CHAPTER VI

DEATH PENALTY: ROLE OF JUDICIARY IN DEALING WITH ITS DIFFERENT DIMENSION

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CHAPTER VI

DEATH PENALTY : ROLE OF JUDICIARY IN DEALING WITH ITS DIFFERENT DIMENSION

I. INTRODUCTION

The Indian Judicial system has a long and glorious history of functional accomplishment and admirable social purpose. It has acquired a solid respectable structural frame with established laws and recognised court practices of trials and justice through the institution of bar and the bench. It is well known that an independent judiciary, free from interference of the executive or legislative organs of the government is an essential pre requisite of a democracy which is wedded to rule of law and public welfare. Independence, however, does not allow the judges to act in an arbitrary manner, but they are to interpret laws in accordance with the settled principles of law and the dictates of their own conscience. The courts must impart justice within the limits of the law so as to maintain uniformity and impartiality in the determination of guilt and punishment of the accused. It can not, however, be denied that despite these legal limits prescribed by the law, certain degree of personal discretion of the judicial authorities does play a significant part in influencing their decision as to the guilt of the accused and the sentence awarded to him. Thus, the sentence passed for a particular offence may vary, of course within the prescribed limit from judge to judge depending on his personal perceptions, belief, faith, temperament attitude of mind, likes and dislikes and own life experiences.

Judiciary with its guiding light has been a potent tool in illuminating our legal system. It helps in interpreting the already given legislation or legislative provisions and at times gives new solutions to the ever increasing or upcoming social evils through the opening door called precedent. As law is meant for society, thus law should be flexible enough to cope up with or keep pace with the changing needs of the society. Thus demand has been fulfilled by the Indian Judiciary. Judiciary is that important tool which solves or gives a quick and effective solution to every social
evil. Therefore, it can correctly be called “panacea to all social evil”. Here we will discuss its role in relation to the ‘death penalty’.

Our judiciary has given multiple dimensions to this concept of capital punishment and has compelled us to go for the brainstorming exercise and thus to ponder over the pros and cons in retaining or abolishing the death sentence. Our jurist and judges, in co-operation with other criminologist and penologist had tried to show us or reflect upon us as how far the death penalty been able to give deterrent impact on the society so as to reduce a crime graph.

II. APPROACH OF JUDICIARY IN INFLICTION OF DEATH PENALTY

For an analytical study of judicial approach towards death penalty, we can divide our research into two parts Pre Bachan Era and Post Bachan Era, because after the landmark decision of Supreme Court in 1980, i.e. in Bachan’s Singh case, there has been a great shift in the approach of judiciary on the infliction of death penalty. Now the Supreme Court has laid down few cardinal principles before imposing death penalty.

PRE BACHAN ERA

The shifting trend towards imposition of death sentence for the offence of murder is clearly discernible from the amendments made in criminal law. Prior to 1955 judicial discretion in awarding a lesser penalty instead of death sentence was circumscribed by requiring the Judge to record his reason for awarding a lesser punishment. This in other words, meant that the discretion of the Judge was open to further judicial review. Section 367 (5) of Criminal Procedure Code 1898 as it stood prior to its amendment by Act 26 of 1955 provided:

If the accused is convicted to an offence punishable with death, the imposition of death sentence was the rule and awarding of a lesser sentence was an exception and the court had to state the reasons for not passing the sentence of death.
However, it was subsequently realized that this restriction on the power of the court was unnecessary because at times it nullified the achievement of the judge if his reasons for awarding life imprisonment instead of death sentence, did not argue well even though he might be ultimately correct in his final judgement.

Thus in *Avtar Singh Vs. Emperor*\(^1\) the judge concerned considered it proper to award a sentence of life imprisonment instead of death, for the reason that the accused was initially condemned to death which remained suspended for a period of over 6 months. Giving reasons for his decision, the learned Judge observed that it was unjust to keep the sentence of death hanging over the head of the accused for a long period of over six months because it must have caused him great mental torture. He, therefore thought, it proper to reduce the sentence of death to one of life imprisonment.

But in another case *Queen Vs. Osram Sungra*\(^2\) where the accused committed a deliberate cold blooded murder for ulterior motives, the court awarded a lesser punishment of life imprisonment instead of death, without recording reason of such leniency. Restriction on the discretion of the Judge to record reasons for awarding a lesser punishment of life imprisonment to the murderer instead of sentence of death were withdrawn by the *Amending Act of 1955*\(^3\).

After this amendment, the judge had the discretion to commute the sentence of death to that of life imprisonment but in case he considered the imposition of death sentence necessary, he had to state the reasons as to why a lesser penalty would not serve the ends of justice. Thus the amendment clearly reflected the shift in trend towards death penalty.

*After New Code of Criminal Procedure Code 1973* : New criminal procedure has made the situation just reverse of what it was before 1955 in matter of sentence in murder cases. Section 354 (3) provided that "When the conviction is for an offence punishable with death or in the alternative, with imprisonment for life or

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1 17 CWN 1213.
2 (1886) 6 WR (Cr.) 82.
3 Section 66 of the amending Act (XXVI of 1955)
imprisonment for a term of years, the judgement shall state the reason for the sentence awarded and in the case of sentence of death, the 'special reason' for such sentence'.

Thus the courts now should be guided by the new section 354 (3) Criminal Procedure Code

In *Balwant Singh Vs. State of Punjab* the Supreme Court stated. It would thus be noticed that awarding the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case will warrant the passing of death sentence. It is neither necessary nor it is possible to make a catalogue of such special reason. But we may indicate just a few, such as, the crime has been committed by a professional or a hardened criminal or it has been committed in a very brutal manner or on a helpless child or woman or the like.5

The discretion to impose the sentence of death or life imprisonment is not so wide since, Section 354 (3) has narrowed the discretion. Death sentence is ordinarily ruled at and can only be imposed by providing special reason". Judges are left with the task of discovering special reason.

**CASE STUDY FROM 1970-80**

1. **JAGMOHAN SINGH'S CASE:** Question of constitutional impermissibility of death sentence.

In this case, the question of constitutional impermissibility of death sentence based on provisions of Article 14, 19, 21 of the constitution was raised for the first time. In addition to the constitutional issues the next contention was that by providing in Section 302 INDIAN PENAL CODE, that one found guilty thereunder is liable to be punished either with death sentence or imprisonment for life, the legislature has abdicated its essential function is not providing by legislative standards in what cases the Judge should sentence the accused to death and in what cases he should sentence him only to life imprisonment.

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4 AIR 1976 SC 915.
5 Ibid.
The court negatived the contention and held:

"Deprivation of life is constitutionally permissible provided it is done according to procedure established by law. The death sentence can not be regarded per se as unreasonable or not in public interest. The policy of the law in giving a very wide discretion in the matter of punishment to the Judges has its origin in impossibility of laying down standard, any attempt to lay down standards why in one case there should be more punishment and in the other less punishment would be an impossible task. No formula is possible that would provide a reasonable criteria for infinite variety of circumstances that may effect the gravity of the crime of murder. The impossibility of laying down standards is at the very core of the criminal law as administered in India which invest the Judges with a very wide discretion in the matter of fixing the degree of punishment.\(^6\)

The court agreed that though no formal procedure for producing evidence with reference to the sentence is specifically provided but the reason is that the relevant facts and circumstances impinging upon the nature and circumstances of the crime are already before the court. All such facts and circumstances are being capable of being proved in accordance with the provisions of the Indian Evidence Act regulated by the Criminal Procedure Code Section 235(2) of the Criminal Procedure Code provide the procedure for the Judge to decide on guilt and punishment. The death sentence imposed after trial in accordance with the procedure provided by the said provisions was therefore, held to be valid.

2. **EDIGH ANAMMA VS. STATE OF AP\(^7\)**: Guidelines to the Courts to exercise jurisdiction.

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\(^6\) AIR 1973 SC 947.

\(^7\) AIR 1974 SC 799
In this case supreme court has given some guidelines to the courts to exercise their judicial discretion while deciding between life imprisonment and death sentence as follows.

We think the penal direction in this jurisprudential journey points to life prison normally, as against guillotine, gas chamber, electric chair, firing squad or hangman’s rope. “Thou shall not kill” is a shibboleth commandment is law as in life, addressed to citizens as well as to state, in peace as in war. Briefly stated the facts of Edigma Anamma’s case were:

A village shepherd was philandering simultaneously with two village wives Ediga Anamma (aged 24 & mother of 10 year old boy) and Asuya (mother of 18 months old girl). When Ediga Anamma became aware of her rival, she lured her into the fields, stabbed her and her baby daughter to death with a chisel, wrapped both bodies in her own clothing, partially burnt Ansuya’s face & body to hinder identification, and buried the baby in a sand bank beside the village stream.

Ediga anamma was convicted of murder and the conviction of murder was confirmed by appellate courts. Then arose what Justice Krishna Iyer called “the punitive dilemma”.

Justice Krishna Iyer’s choice of punishment in this case reflects a reformist mood and a willingness to build the new Criminal Procedure Code His lordship welcomed the new provision of S. 235(2) requiring separate procedure consideration of the question of sentence. He warmly endorsed the sharp distinction, this implied in the question of guilt and question of sentence.

