in the case of "*Dhananjay Chatterjee v. State of West Bengal*", the Court imposed the death penalty on a 27-year-old; thus, it highlights the inconsistency in judgments regarding age.

Suppose we have a look at the Conflicting views of the Court in terms of the Nature of the offence, as in the case of "*Bhagwan Das v. State (Delhi NCT)*", an honour killing was considered a "rarest of rare" crime, supporting the death sentence. Conversely, in the case of "*Dilip Premnarayan Tiwari v. State of Maharashtra*", the Court granted the death penalty for a caste-based killing, considering the influence of deep-rooted social issues on the offender's mind.

A. Considering These Cases, we Can Easily Identify the Gaps in the Bachan Singh Guidelines

- i. Inconsistent Application of the "Rarest of Rare" Standard
- ii. Failure to consider mitigating Factors
- iii. Discretion and Subjectivity in Sentencing
- iv. Caste and Class Bias in Sentencing
- v. Vague Interpretation of "Rarest of Rare"

IV. CHALLENGES FACED BY INDIAN TRIAL COURTS

The "*Death Penalty in India: Annual Death Penalty Report*" [8] examines 215 capital case judgments from trial courts in "Madhya Pradesh," "Maharashtra," and "Delhi" between 2000 and 2015 (90 Maharashtra, 82 Madhya Pradesh, and 43 Delhi). It primarily highlights the flaws in death sentencing that stem from the Bachan Singh judgment and subsequent inconsistencies in Supreme Court rulings.

- A. Non-consideration of Mitigating Factors/ The dominance of Brutality
- B. Reliance on Collective Conscience
- C. Non-consideration of Probability of Reformation
- D. Failure to consider Life Imprisonment
- E. Reliance on Precedents
- F. Penological Factors



V. COMPARATIVE ANALYSIS OF JUDICIAL DISCRETION IN DEATH SENTENCING: INDIA & U.S.

Judicial discretion is at the heart of administering the death penalty, shaping sentencing decisions through interactions of legal commands, moral and ethical concerns, and social issues. The extent and way discretion is exercised differ significantly between legal systems, shaping the administration of capital punishment. In India, judicial discretion is guided by the 'rarest of rare' doctrine established in "*Bachan Singh v. State of Punjab* (1980)", whereas in the United States, discretion is primarily influenced by jury decisions and statutory guidelines as seen in "*Gregg v. Georgia* (1976)".

While doing the comparative study, the focus will be on the key aspects that shape judicial discretion in death sentencing cases, which include;

- A. Legal Framework and Constitutional Provisions
- B. Sentencing Guidelines and Judicial Discretion
- C. Mitigating and Aggravating Factors
- D. Arbitrariness and Socio-Economic Disparities
- E. Clemency Powers and Judicial Review
- F. Execution Methods and Human Rights Concerns

This study aims to assess the extent to which judicial discretion serves the interests of justice and whether it ensures fair and consistent sentencing outcomes.

A. Legal Framework and Constitutional Provisions

Although the death penalty is still a recognized form of punishment in both India and the U.S., its use is strictly limited by constitutional protections.

The right to life and personal liberty in India is guaranteed under Article 21 of the Constitution, unless legal restrictions exist. With a focus on judicial rationale in sentencing, Section 354(3) of the "Code of Criminal Procedure (CrPC)", 1973, requires courts to document reasons for applying the death penalty. The S.C., through cases like "*Jagmohan Singh v. State of Uttar Pradesh* (1973)" and "*Bachan Singh v. State of Punjab* (1980)", has upheld the constitutional validity of the death penalty while requiring courts to apply the 'rarest of rare' principle.

On the other hand, the Eighth Amendment of the U.S. Constitution prohibits unreasonable and cruel punishment, which has caused the death penalty to come under intense legal scrutiny. The Fourteenth Amendment has also significantly impacted jurisprudence surrounding the death penalty, ensuring equal protection under the law and due process of law. The United States Supreme Court declared existing death penalty statutes unconstitutional in "*Furman v. Georgia* (1972)" because they applied arbitrarily. This led to amendments that included guided discretion in death sentencing in instances such as *Gregg v. Georgia* (1976) [9].

B. Sentencing Guidelines and Judicial Discretion

The role of judicial discretion differs markedly between India and the U.S. due to procedural and institutional variations in sentencing.

Judges in India have the exclusive authority to impose sentences; to decide if a case is "rarest of rare," they must consider both aggravating and mitigating circumstances. Factors that include the brutality of the crime, criminal

history, socio-economic circumstances, and potential for reform influence the sentencing decision. However, this discretion has led to inconsistency and subjectivity as judges may interpret 'rarest of the rare' differently.

Conversely, Death sentencing in the United States involves both the judge and the jury. Most states follow a bifurcated trial system, in which the jury determines guilt and then deliberates on sentencing, based on statutory guidelines. Judges have limited power to override jury verdicts. However, some states allow judicial override, as seen in *Hurst v. Florida* (2016), which invalidated Florida's practice of allowing judges to impose death sentences without a unanimous jury recommendation.