In this case he observed that

“Let us crystallise the positive indication against death sentence under Indian law currently. Where the murder is two young or too old, the clemency of penal justice helps him, where the offender suffers from socio-economic
psychic or penal compulsions insufficient to attract a legal exception or to down grade the crime into a lesser one, judicial commutation is possible. Other general social pressures, warranting judicial notice, with an extenuating impact may in special cases, induce the lesser penalty. Prolonged delay is also one of the factor. We can not obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death can not be left for ad-hoc mood or individual prediction and so we have sought to objectify to the extent possible, abandoning retributive, ruthlessness, amending the deterrent creed and accepting the trend against the extreme and irrevocable penalty of putting out life.8

_Bishan Das Vs. State of Punjab_9, is another case where the supreme court refused to interference with the award of death sentence on the appellant because the murder was committed in an extremely dastardly and cruel manner. The court observed:

We are aware that general trend in courts and among jurists as well as penal codes in the country and other countries in towards abolition of capital punishment. Indeed we had occasion to consider the matter in some detail in _Ediga Anamma Vs. State of AP_10. In this Ediga case draft bill before the Parliament revising the Penal code laws towards the more humane alternative of the two punishment prescribed for murder. The trend is clearly towards the abolition of death sentence and it appears that at present death sentence is being allowed only in cases where there is nor the slightest trace of any extending circumstances.

The Supreme Court observed in Ediga Anama: While murder in its aggravated form in the extenuating factors connected with crime, criminal or legal process, still is

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8 AIR 1974 SC 799.
9 (1975) 3 SCC 700.
condignly visited with death penalty, a compassionate alternative of life imprisonment in all other circumstances in gaining judicial ground.

In fact that decisions in the above case and in *Raghbir Vs. State of Haryana*¹¹ represent the high water mark of judicial clemency in India in the context of capital punishment. In both the cases Justice Krishna Iyer commuted the death penalty of sex-stricken persons to life imprisonment inspite of the fact that in both the cases the criminal showed criminality of a high order and the murders were the result of treachery, planning and deep premeditation, one case being of double murder.

In this case, the appellant had a sexual affair with a woman who feigned pregnancy to force him into marriage. The appellant being married and, therefore, reluctant to marry her caused her death by administering poison in a cup of milk. Despite the fact that the appellant was found to be lecherous even before his involvement with the deceased and the supreme court accepting that the murder was treacherous, the death sentence was reduced to life imprisonment, Krishna Iyer, and giving the following reasons:

But a few ameliorative features fall to be noticed since judicial temper has more components than indignation against murder. The convict is in his tewenties, not irrelevant in considering death sentence. He is said to be a married man. He was promiscuous with women, a salacious sin for which the deceased was a contributory. The latter’s pressure to get him to marry her must have planted the seed of murderous thought in him. He bargained for romance, encouraged by the victim but the pregnancy – though pretended – in a society, which views unmarried mothers as vicious, upset the appellant. These have no bearing on guilt it all but attenuate the lethal touch the sentence. Some planning and treachery have aggravated the crime, which also must not be overlooked. Yet another circumstance, the man was sentence to death as early as May 23, 1972 and for twenty months the spectre of death penalty must have tormented his soul. Taken separately, none of these may suffice to committee but the conspectus of factors, personal and social, till the scale in favour of a life term.

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¹¹ (1975) 3 SCC 37 : 1974 SCC (Cri) 733
The Supreme court has continued to give judgement showing its preference to life imprisonment in all cases except those which do not have extenuating circumstances at all. A triple murder offender who killed his wife and two daughters supposedly under some kind of ‘mental imbalance’ as a result of dogbite got his death sentence commuted by the supreme court.12

In yet another case the supreme court reduced the capital punishment to life imprisonment on the ground of the quality of evidence against the appellant. It is interesting that the court found that approver’s evidence corroborated by independent evidence to be sufficient for conviction for murder but not good enough to warrant death sentence.13

If Ediga Anamnma reflected the Supreme Court’s increasing aversion to death sentence, the majority opinion in State of U.P. Vs. Rajendra Prasad14 represent the most ambitious judicial attempt towards abolition of capital punishment in India. No longer did the Supreme Court work its way taking, an extremely liberal position in terms of extenuating circumstances there were hardly any in the three cases disposed of by the judgement.15

For the first time the court asserted that it had the right to evolve the ‘supplementary principles’ if the legislative text was ‘too bald to be self acting’ and even if this appeared ‘to possess the flavour of law making’. The facts of the case are briefly described below:

3. RAJENDRA PRASAD’S CASE : Efforts to Abolish Capital Punishment Judicially

The pros and cons of “life or death” sentence have been extensively dealt with by the Supreme Court of India in this case16 Therefore, it would be pertinent to state the facts of the case to analyse the entire issue in its proper perspective.

14 (1979) 3 SCC 646 : 1979 SCC (Cri) 749.
15 The other two appeals disposed of were Kunjukunju Janardhan Vs. State of kerala and Sheo Shankar Dubey Vs. State of Uttar Pradesh.
16 AIR 1979 SC 916.
The accused in the instant case was a “desperate character” who had undergone sentence of imprisonment for life and was released on Gandhi Jayanti Day in 1972, a few days prior to the occurrence. On 25th Oct. 1972, the accused suddenly attacked one Rambharosey and dealt several blows on vital parts of his body with knife. Rambharosey released himself from the grip of the accused and ran inside his house and bolted the door. The accused chased him all the way with the blood stained knife and knocked at the door asking him to open it. Meanwhile the deceased Mansukh came and tried to entreat the accused not to assault Rambharosey. Thereupon, the accused struck deceased Mansukh who tried to escape but the accused chased him over a distance of 200 to 250 ft. and inflicted repeated knife blows on him which resulted into his death. Thus the deceased was done to death by the accused because the former tried to prevent him from assaulting Rambharosey.

The Supreme Court by a majority of 2 to 1 and speaking through Mr. Justice V. R. Krishna Iyer attribute failure of penal institution to cure criminality within the criminal as the sole cause of this cruel murder and allowed commutation of death sentence of the accused to that of life imprisonment. Expressing his compassion for the condemned accused the learned Judge further observed:

"This convict has had the hanging agony hanging over his head since 1973 with near solitary confinement to booth. He must by now be more a ‘vegetable’ than a person and hanging a ‘vegetable’ is “not death penalty”.

Whereas Justice A P Sen while reacting sharply to the majority view pleaded that accused deserved no leniency in award of death sentence. He further observed that

...the humanistic approach should not obscure our sense of realities. When a man commits a crime against society by committing a diabolical, cold blooded, pre planned murder of one innocent person the brutality of which shocks the

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17 AIR 1979 SC at p. 946
conscience of the court, he must face the consequences of his act. Such a person forfeits his right to life.

In a way Rajendra Prasad Case provided an appropriate opportunity for the Supreme Court to express its view on need for dilution of death penalty in the context of Indian society.

Justice Krishna Iyer emphatically stated that, by and large, murder in India are not by a calculated professionally cold blooded planning but something that happens on the spur of the moment due to sudden provocation, passion, family feud or an altercation etc. motivates one to go to extreme and commit the crime and therefore, there are prospects for reformation of the offender if they are not done away to death.

In this case, the court seems to have handed down a well reasoned commutation decision, which have relied upon certain recognised factors like suitability for reform danger to fellow citizen, period of waiting pending trial and other personal and social factors relevant to the sentencing issue. By spelling out the reasons for their commutation decision, the court has complied not only with the general requirement of giving a reasoned judgement, but also followed the lead given in Ediga Anamma where Supreme Court for the first time attempted to rationalize the sentencing rules by requiring reference to ‘positive indicators’.

The ruling in Rajendra Prasad case was followed in two subsequent cases decided by the Supreme Court in the same year.


In this case, the accused was sentenced to death by the High Court but on appeal his sentence was committed to life imprisonment because the murder arose out of a family quarrel relating to division of land and the fact that the appellant was under the sentence of death for 6 long years was by itself enough to justify mitigation of sentence.

Dalbir Singh Vs. State of UP\(^\text{18}\)

\(^{18}\) AIR 1979 SC 1384.
In this case, although the accused was convicted for quadruple murder and sentenced to death, but the Supreme Court in appeal reduced it to one of imprisonment for life on the ground that dispute related to regulating ‘turns’ for taking irrigation water for agricultural purposes and the earlier provocation came from the deceased side by beating the accused.

**BACHAN SINGH : RAREST OF RARE CASES**

**AIR 1980 SC 898**

A year later, the supreme Court was once again called upon to settle the controversy over choice between death penalty and imprisonment for life in this case, but this time by a larger bench of five judges overruling its earlier decision in Rajendra Prasad the court by a majority of 4 to 1. (majority view taken by Mr. Justice Y. V. Chandra Chud, O J Sarkaria, Gupta Untavalia, J J White Bhagwati J Dissenting) expressed a view that death sentence as an alternative punishment for murder is not unreasonable and hence not violative of Article 14, 19 and 21 of the constitution19, because the ‘public order’ contemplated by clauses (2) to (4) of Art 19 is different from “law and order” justifying retention of death penalty as an alternative punishment in reference to section 354(3) of Criminal Procedure Code the court inter alia observed:

“The question whether or not death penalty serves any penological purpose is a difficult complex and intractable issue. It has evoked strong divergent views of the abolitionists to the contrary, a very large segment of people, the world over, including sociologist, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society”.

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19 In Jag Mohan singh Vs. State of UP AIR 1973 SC 947 the Supreme Court observed that Capital punishment is not unreasonable per se and is not violative of Art. 19 of the constitution of India.
The court further observed: The Supreme Court should not venture to formulate rigid standards in an area in which the legislators so wearily tread, only broad guidelines consistent with the policy indicated by the legislature can be laid down.

The majority, however, expressed the need for liberal construction of mitigating factors in the area of death penalty and held that dignity of human life postulates resistance to taking life through laws instrumentality, that ought not to be done save in rarest of the rare cases when alternative option is unquestionably foreclosed.

The trend of the restricted use of death penalty in the use of ‘special reasons’ collated in the doctrine of ‘rarest of rare cases’ in Bachan Singh. Speaking for the majority Justice Sarkaria observed:

In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its decree of culpability. And it is only when the curability assumes the proportion of extreme depravity that “special reason” can legitimately be said to exists.

Thus the supreme court extremely limited the scope of death penalty by introducing a new phrase ‘rarest of rare cases’ as the meaning of ‘special reason’ in this case. But the court did not define this new phrase. It did not point out as to what may be regarded as the ‘rarest of rare case’ deserving to be punished with the death sentence. It is also not possible to do so as it will depend upon the facts and circumstances of the case.

**PRINCIPLES LAID DOWN IN THE CASE**

The court laid down certain principles which were the explained in subsequent decision of *Macchi Singh* which is summarized as under:

1. The extreme penalty of death need not be inflicted except in gravest case of extreme culpability.

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21 AIR 1983 Sc 957.
2. Before opting for death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the crime.

3. Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life can not be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

4. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstance have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

AGGRAVATING CIRCUMSTANCES LEADING DEATH PENALTY

In Bachan Singh case the constitution Bench considered the following circumstances as aggravating circumstances which may call for imposition of death penalty.

a) If the murder has been committed after previous planning and involves extreme brutality or

b) If the murder involves exceptional depravity

c) If the Murder is of a member of any of the armed forces of the union or of a member of any police force or of any public servant and was committed –
   i) while such member or public servant was on duty; or
   ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, had ceased to be such member or public servant; or

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d) If the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Criminal Procedure Code, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under S. 37 and Section 129 of the said code

MITIGATING FACTORS

On the other hand, the following were considered as mitigating factors.

i) That the offence was committed under the influence of extreme mental or emotional disturbance.

ii) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

iii) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

iv) The probability that the accused can be reformed and rehabilitated. The state shall by evidence prove that the accused does not satisfy the condition (3) & (4) above

v) That in the facts and circumstances of the case the accused believed that he morally justified in committing the offence.

vi) That the accused acted under the duress or domination of another person.

vii) That the condition of the accused showed that he was mentally defective and the said defect impaired his capacity to appreciate the criminality of his conduct.

Special Factor Providing Immunity To Children

Thus *to conclude*, the law declared by the Supreme Court in Bachan Singh case in regard to the imposition of death penalty in as follows:

1. Procedure for imposing death penalty for murder is neither unfair nor unjust.
2. Declaration of the court regarding imposing death penalty as an alternative punishment does not amount to delegation of powers of parliament and does not hit the Article 14, 19, 21 of India.
3. Death sentence is neither unreasonable nor cruel nor unusual. Further structure of constitution is not violated.
4. Deprivation of freedom on account of conviction under Section 302 does not attract the provisions of Article 19 (1).
5. Introduction of pre sentence hearing and death penalty in alternative punishment for murder in Section 302 does not violate Article 19.
6. Capital Punishment is not outlawed by International covenant.
7. Crime committed in different circumstances causes different reactions. Article 19 is attracted which are capable of being tested under clause (2) to (5).
8. Legislation covering one of the fundamental freedom must pass test of reasonableness. But where impact of law is incidental and remote, an evil of Article 19 is not available.
9. It is on the petitioner to prove that death sentence for murder is out moded and devoid of rational nexus and writ object of legislation.
10. Retribution and deterrent are not two divergent ends of capital punishment. They are convergent goods which ultimately merge into one.
11. Regarding section 354(3) of Criminal Procedure Code and Article 14, 19 and 21 of the constitution of India, the Supreme Court is not to formulate rigid standards in an area in which the legislature so verily treats. Only broad guidelines consistent with the policy indicated by the legislature in section 354(3) can be laid down.\(^{22}\)

\(^{22}\)Makkar SP Singh law of culpable promicide, Murder and Punishment in India 1988.
12. 'Special reason' must exist for making the choice of punishment and for ascertaining the existence or absence of special reasons.

13. The challenge to constitutional validity of Section 302 INDIAN PENAL CODE and Section 235(2) and Section 354(3) of Criminal Procedure Code 1973 fails and they are declared valid and constitutional.

Thus, to conclude, the Supreme Court of India carries a uniform approach regarding the imposition of Death penalty where it is ruled that death penalty per se is not cruel and unusual and therefore, not unconstitutional.

POST BACHAN SINGH ERA

CASE STUDY FROM 1980 TO 2000

The doctrine of rarest of the rare case has been evolved order as the meaning of 'special reason'. However the meaning of this phrase has been explained in MACHHI SINGH VS. STATE OF PUNJAB

In this case, the Supreme Court emphasized once again that death penalty should be inflicted only in the 'rarest of rare cases'.

This case arose out of a feud between two families. 17 persons all belonging to one of the feuding families were murdered in the course of a series of five incidents which occurred in one night in five different village situated in the vicinity of each other. Those killed included men, women and children.

The trial court had sentenced four accused to death and nine accused to life imprisonment. The sentences of death were confirmed by the High Court. The question for the consideration of the Supreme Court was whether the murders revealed special circumstances which brought them within the rarest of rare cases. In this context, the court considered the question of applying the test of 'the rarest of rare cases' to the facts of each individual case. The court then formulated broad

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23 Special reason in Section 354(3) Cr.P.C. This section require the sentencing court to record special reason for sentencing a person to death.

24 AIR 1983 SC 957.
guidelines in the light of Bachan Singh which the court could take into account in determining the rarest of rare cases' deserving the extreme penalty of death. It divided these guidelines into five heads and described them in following manner.

1. **Manner of commission of murder**

   When the murder is committed in an extremely brutal, gruesome, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

   i) When the house of the victim is set aflame with the end in view to roast him alive in this house.

   ii) Whether the victim is subject to inhuman acts of torture or cruelty in order to bring about his or her death.

   iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

2. **Motive for commission of murder**

   When the murder is committed for a motive which evinces total depravity and meanness. For instance when

   i) A hired assassin commits murder for the sake of money or reward.

   ii) A cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a word or a person under the control of the murderer or vis a vis whom the murderer is in a dominating position or in a position of trust.

   iii) a murder is committed in the course for betrayal of the motherland.

3. **Anti social or socially abhorrent nature of the crime**

   When murder of a member of a schedule caste or minority community is committed in circumstances which arouse social wrath. For instance murder committed with a view to terrorise and frighten them into fleeing from a place or dowry deaths and bride burning etc.
4. **Magnitude of crime**

   When the crime is enormous in proposition. For instance when multiple murders, say of almost all the members of a family or a large number of persons of a particular caste, community or locality are committed.

5. **Personality of the victim of murder**

   When the victim of murder is

   (a) an innocent child who could not have or has not provided even an excuse, much less a provocation of for murder

   (b) a helpless woman or a person rendered helpless by old age or infirmity.

   (c) When the victim is a person vis a vis whom the murderer is in a position of domination or trust.

   (d) when the victim is a public figure generally loved and respected by a community for the services rendered by him and murder is committed for political or similar reasons other than personal reasons.

   The court formulated **two questions** that may be asked and answered by the courts in order to apply these guidelines. These are:

   a) Is there something uncommon about the crime which renders sentence of imprisonment for life, inadequate and calls for a death sentence?

   b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender.

   If the answer to these two questions are positive, the courts are justified to sentence the accused to death.

   In this case, the trial court had sentenced the main accused, Macchi Singh and three accused to death. The High Court had confirmed the death sentence imposed on each of them. The main reasons that weighed with the High Court in confirming the

\[25\text{ AIR 1983 SC 967.}\]
death sentence were that the murders were cold blooded, brutal and heinous. The victims were innocent, helpless persons who offered no offence to the accused. The victims could offer no resistance to the accused as they were put to death in sleep. The supreme Court agreed with these reasons. It acquitted one of the accused Mohinder Singh giving him the benefit of doubt. However, it confirmed the death sentence imposed on the remaining three accused Machhi Singh, Kashmir Singh & Jagir Singh. In doing so, the Court applied the test of the ‘rarest of rare cases’ to the facts of each case.

New cases have been cited after the above decision to indicate the trend. In two cases, i.e., Gayasi V. State of U.P.26 and Kuljeet Singh alias Ranga V. Delhi Admn.,27 the Supreme Court did not interfere in the matter of award of death sentence. The aggravating factors in Gyasi’s case were that the murder of a public servant was committed and the Supreme Court declared that such crimes committed against public servants on duty must be discouraged and put down with a firm hand.

In Kuljeet Singh alias Ranga’s case, the Supreme Court dismissed the petition on the ground of public security. It observed that the survival of an orderly society demands the extinction of the life of persons like Ranga and Billa who were a menace to social order and security. They are professional murderers and deserve no sympathy even in terms of the evolving standard of decency of a maturing society.

The case of Harbans Singh V. State of U.P. and Others28, is regretful because of the irrevocable character of the death sentence. In this case one of three accused Jeeta Singh was executed on 6th Oct., 1981, while the death sentence in case of others was commuted to life imprisonment, though all were sentenced to death by a common judgement. The Supreme Court observed that he cannot profit by the direction which they propose to give (commutation to life imprisonment) because he is now beyond the processes of human tribunals. In other two cases29, the death sentence was commuted to life imprisonment in view of the Bachan Singh’s case.

26 A.I.R. 1980 S.C. 898 (decided on 9.5.80)
27 A.I.R. 1981 S.c. 1160 (decided on 16.3.81)
28 A.I.R. 1982 S.C. 1572 (decided on 21.4.81)
In the case of Gayasi V. State of U.P.,\textsuperscript{30} the sentence of death confirmed by the High Court of Allahabad was not commuted by the Supreme Court. On the question of sentence, the Supreme Court Bench observed that they see no reason for commutting the sentence of death imposed upon the appellant to the lesser sentence of imprisonment for life. The fact that Daya Ram (co-accused) is absconding does not reduce the gravity of the offence committed by the appellant. Bhagwan Singh (deceased) had put performed his ministerial duty as an Amin in putting the appellant’s land to sale. He bore no personal grudge against the appellant nor had he anything to gain for himself by selling the lands of the appellant and of Daya Ram. Such crimes committed against public servants for reasons arising out of the performance by them of their public duties must be discouraged and put down with a firm hand. They, therefore, confirmed the sentence of death passed on the appellant and dismissed the appeal.