C. Role of Mitigating and Aggravating Factors

Both jurisdictions consider mitigating and aggravating factors, but their application differs due to legal frameworks.

In India, mitigating factors include the convict's age, socio-economic background, mental health, and possibility of reform. However, the type of offence, past criminal history, and social impact are aggravating considerations. Judicial subjectivity remains a concern, as highlighted in *Ravji v. State of Rajasthan* (1996) where the Santosh Bariyar case (2009) rectified the Supreme Court's failure to consider mitigating factors.

In the United States, sentencing frameworks require juries to weigh statutory aggravating factors (e.g., premeditation, multiple victims, cruelty) against mitigating aspects (e.g., mental illness, absence of criminal history). The jury's decision must be unanimous, ensuring a structured approach to discretion.

D. Arbitrariness and Socio-Economic Disparities in Sentencing

Concerns about arbitrary and socioeconomically biased death sentences are present in both India and the United States.

In India, studies suggest that death sentences disproportionately affect marginalized and economically disadvantaged individuals, often due to inadequate legal representation. The "Death Penalty India Report (2016)" found that most death row inmates belong to lower socio-economic backgrounds, raising concerns over judicial bias.

Similarly, in the United States, capital sentencing has been criticized for racial and economic disparities. According to studies, the death sentence is more likely to be applied to African American defendants and those who kill white victims. The United States, S.C. acknowledged this challenge in *McCleskey v. Kemp* (1987) but refused to overturn a death sentence despite statistical evidence of racial bias.

E. Clemency Powers and Judicial Review

India and the U.S. provide avenues for executive clemency, though their scope and judicial review differ.

Articles 72 and 161 of the Indian Constitution grant clemency to the President and Governors of India, respectively. However, the Supreme Court has expanded judicial review over mercy petitions, as seen in "*Shatrughan Chauhan v. Union of India* (2014)", where inordinate delays in execution were held to violate the convict's rights.



In the United States, clemency powers rest with state Governors and the President, but judicial review is limited. For instance, Ohio Governor Richard Celeste (1991) commuted multiple death sentences over fairness concerns, but such interventions remain rare.

F. Execution Methods and Human Rights Concerns

Execution methods reflect broader human rights debates surrounding the death penalty. According to Section 354(5) CrPC, hanging is the approach to execution used in India. In the U.S., methods vary by state, including lethal injection, electrocution, firing squad, and gas chamber. Recent challenges to lethal injection protocols (e.g., *Glossip v. Gross* (2015) highlight concerns over botched executions and cruel treatment [10].

The exercise of judicial discretion in capital sentencing remains a complex issue in India and the United States. While India relies on the 'rarest of rare' doctrine, judicial subjectivity remains a concern. In contrast, the U.S. employs a jury-based system with statutory guidelines, but racial and socio-economic biases persist. Both jurisdictions gradually shift away from capital punishment, reflecting evolving human rights standards. Ensuring consistency, fairness, and transparency in sentencing remains a pressing challenge for both legal systems.

VI. CONCLUSION

Since deciding whether life in prison is "unquestionably foreclosed" and evaluating aggravating and mitigating considerations are subjective and judge-centric processes, the pursuit of consistency in death sentencing has shown its fundamental problems. This leads to a wide range of judicial discretion and, consequently, inconsistent implementation of death sentences.

A comparison of judicial discretion in death penalty cases between the United States and India reveals significant distinctions and commonalities. While India relies on the 'rarest of rare' doctrine, granting judges broad discretion in capital punishment, the U.S. employs a jury-based sentencing framework with statutory guidelines. Despite structural differences, both systems struggle with arbitrariness, socio-economic and racial biases, and inconsistencies in sentencing. The U.S. model attempts to curtail excessive judicial discretion through jury deliberations and structured guidelines, yet disparities persist. Similarly, India's subjective interpretation of the 'rarest of rare' doctrine results in variations in sentencing outcomes. This comparative study suggests that structured sentencing guidelines with clearly defined mitigating and aggravating factors could help achieve greater consistency in capital punishment decisions.

Thus, the only solution left with us regarding consistency in death sentencing in India is a need for a Re-evaluation of the Sentencing Framework to ensure fair and consistent sentencing without any or limited discretion. Using their "judicial mind" to apply the evidence and reach a decision is a crucial task assigned to the judges. Removing this authority could be detrimental to the system. Therefore, our primary objective should be to minimise discretion; thus, for trial courts to exercise judicial discretion in situations involving the death penalty, they must be given more consistent guidelines.

If this framework remains inconsistent, as discussed, then the next step could be the abolition or reconsideration of the criteria for death sentences. The scope of Death Sentencing should be restricted, ensuring it is only imposed when necessary and after exhaustive consideration of all possible mitigating factors.

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After aggregating input from all authors, I must verify the accuracy of the following information as the article's author.

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