In the case of Kuljeet Singh alias Ranga v. Union of India\textsuperscript{31}, the Supreme Court did not commute the death sentence confirmed by the High Court of Delhi, to life imprisonment. Chandrachud Chief Justice, speaking for the 3 Judges Bench observed that

\begin{quote}
It is true that the murder of two children Geeta Chopra and her brother Sanjay was not preplanned. What is important is that the accused had made all the preparations for committing the murder of a person or persons whom they would apparently oblige by offering a lift. The plan which they had hatched was that they would offer a lift to some young children, try to extort ransom from their parents by kidnapping them and do the children to death in the event of any impediments arising in the execution of their plan. The impediments here were the uncommon courage of the brave little children who did not make an abject surrender to their destiny and the stark fact which emerged during
\end{quote}

\textsuperscript{30} A.I.R. 1981 S.C. 1160 (decided on 16.3.81).
\textsuperscript{31} A.I.R 1981 S.C. 1572 (decided on 21.4.81).
their molestation that their father was a mere Government servant whose salary was too small to permit the payment of a handsome ransom.

The Supreme Court observed about the nature of crime that the murder was most certainly not committed on the spur of the moment as a result of some irresistible impulse which can be said to have overtaken the accused at the crucial moment. In other words, there was a planned motivation behind the crime though the accused had no personal motive to commit the murder of these two children. The accused had loosened the handles of the doors of the car so that they should fall down when the children, after getting into the car, close the doors behind them. By this process it was ensured that the children would get into a trap like helpless mice. They got into the car but could not get out of it. In the boot of the car were kept formidable weapons which were ultimately used for committing the murder of the children. In addition the accused carried sharp weapons with them which explains the injury caused to Sanjay in the car itself. The author of that injury was the petitioner since his hands were more free than those of Billa who was on the wheel. The injured children were taken to a park in order apparently to hold them into a false sense of security. The true purpose of doing so was to let the dusk fall so that the most dastardly act could be committed under the cover of darkness. So deep was the strategy to which they adhered to the last without contrition of any kind. Their inhumanity defies all beliefs and description.

Dismissing the petition it was observed that the survival of an orderly society demands the extinction of the life of persons like Ranga and Billa who are a menace to social order and security. They are professional murderers and deserve no sympathy even in terms of the evolving standards of decency of a maturing society.

The course which the case of Harbans Singh v. State of U.P. and Others, had taken makes a sad reading, observed the Supreme Court. In this case, three persons were sentenced to death by a common judgment and regretfully, each one has eventually met with different fate. One of these three persons, Jeeta Singh, who did not file any review petition or writ petition in the Supreme Court, was executed on 32 AI.R 1982 S.C. 849 (decided on 12.2.82).

32 ALR 1982 S.C. 849 (decided on 12.2.82).
Oct. 6, 1981. His special leave petition No. 343 of 1976 filed in the Supreme Court was dismissed on April 15, 1976. The other person, Kashmira Singh, succeeded in having his death sentence commuted into life imprisonment. The petitioner in this case, Harbans Singh, as to be executed on the same day on which Jeeta Singh was executed, because his special leave petition No. 658 of 1978 was dismissed on Oct. 16, 1978. His review petition No. 140/79 was also dismissed by Sarkaria and AP. Sen. JJ. on May 9, 1980. But, fortunately, filed this writ petition on which the Supreme Court passed an order staying the execution of his death sentence.

The Supreme Court commuted his death sentence to life imprisonment on the ground that no distinction at all can be made between the part played by Kashmira Singh on the one hand and the petitioner on the other. Since Kashmira Singh's death sentence was commuted by the Supreme Court, it would be unjust to confirm the death sentence imposed upon the petitioner. That will involve the Court as well as the authorities concerned in the violation of rudimentary norms governing the administration of justice.

The Supreme Court (Chandrachud, C.J. speaking for himself and on behalf of Desai, J.) further observed regarding the execution of Jeeta Singh that

It is unfortunate that Jeeta Singh could not get the benefit of the commutation of Kashmira's sentence. Were he to approach the Supreme Court like the petitioner. The sentence imposed upon him would have been commuted into life imprisonment because no distinction could have been made between his case and that of Kashmira Singh whose sentence was commuted prior to the execution of Jeeta Singh.

The Supreme Court further observed that the fate of Jeeta Singh has a posthumous moral to tell. He cannot profit by the direction which we propose to give because he is now beyond the processes of human tribunals.

The Supreme Court, however gave direction that prior to the actual execution

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of any death sentence, the Jail Superintendent should ascertain personally whether the sentence of death imposed upon any of the co-accused or the prisoner who is due to be hanged has been commuted. If it has been commuted the Superintendent should apprise the superior authorities of the matter, who in turn must take prompt steps for bringing the matter to the court concerned.

In *Shidagouda Ningappa Ghandavar v. State of Karnataka,*\(^3\) the death sentence was commuted to the life imprisonment relying on *Bachan Singh*’s case.\(^4\)

The Supreme Court observed that it is true that both the Sessions Court and the High Court have given "special reasons" for imposing death sentence upon the appellant, the Supreme Court after carefully examining the special reasons did not agree that this is proper case for imposing the death sentence. The Supreme Court Bench (consisting of Hon'ble Chief Justice and AC. Gupta. JJ.) observed, that they had held in *Bachan Singh v. State of Punjab*\(^5\) that the rule that the normal sentence for the offence of murder is life imprisonment should be observed both in the letter and spirit. They further observed that they had, therefore to emphasise in that case that the death sentence should be imposed in very extreme cases.

Brief facts of the case are that the appellant committed the murder of a young boy which has to be deprecated as strongly as one may but it appears that there was a land dispute between the deceased father and certain other persons, which led to the murder of the unfortunate young boy. The appellant is not a habitual criminal, the circumstances which led to the crime are not likely to recur and the appellant has not committed the crime for any personal gain. Sentence of death reduced to life imprisonment. The Supreme Court observed that they hope that the Government will not reduce the sentence of appellant to less than 14 years (S. 433-A), because he has committed a very serious crime.

In another case of *Umnilal v. State of Madhya Pradesh,*\(^6\) the sentence of death was commuted to life imprisonment by the Supreme Court. The learned Judges observed that it is the case of prosecution itself that at about 11 o'clock on the

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35 Ibid.

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morning of October 20, 1977 there was a quarrel between the appellant and his brother Bali Prasad, the husband of the deceased Faggobai. during the course of which the appellant was slapped by his brother. The quarrel appears to have taken place over to grazing of cattle by Hali Prasad. The appellant seems to have been increased by the treatment accorded to him by his brother as a result of which he went home straight and committed this dastardly attack on Hali Prasad's wife and son.

Reducing the sentence to life imprisonment, the Judges observed that the appellant was just about 22 years of age and appears to have acted under a sudden impulse in a grave fit of rage. In these circumstances they observed that the ends of justice will be met by sentencing the appellant to imprisonment for life.

**MANAWAR HARUN SHAH** popularly known as **Joshi Abhyankar Massacre** case the accused had committed a series of murders and robberies and been sentenced to death. They requested the court to reduce the sentence on the ground that death sentence had been hovering over their minds for five years. Some of the accused also took the plea that they had done some useful work like writing and translating some books during their imprisonment. The Supreme Court, however, rejected the plea as it found that much of the delay that had occurred was due to the frivolous litigation resorted to by the accused themselves. Further, the court held that the fact that they had written and translated book belied that any convict of death sentence was hovering over their mind and concentrated attention. Any leniency shown in the matter of sentence would not only be misplaced but will certainly give rise to and foster a feeling of private revenge among the people leading to distablisation of the society.

In **Javed Ahmad Vs. State of Maharashtra** the accused had been convicted and sentenced to death for committing multiple murders of his sister in law (aged 23 years) his little niece (aged 3 years), his baby nephew (aged 1½ years), and a child servant (aged 7-8 years). The murders had been committed brutally by causing multiple stab wounds. In appeal on the question of sentence, the supreme court saw no ground for commutation of death sentence despite its reluctance to impose this.

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37 AIR 1983 SC 585.
38 AIR 1983 SC 586.
39 AIR 1983 SC 594
sentence except in the rarest of rare cases'. Speaking for the court justice O Chinnappa Reddy observed

The appellant, we see, acted like a demon showing no mercy to his helpless victims, three of whom were helpless little children and one a woman. The motive was gain and the murders were perpetrated in a cruel, callous and fiendish fashion. There is no way to show him any mercy.... We are unable to refuse to pass the sentence of death as we would be stultifying the course of law and justice if we adopt such a course in this cases. This is truly the 'rarest of rare cases' and we have no option but to confirm the sentence of death and dismiss the appeal.

*Henry West Muller case*\(^{40}\)

In this case the accused appellant had made a plan to kidnap children of rich people for extracting ransom. In pursuance of this plan, he along with his companions had kidnapped a boy and murdered him. On appeal, the supreme court upheld the death sentence imposed on the appellant holding the case to be falling within 'the rarest of rare' category.

*Mahesh and others Vs. State of MP*\(^{41}\)

In the instant case father and son had axed a person and three members of his family and his neighbour who intervened merely because daughter of that person married a Harijan. The Supreme Court held that interference with the sentence was not called for because the act of appellant was extremely brutal, revolting and gruesome which shocks the judicial conscience. Therefore deterrent punishment was a social necessity in this case. The supreme Court maintaining the sentence of death passed by the High Court observed.

"It would be mockery of justice to permit the appellants to escape the extreme penalty of law... and to give lesser

\(^{41}\) AIR 1987 SC 1346.
punishment for the appellants would be to render justicing system of this country suspect, the common man would lose faith in courts.

In *Asharfi Lal and Sons Vs. State of Up*\(^{42}\) the accused (two brother) had committed gruesome murders of two innocent girls to wreak their personal vengeance over the dispute they had with regard to property with the mothers of the victims. Both of them had been sentenced to death. On appeal the Supreme Court refused to substituted their sentence with imprisonment for life holding the case to be ‘the rarest of rare’ deserving the extreme penalty of death. Justice A P Sen observed:

Failure to impose a death sentence in grave cases where it is a crime against the society, particularly in cases of murders committed with extreme brutality will bring to naught the sentence of death provide by S. 302 INDIAN PENAL CODE. It is the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment.

In *KEHAR SINGH VS. STATE DELHI ADMN*\(^{43}\)

**Assassination of High Dignitary**

The Supreme Court in Kehar Singh & Others v. State\(^{44}\), dismissed the appeal against their conviction and death sentence. In this case, "in pursuance of the conspiracy Beant Singh and Satwant Singh, who had prior knowledge that Smt. Indira Gandhi (the then Prime Minister of India) was scheduled to pass through the T.M.C. gate on 31-10-1984 at about 9 A.M. for an interview with an Irish television team, manipulated their duties in such a manner that Beant singh would be present at the TMC gate and Satwant Singh at the TMC. Sentry booth on 31-10-1984 between 7 and 10 A.M. Beant Singh managed to exchange his duty with SI Jai Narain (PW. 7) and

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\(^{42}\) AIR 1987 SC 1721.
\(^{43}\) AIR 1988 SC 1883.
Satwant Singh arranged to get his duty changed from Beant No. 4 at PM's house to TMC Sentry Booth situated near the latrine by misrepresenting that he was suffering from dysentery. Beat Singh was armed with a revolver, which had 18 cartridges of .38 bore and Satwant Singh was armed with a SAF carbine and 100 cartridges of 9 MM. Both having managed to station themselves together near the TMC gate on 31.10.84, at about 9.10 A.M. Beant Singh opened fire from his revolver and Satwant Singh from his carbine at Smt. Indira Gandhi as she was approaching the TMC gate. Beant Singh fired five rounds and Satwant Singh 25 shots at her from their respective weapons. Smt. Indira Gandhi sustained injuries and fell down. She was immediately taken to the AIIMS, where she succumbed to her injuries the same day.

It is also stated in the facts of the case that accused Kehar Singh, a religious fanatic, after the 'blue star operation' converted Beant Singh and through him Satwant Singh to religious bigotry and made them undergo 'Amrit chakhna ceremony on 14-10-1984 and 24-10-1984 respectively at Gurdwara Sector VI, R.K. Puram, New Delhi. He also took Beant Singh to Golden Temple on 20.10.1984 where Satwant Singh was to join them as part of the mission.

Balbir Singh, a Sub-Inspector posted for security duty at Smt. Indira Gandhi's office was said to have been arrested on 3.12.1984. It was said that certain incriminating documents were found on his person when searched at the time of arrest.

Beant Singh, the above said accused died as a result of injuries sustained by him just after the said incident.

That three accused namely, Satwant Singh, Kehar Singh and Balbir Singh were ultimately charged of offences under sections 120-B, 109 and 34 read with Sections 302, 307 of I.P.C. and sections 27, 54 and 59 of the Arms Act. The charge report also mentioned Beant Singh as one of the accused persons but since he had died the charges against him were said to have abated.

The Addl. Sessions Judges, Delhi held all the three accused guilty of the charges and sentenced to the punishment of death. The High Court of Delhi also confirmed the death sentence awarded to the accused.
The one of the accused Balbir Singh was acquitted by the Supreme Court on the ground that the evidence produced by the prosecution against Balbir Singh is defective as well as deficient. The Supreme Court held that it is safer, therefore, to err in acquitting than in convicting him.

Kehar Singh and Satwant Singh's appeals were dismissed. In respect of Kehar Singh, the S.C. summed up that his close and continued association with Beant Singh; his deliberate attempt to exclude Mrs. Bimal Khalsa from their company and conversation; how secret talk with Beant Singh followed by taking meals together with Satwant Singh, his keeping the golden kara and ring of Beant Singh: and his post crime conduct taken together along other material on record and stronger as evidence of guilt than even direct testimony. The Supreme Court agreed with the conclusion of the High Court that Kehar Singh was one of the accused who conspired to murder Mrs. Gandhi.

In case of another main accused Satwant Singh, the Supreme Court after scrutinizing the testimony of the witnesses to the crime and other clinching circumstances available on record, observed that there is not even an iota of doubt about the crime committed by Satwant Singh. The Supreme Court agreed with the High Court that he is guilty of all the charges.

On the question of death sentence awarded to the said accused by the Sessions Court and confirmed by the High Court, the Supreme Court was reminded that this Court in Bachan Singh v. State of Punjab, has indicated certain guidelines to be applied to the facts of each individual case where the question of death sentence arises. It may be given only in rarest of rare cases, where there is no extenuating circumstances. In Machhi Singh v. State of Punjab, this Court again indicated some principles as to what constitutes as 'the rarest of rare cases' which warrant the imposition of death sentence. The Supreme Court observed that the High Court has carefully examined these principles and given reason why in this case, the death sentence alone should be awarded.

The Supreme Court observed that in its opinion the punishment awarded to Satwant Singh and Kehar Singh is not excessive. There cannot be two opinions on this issue. It observed that the 'Blue Star Operation' was not directed to cause damage
to Akal Takhat. Nor it was intended to hurt the religious feelings of Sikhs. The decision was taken by the responsible and responsive government in the national interest. The Prime Minister (late) Mrs. Indira Gandhi was, however, made the target for the consequence of the decision. The security guards who were duty bound to protect the Prime Minister at the cost of their lives, themselves became the assassins. Incredible, but true. All values and all ideals in life: all norms and obligations are thrown to the winds. It is a betrayal of the worst order. It is the most foul and senseless assassination. The preparations for and the execution of this "egregious crime do deserve the dreaded sentence of the law. The Supreme Court, thus, dismissed the appeal of Satwant Singh and Kehar Singh on the question of sentence also, but as said above allowed the appeal of Balbir Singh by setting aside his conviction and sentence, and acquitting him of all the charges.

The accused were sentenced to death for murdering the then Prime Minister Smt. Indira Gandhi. The Supreme Court upheld the sentence of death imposed on them holding that the case belonged to the rarest of the rare" category of cases which deserved the imposition of death sentence. The Court observed that this was not a case of murder on some personal ground, but her the murder had been committed for political reasons. Apart from this, various other factors weighted in the minds of the Judges to pass the sterner sentence. Justice Oza traced out a number of factors which brought the present case within the ‘rarest of the rare category’. The se were as follows:

1. The victim was an unarmed lady.

2. The victim was a popular leader, no less than a Prime Minister of the country.

3. The murder in this case undermined the accepted system of this country that had worked well for 40 years and within which the charge of the leader was permissible by ballet and not by bullet.

4. Both the accused were posted on the security duty of the victim and were required to protect her from outside. But these persons betrayed the confidence reposed in them to give her protection and themselves resorted to the offence of murder.
5. The unarmed victim was attacked by both the accused together.

6. The murder was committed in a merciless manner. A series of bullets were fired at her and a number of them entered her body.

**SHANKAR ALIAS GAURI SHANKAR V. STATE OF TAMIL NADU**

In the above case the High Court awarded the sentence of death upon the appellants. In the appeal on the question of death sentence, the Supreme Court rejected the appeal justifying the imposition of death sentence.

The Supreme Court observed that bearing the principles particularly those in Bachan Singh's case (A.I.R. 1980 S.C. 898) in mind, it would consider whether in the instant case the imposition of death sentence against appellants 1 to 3 is warranted as held by both the courts below.

The appellant was leader of the gang indulged in illicit arrack and brothel business which are unlawful and most harmful to society. He was responsible for spoiling the life of many girls. He used to keep some of the girls for himself for setting up a separate residence. He used to be very cruel to them and used to bum the young girls with cigarettes butts and as a result one of them committed suicide. The appellants and others brutally murdered six persons. Lalita, deceased No. 1 who could not adjust herself to live with him (appellant 1) was brutally murdered and in order to screen the said offence he got the body buried. Having successfully committed the murder of Lalita, he planned to murder Sudalai, deceased no. 2 obviously apprehending that he may expose them with regard to murders of deceased 1 and deceased 2 and his body was also buried. Then deceased nos. 4 to 6 threatened to him running of brothel business, they were severally beaten and brutally murdered. Deceased No. 6 was strangulated in a coldblooded manner and all these bodies were buried. Thus it is clear that appellant 1 organised these crimes in an organized manner. The crime indulged was gruesome, coldblooded, heinous, atrocious and cruel and he was proved to be an ardent criminal and thus a menace to society.

The Supreme Court observed that it is an exceptional case. Then the crime committed by him is so gruesome, diabolical and revolting which shocks the

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collective conscience of the community. There can not be any doubt that his case is one of the rarest cases fully warranting imposing of death sentence.

In *Kamta Tiwari Vs. State of MP*\(^6\), the accused committed the rape on a seven years old girl and strangulated her to death. He threw her body in a well and caused disappearance of evidence. The accused was convicted for the offence under Section 363, 376, 302 and 201 Indian Penal Code and was sentenced to death by the trial court and the sentence was maintained by the High Court also. In appeal, the supreme court upheld the decision of lower courts and held that this is a rarest of rare cases, where the sentence of death is eminently desirable not only to deter other from committing such atrocious crimes but also to give emphatic expression to society’s abhorrence of such crimes.

*Ravji alias Ram Chandra Vs. State of Rajasthan*\(^47\)

The Supreme Court found no justification in commuting the death penalty to imprisonment for life. In this case, the accused had committed murder of five person including his wife and three minor children and attempted to commit murder in cool and calculated manner while victim were asleep. There was absence of provocation or any psychic disorder which could be attributed to these brutal and heinous murders. Therefore, the court found no justification to commute the death penalty to imprisonment for life and dismissed the appeal.

In *Major R.S. Budhwar V. Union of India* and others with *Mahavir Singh V. Union of India* and *Inderpal Singh V. Union of India*, the death sentence was awarded.\(^48\)

While serving as a Major in the Indian Army the appellant RS. Budhwar. alongwith two other officers was tried by a G.C.M. in December. 1988 for the following charge:

"Army Act. S. 69 : Committing a civil offence. that is to

\(^{46}\) AIR 1996 SC 2800.

\(^{47}\) AIR 1996 SC 2791.

\(^{48}\) 1996 C.L.J. 2862 (S.C.)
say, abetment of an offence specified in S. 302 of I.P.C. in consequence of which abetment of such offence which (sic) committed, contrary to S. 109 read with S. 34 of I.P.C."

In that they together at field on or before 14th June 1987 abetted No. 3173368/L/NK. Inderpal Singh and No. 31775231 L. Sep. Mahavir Singh both of 8 Jat to commit murders of Colonel S.S. Sahota and Major Jaspal Singh of the same Unit which was committed in consequence of such abetment by the appellants Mahavir Singh and Inderpal Singh. The CCM awarded the sentence of life imprisonment to Appellant Major Budhwar and the other two appellants namely Mahavir Singh and Inderpal Singh were sentenced to death.

This was a case of killing of a Commanding Officer, an officer-second-in-command and two officers. Following death sentence pronounced by the CCM on Dec. 10. 1988. the appellants filed their application under sub-section (1) of S. 64 of the Army Act on Dec. 31. 1988. to the Chief of the Army staff for setting aside conviction and sentence. This was disposed of on Feb. 13. 1991 that is after a period of more than two years and one month. Thereafter the petition was moved u/s 164(2) of the Act and this petition was disposed of after a delay of more than one year and 6 months. The total delay therefore comes to more than 3 years and seven months and needless to say during this period appellants were being haunted by the shadow of death over their heads. No explanation was given for these unduly long delays and therefore the appellants pleaded for commutation of death sentence for the above factor in their favour.

It has been observed in *Triveniben v. State of Gujrat*, (A.I.R 1989 S.C. 1335) that undue and prolonged delays occurring at the instance of the executive in dealing with the petitions of conviction filed in exercise of their legitimate right is a material consideration for commuting the death penalty.

But, then it has also been observed in this case relying upon the following passage from the earlier judgment of the Supreme Court in *Sher Singh v. State of Punjab*. (A.I.R 1983 S.C. 465 at 472. para 20):

"The nature of the offence, the diverse circumstances
attendant upon it, its impact upon the contemporary society and the questions whether the motivation and pattern of the crime are such as are likely to lead to its repetition. If the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reasons that its execution is delayed."

That such consideration can not be divorced from the dastardly and diabolic circumstance of the crime itself.

The Supreme Court held that the appellants do not deserve the extreme penalty of death notwithstanding the fact that two of the murders namely that of the commanding officer and Second-in-Command were diabolically planned and committed in coldblood.

Indeed it was the case of the respondents and accepted by the Supreme Court that Major RS. Budhwar alongwith other officers of the Unit of the appellants instigated and compelled them to commit the above two murders by exploiting their religious feelings and ultimately they succumbed to the 'threat' command and influence of their superiors. So far as the murders of the other two officers are concerned the Supreme Court observed that they became the unfortunate victims of circumstances as they happened to be present at the time of the incident.

The Supreme Court further observed that another mitigating factor which in its opinion calls for commutation of the death sentence is that Major Budhwar who along with another officer (since dead) masterminded the two murders were awarded life imprisonment whereas the appellants who carried out their orders have been sentenced to death.

The Supreme Court further observed that in its considered opinion in a case of the present nature which relates to a disciplined force as the Army, the offence committed by the officers who conceived the plan, was more heinous than that of the appellants who executed the plan as per directions and orders as said above. Though they were not bound to carry out illegal orders, but certainly this is a factor which can not be ignored while deciding the question of sentence.
Another factor that persuaded the Supreme Court to commute the death sentence was that the appellants surrendered before the authorities within two days and spoke out the truth in their confessional statement, and this resulted in booking the said officers in the offence.

None of the mitigating circumstances were taken into consideration by the High Court while deciding the question of sentence. The High Court was obliged to consider both the aggravating and mitigating circumstances and, therefore, by ignoring consideration of the mitigating circumstances, the High Court apparently fell in error.

The Supreme Court while allowing the appeals commuted the sentence of death imposed upon each of the appellants to imprisonment for life, for the conviction recorded against them.

BALWINDER SINGH V. UNION OF INDIA AND OTHERS 49

In Balwinder's case the death sentence awarded by the Sessions court was commuted by the High Court of Delhi, following the above cited case of Major RS. Budhwar and others. The High Court held that the appellant Balwinder is in prime of youth and is a normal man having two young children and a wife with aged parents to be looked after. There was no motive. There was no planning, no premeditation, no hatred or ill will. Comparing the case with that of Major RS. Budhwar's case, which was a case of diabolically planned murder committed in cold blood of that of commanding officer and second-in-command, this case on an overall balancing of mitigating and aggravating circumstances leaves no manner of doubt that death penalty deserves to be commuted into imprisonment for life.

Brief facts of 'the case are that the appellant Balwinder Singh was a sepoy driver of M. T. at Central Ammunition Depot, Pulgaon and was charged for offence under section 69 of Army Act in having committing civil offence namely murder contrary to S. 302 I.P.C. on 10.1.90 by causing death of L/NK Dvr. P.K Chaudhary and that of sepoy driver Siva Prasad and attempt to murder contrary to section 307


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Indian Penal Code at Pulgaon Camp on 10.1.90 by running over squad of hit persons by driving one on Army vehicle with intent to murder them resulting to injury to 14 individual sepoy drivers.

The Supreme Court in *Kirshan Vs. State of Haryana*\(^{50}\) declined to hold that the appellant’s case fell in the category of rarest of rare cases and therefore, commuted death sentence to one of life imprisonment. In this case the accused was already serving a sentence of life imprisonment for a murder and he was found guilty of committing another murder of a person with whom he had a property dispute while he was released on parole. The court ruled that undoubtedly felonious propensity of offender is a factor which requires consideration for the sentence of death but that can not be made the sole basis for award of death sentence as all other factory such as motives, manner and magnitude should also be taken into consideration.

**STATE OF TAMILNADU VS. NALINI*\(^{51}\)**

This case involved 26 persons accused of being involved in the conspiracy to assassinate former Prime Minister of India, Rajiv Gandhi at Sri Perumbudur near Chennai on 21\(^{st}\) May 1991. All the 26 accused had been sentenced to death by the trial court judges under TADA.\(^ {52}\) The Supreme Court finally confirmed the conviction under section 120-B read with 302 INDIAN PENAL CODE against six accused only namely Nalini (A-1), Santhan (A-2), Murugan (A-3) Robert Pyas (A-9), Jaya Kumar (A-10), Ravi Chandra @ Ravi A-16, and Perarivalan @ Arivu (A-18). The rest of the accused were acquitted. Of the six persons convicted of the murder, the death sentence of only four accused namely Nalini, Santhan, Murugan and Perarivalan alone were confirmed of death sentence against Nalini between Wadhwa and Quadri JJ who confirmed and K.T. Thomas J who felt the death penalty should be converted to life sentence.

According to Thomas, J the relevant consideration for converting the sentence from death to life imprisonment was that she is the mother of a little female

\(^{50}\) AIR 1997 SC 2598.

\(^{51}\) AIR 1999 SC 2640.

\(^{52}\) This case was registered as a TADA case under the Terrorist and Disruptive Activities (Prevention) Act 1987 and involved offences from TADA as also INDIAN PENAL CODE, about from other related enactment like explosive substance Act, Arms Act, wireless Act and Foreign Act and so on.
child who would not have even experienced maternal huddling as that little one was born in captivity. Of course, the maximum Justice non novit patremnee matrem (Justice knows neither father nor mother) is a pristine doctrine.\textsuperscript{53} But it can not be allowed to reign with its rigour in the sphere of sentence determination. As we have confirmed the death sentence passed on the further of that small child, an effort to save its mother from gallows may not mititate against jus gladii so that an innocent child can be saved from orphanhood.

The judge had also noted earlier that .... Considering the fact that she belongs to the weaker sex and her helplessness in escaping from the cobweb of Sivarasan and company, the mere fact that she became obedient to all the instruction of Sivarasan, need not be used for treating her conduct an amounting to ‘rarest of rare case’ indicated in Bachan Singh’s case.

In contrast however Wadhwa J noted that it was not as though Nalini did not understand the nature of the crime and her participation. She was a willing party to the crime, the court has to consider both the crime and the criminal. The Judge raised the question what about the children, wives and husbands of those who died & cruelty of the crime committed has known no bounds. The crime sent shock waves in the country. He thus felt that the death penalty on the four accused ought to be confirmed. Similarly Qadri J noted that Nalini as an Indian, joined the gang of conspirators to assassinate Rajiv Gandhi, only because of her love for Murugan, and thus played her part in the conspiracy which resulted in the assassination of Rajiv Gandhi. It was also noted by him that the fact strongly suggest her participation was not the result of helplessness but a well designed action with her free will to make her part of the contribution to the unholy plan and wicked conspiracy.\textsuperscript{54} Thus the death sentence on all the four accused was confirmed.

\textsuperscript{53} It may be noted that Murugan and Nalini were married and their daughter was born in captivity. This was one of the factors which weighed this Thomas J discussed shortly hereafter.

\textsuperscript{54} AIR 1999 SC 2640, paras 716, 717 page 2853.
In this case, the accused Jay Kumar was sentenced to death by the trial court for having killed his sister in law, who had not given him enough food, and enraged over this, he committed the murder. The Supreme Court noted that murder was committed in cold blooded manner. The manner in which the bodies were dealt with after committing the murder did not permit any consideration of commutation to life sentence. The facts establish the depravity and criminality of the accused in no uncertain term.

In the present case, the savage nature of the crime has shocked our judicial conscience. The murder was cold blooded and brutal without any provocation. It certainly makes it a rarest of rare cases in which there are no mitigating or extenuating circumstances.\(^\text{56}\)

\textit{Molai and another Vs. State of MP}^\text{57}

In this case the Supreme Court upheld the death sentence of the two accused and expressed a view that the case squarely fell in the category of one of the rarest of rare case. The facts of the case were as follows: the victim, a girl named Naveen aged 16 years was alone in her home. Suddenly both the accused taking advantage of her being alone in the house entered the house and committed rape and strangulated her and thereafter took her to septic tank along with the cycle and caused injuries with a sharp edged knife.

The trial court convicted the accused for rape and murder under S. 375 & 300 and sentenced them to death. The High Court upheld the conviction in appeal. In appeal, the Apex Court held that counsel for the accused could not point any mitigating circumstances which would justify reduction of the sentence, hence the case clearly fell in the category of rarest of rare case and death sentence was the only proper punishment in the instant case.

\(^{55}\) AIR 1999 SC 1860
\(^{57}\) AIR 2000 SC 177.
In case of Omparkash alias Raja V. State of Uttranchal, the Supreme Court rejected the appeal of the petitioner-accused for setting aside of the orders of the High Court and trial court imposing death sentence on the accused. In this case the petitioner was the domestic servant. He killed three members of the family who employed him and fourth member was also attacked by the accused who managed to save herself by locking in a back room. Her evidence about sequence of events that happened from voices and conversations she heard clinching pointed out to the involvement of the accused. Her evidence though not direct but held sufficient to convict the accused. Plea of the accused that he alone could not have killed three persons belied because he planned the whole matter to kill the said persons. It was not held to be a case of lack of sufficiency of evidence. In view of the facts of the case the award of death sentence was held proper. The Supreme Court had held time and again that if for extremely heinous crimes of murder perpetrated in a very brutal manner without any provocation, the most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. The social impact of the crime which relates to offences against women, dacoity, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency that have great impact on social order and public interest cannot be lost sight of and per se requires exemplary treatment.

Lapse of time also cannot condone crime. In an appeal filed by Madhya Pradesh Government in Supreme Court seeking adequate punishment to an accused involved in a murder case about 22 years ago, the Supreme Court has justified imposition of death penalty for crimes having serious social impact.

In Daya Nidhi Besoi V. State of Orissa, the accused was sentenced to death by the Sessions Court and the sentence of death was confirmed by the High Court. The accused filed Special Leave Petition in the Supreme Court and the same was also rejected. In this case the accused was related to the deceased and was on visiting terms with the deceased and was enjoying hospitality and kindness of the deceased.

58 2003 Cr.L.J. 483.
He killed the entire family members of the deceased including a 3 year child in the night, when the victims were asleep and when there was no provocation from victims. Purpose was only to gain financial benefit. It shows the murder was coldblooded and premeditated. Supreme Court observed that case falls in the category of rare cases and death sentence is proper. Facts that accused was only 35 years of age, he had aged parents and minor daughter and there was possibility of his rehabilitation does not justify imposition of life imprisonment, observed the court.

DARA SINGH: THE HORRIFIC STRAINES MURDER CASE

In this case, Dara Singh accused in the horrific straines murder case, has been sentenced to death. While pronouncing capital punishment on the perpetrator, Dara Singh the Court observed: The killing of Australian missionary Graham Staines and his two sons had showed that humanity was not yet fully civilized.

The court described Dara as an ambassador of death, who deserved to die. "By burning two innocent small boys, along with their father, while they were asleep, Dara Singh, the prima donna of the offence has added a new chapter to the rhyme book of children which may read like this. I met murder on the way. It was a mask like Dara Singh district and Session Judge Khurda Mahendranath Patnaik said in his 153 pages judgement.

J. Patnaik, while sentencing Dara to death under Section 302 Indian Penal Code awarded life imprisonment to the remaining 12 convicts. The death sentence was subject to confirmation by the Orissa High Court. The judge said,

"this in one of the rarest of rare cases and survival of an orderly society demands imposition of capital punishment.

A criminal has no religion, he observed, asking what sin had the two small boys committed?

"We have just enough religion to make us hate each other, and not enough religion to make us love each other", the Judge said, quoting Jonathan Swift. The Judge said Dara,

like the knight errant of crime, had formed a militant group of local tribals to physically liquidate stain in the belief that with the Australian missionary, the spread of Christianity would be buried in the area. The rest of the convicts, being gullible tribals, blindly followed him and as such, they deserved tempered justice.

The court had convicted 13 persons including Dara on September 15, while acquitted another Aniruddha Dandapat alias Andha Nayak, for want of sufficient evidence.

**TANDOOR CASE**

Death penalty was awarded to Sushil Kumar in ‘tandoor’ case.61

The Delhi session court awarded death sentence to Former Delhi Youth Congress President Sushil Sharma on Nov. 7, 2003 for the brutal murder of his wife Naina Sahni eight years ago and then trying to destroy the body by burning it in a ‘tandoor’ of a restaurant run by him.

The court found Sharma guilty under Section 302, Section 120B (Criminal conspiracy) and Section 201 (destroying evidence) and Keshav guilty of abetting in the conspiracy and distinction of evidence. He was acquitted of murder charge by the Judge, holding that the prosecution could not establish it beyond doubt.

“The murder charge under Section 302 against Sushil Sharma for causing the death of Naina Sahni is proved beyond doubt”. Mr. Thareja said in his 254 page judgement. The court had examined 87 of the 100 witnesses cited by the prosecution. The prosecution had alleged that Sharma had killed Naina because he suspected that she had extra marital relations with city congress worker Matlood Karim. On the evening of July 2, 1995 when Sharma reached his flat in the Gole Market Area, he found Naina consuming liquor and talking on phone with someone. Suspecting that she was talking to Karim, Sharma got enraged and shot her with his licenced revolver thrice. She received bullet injuries in the head and neck. Sharma then took the body in her car to Bagia Restaurant in Ashoka Yatri Niwas close to parliament House.

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61 November 8, 2003 The Tribune.
which was being run by him on contract with the Indian Tourism Development Corporation. He then asked his Manager Keshav Kumar to destroy it in the 'tandoor'.

The smoke and flames from the 'tandoor at the open air restaurant caught the attention of a woman who informed constable Abdul Nazir, who caught Keshav red handed. The court also found Senior IAS officer D K Rao, then posted at Gujrat Bhavan, here, prima facie guilty of harbouring Sharma after the crime and directed the Delhi chief Metropolitan Magistrate to prosecute him separately for the alleged offence. The prosecution had accused Rao of providing shelter to Sharma on the night of July 2, at Gujrat Bhawan before the accused fled to Jaipur. He then went to Mumbai & got anticipatory bail from a Chennai Court.

He finally surrendered before a special investigation team of Delhi Police at Bangalore on July to which caused a big embarrassment to the congress.

Since the body of Sahani was chopped into pieces before being burnt, it was a challenging task for the Crime branch to establish that it was of the victim. The DNA test conducted in Hyderabad established that the body was of Naina. The police had recovered the revolvers and the blood stained clothes of the victim and the forensic science laboratory had confirmed the prosecution theory.

Thus holding that the murder committed by Sharma fell in the “rarest of rare case” category as defined by the Supreme Court, Additional Session Judge G. P. Thareja who had found him guilty of crime, said he should be “hanged by the neck till dead”. Mr. Thareja ordered that the file relating to the case be sent to the Delhi High Court for confirmation of the death sentence, who confirmed the death penalty as appropriate.

Thus the trial court verdicts in the Naina Sahni and Safdai Hashmi murder case revive the debate on the merits of awarding the death sentence in the rarest of rare doctrine.

DHANANJAY CHATERJEE VS. STATE OF WB

Dhanajay, a private security guard was sentenced to death in August, 1991 for the rape and murder of an 18 year old school girl in her apartment in Calcutta on 5th

62 Dhanajay Chaterjee Vs. State of West Bengal AIR 2004 SC 3454.
March, 1990 As there were no eye witness, the case was reported to have rested on circumstantial evidence alone. Chateijee pleaded innocent but the Supreme Court ruled that his guilt was "amply evident". He was alleged to have committed the crime as an act to revenge after the girl complained to her parents that he was harassing her. The Supreme Court imposed the death penalty because of the 'savage nature of the crime' and held that it fell into the category of 'rarest of rare' cases for which the death penalty could be imposed.

After unsuccessful appeals to the High Court and the Supreme Court, Dhananjay Chatterjee was due to be hanged on 25th Feb, 1994 after which the date of execution was postponed to 4th and then 18th March, 1994, but did not take place. Dhanajay Chatterjee remained in jail for 14 years. According to Indian Newspaper, his execution date was set by officials from the West Bengal Government, who discovered that he had not been executed when they reviewed old files on the day of execution, Dhananjay received the Presidential pardon and execution order was stayed. But finally he was hanged on August, 2004.

SUSHIL MURMU VS. STATE OF JHARKHAND\(^{63}\)

In this case the appellant sacrificed a child of 9 years before the deity kali by beheading him, for his own prosperity. The nonchalant way in which he carried the severed head in a gunny bag and threw it in the pond unerringly shows that the act was diabolic of most superlative degree in conception and cruel in execution, particularly when the appellant (accused) was having his own child of the same age. The Supreme Court reiterated the 'rarest of rare case' doctrine and held,

"When collective conscience of the community is shocked and it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence must be awarded."

\(^{63}\) AIR 2004 SC 394.
INDIAN PARLIAMENT ATTACK CASE

Under the anti terrorist act, a special court in Delhi sentenced to death, the three man convicted in the ‘Parliament Attack case’ for waging war against the country. Special Judge S. N. Dhingra awarded capital punishment to Jaish-e-Mohammed (Jem) terrorist, Moh Afzal, Shaukat Hussain Guru and Lecturer of Delhi University, SAR Geelani. The fourth convict Shaukat’s wife Navjot Sandhu alias Afran Guru found guilty of concealing the plot, was sentenced to 5 years rigorous imprisonment and also fined 10,000 rupees. The death sentence then referred to a Division Bench of Delhi High Court for confirmation.

The main convicts were held guilty of waging war against India in conspiracy with the Pakistani militants and attempting to assassinate the Prime Minister, Home Minister and other VIP’s and attacking Parliament when it was in session with a view to take the VIP’s hostage Afzal, Shaukat and Geelani were sentenced to death under Section 302 INDIAN PENAL CODE and stooped a fine of Rs. 50,000 rupees each which the trial court directed to given to the families of those killed in the attack. In the attack on parliament, nine security personnel were killed and 16 others were injured.

Then, on an appeal filed by the Delhi Police, the Supreme Court acquitted the Delhi University lecturer, SAR Geelani and Afsan Guru issuing a notice.

A bench comprising Justice S. N. Variava and Justice H K Seema directed Geelani and Afsan Guru not to leave the country without the permission of the court. On appeal the Supreme Court putting the case into rarest of rare case upheld the death penalty for Mohd. Afzal and his execution were to be held on 14th Oct. 2006, but his mercy petition is still before the President of India.

PRIYADARSHINI MATTOO CASE

In the present case, Priyadarshini Matto, a law graduate of Delhi University was raped and brutally murdered in her house in day time by her own senior on Jan. 23, 1996. On Oct 30, 2006, Delhi High Court awarded him death penalty.

64 Manupatra – from Internet
65 September 27, 2006 The Tribune.
66 From internet.
According to the Apex Court, the following cases would attract the rarest of rare cases’ rule to justify imposition of death sentence:

1. When the murder is committed in an extremely brutal, gruesome, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

2. The murder is committed for a motive which evinces total depravity and meanness.

3. When murder is that of a member of Scheduled Caste or minority community.

4. When murder is in enormous proportion i.e. several persons are murdered.

5. When the victim of murder is an innocent child or a helpless woman or an old infirm person.

The court ruled that death penalty should be the only punishment to be awarded in the aforesaid cases.

III) FACTORS AFFECTING THE AWARD OF CAPITAL PUNISHMENT

When it has been settled in our country that death punishment should be allowed, the only issue to be decided is what are the guidelines for the award of death sentence, because, the different provisions of the Penal Code which make provision for death punishment do not lay down any criteria for the award of death sentence. While swinging the pendulum of sentencing justice an overwhelm of subjective considerations, modern penal theories, behavioural emphasis or social antecedents. It should be the duty of the court to see that as far as practicable judicial subjectivism do not creep into the decisions and thereby make them uncertain and subject to conjectures and surmises.

There are so many factors which may be taken into consideration while awarding capital punishment.

(1) AGE:- One mitigating factors which has often been relied upon for the purpose of commuting the death sentence to life imprisonment is the youth of
the offender. A study of various judgement quoted in the subsequent paragraph would reveal that this his been quite arbitrarily applied by the Supreme Court and High Courts. There are cases where the courts took into account the young age of the appellant and refused to award death sentence to him. Equally there are case where the courts took the view that youth is no ground for extenuation of sentence.

Person who fully understand the nature of their act and person committing cruel and cold blood and premeditated murder, have generally been awarded death sentence inspite of their youth.

The mere fact that the accused is a youth or an old man or a woman is not as such an extenuating circumstances justifying the imposition of lesser sentence of imprisonment for life, but taken along with other circumstances, age or sex of the accused has been considered by the courts as an extenuating circumstances which will enable the court to mitigate the sentence. In *Mst. Daulan V. Emperor*, the accused was aged 15 years and murdered her step son in order to avenge against her husband with whom she was not getting on well. The High Court awarded her sentence to transportation for life in view of her age. In *Mohammed Din V. Crown*, the court observed that the youth of the appellants was sufficiently strong reason to commute their sentence. That the convict is in his twenties is not irrelevant in considering death sentence. Where the accused was a youth, not fully able to understand the nature of his act, or where the criminal act has been done under the influence of elder persons, appropriate punishment would be imprisonment for life.

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69 AIR 1926 Lahore 44.
70 (1937) ILR 18 Lahore 658 p. 661.
71 Raghubir Singh Vs. State of Haryana AIR 1974 SC 677
72 Khitari Vs. Emperor AIR 1934 Audh. 405 p. 409.
In *Ediga Anamma*, the supreme Court observed that where the murderer is too young or too old the clemency of penal justice helps him. In *Harnam V. State of U.P.*, it happened that the appellant was aged only sixteen at the time of murder; and on that ground alone, the Supreme Court reduced her sentence to one of life imprisonment observing,

"the only circumstance on which reliance could be placed on behalf of the appellant for mitigating the rigour of the punishment to be inflicted on her was her tender age at the time of commission of the offence.".

Opposed to the stand taken in above cases, the Supreme Court in *Ragho Mani* confirmed the death sentence of the accused who was a young man of 28 years of age. However, again, in a later decision where the defendant was aged 16 years at the time of the murder, and on that ground alone, the Supreme Court reduced his sentence to one of life imprisonment. Even though the murder was a "a most reprehensible and heinous crime," involving "brutality and callousness to human life and no extenuating circumstances," the Law Commission report had recommended that the minimum age for sentence of death should be eighteen years of age; and although this recommendation had not been implemented by legislation, it represented "the current sociological and justice thinking" by which the court should be guided.

The above cases illustrate the conflicting view taken by the Supreme Court regarding age as a mitigating or extenuating circumstances. Moreover, there is also divergence of opinion as to what should be the age at which the offender may be regarded as a young man deserving of commutation. The result is in some situations young offenders used to do multiple murders get

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74 AIR 1974 SC 799
75 AIR 1976 SC 2071
76 Ibid. p. 2072
77 AIR 1977 SC 703.
78 Harnam Vs. State of UP AIR 1976 SC 2071
reduction in life sentence whereas in others, "where neither the loss of as many human lives nor of higher valued property" is involved, in accused are awarded death sentence.

(2) SEX: There is no rule that a woman is protect by her sex from the death penalty. Of course where a man and woman are jointly charged with an offence, the court may often take the view that the women acted under the influence of the man, and that is always a reason for imposing a lesser sentence upon her. But if the court comes to the conclusion that both parties are equally guilty, the fact that one of them is a woman is no ground for making a distinction in the sentence.

Sex in the absence of aggravating circumstances is an extenuating circumstances, the Law Commission observed as under:

"We have considered the question whether women generally should be exempted from the sentence of death. While we appreciate that it would be a natural desire to avoid the death sentence on females in most cases, we do not think that a general exemption is called for. A woman may be guilty of a brutal cold blooded murder, and the case, therefore, may be one deserving the highest penalty of the law."^79

The Royal Commission also found no adequate reason for the law to differentiate between the two sexes. It also noted that murders by woman included atrocious and cold blooded cases of baby farming and of poisoning over a long period. Their conclusions was that if there was a valid case for the retention of capital punishment, it must apply to women as well as to men, "although possibly not to an equal degree."^80

Where the accused was a woman of 20 years and was convicted of murder and sentenced to death, the Supreme Court held that the murder was

^79 35th Report p. 270.
^80 RC Report p. 65
cold blooded and out of pure greed and upheld the capital punishment.81 Where, the accused was on terms of intimacy with one and committed murder of her husband by Dhatura poisoning,82 a girl of 12 years was murdered for her ornaments,83 a girl of 12 years was murdered by strangling for her silver jewel worth Rs. 5;84 poison was cruelly administered to the husband85 the accused, all women, were sentenced to death because of the pre-mediated and brutal murders in these cases.

(3) MOTIVE: Though proof of motive for the crime is not essential for proving the guilt yet its presence or absence is important from the point of view of sentence. If crime is committed with a good motive, generally a lenient view of the matter is taken at the time of awarding the sentence. For example, if the murder was committed with the probable motive of prevention of cruelty to a helpless woman to a wife who was ill treated by her husband, sentence of death was replaced by the sentence of transportation for life. But where the murder is committed with a motive which speaks of high degree of moral degeneration on the part of the accused, the court does not hesitate to award the extreme penalty of death.

For instance in Ghulam Rasul V. Emperor86 where the accused murdered his elder brother in order to convert the wife of the deceased, it was held by the court that the accused deserved nothing short of death sentence. In Mohan V. State of U.P.,87 the accused had illicit intimacy with the wife of deceased and gave the deceased three ‘peras’ containing arsen resulting in the death of the deceased, the accused was sentenced to death. Where the accused had an eye on the beautiful wife of the deceased and had already developed a liaison with her, the Supreme Court held that this was sufficient motive for the dastardly crime and awarded the sentence of death.88 Where some dispute had

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82 Nisasteree Vs. State of Orissa AIR 1938 Mad. 318.
83 Emperor Vs. Mishri (1909) ILR, 31 All 592.
84 In Re. Thithanchumma, AIR 1941 Mad. 27.
85 Emperor Vs. Mas. Harpiari AIR 1926 IA 737.
86 46 Criminal Law Journal 585.
87 AIR 1960 SC 6659.
been going on between the accused and deceased over the guardianship of one R, and that the motive for the murder, the appellant was sentenced to death.\textsuperscript{89}

However, the absence of motive may, in a case based on circumstantial evidence, prove significant in arriving at a conclusion as the guilt of the accused. In the instant case, the appellant struck the blow with a deadly weapon in the vital part of the body of the deceased who was standing unguardedly. The High Court maintained conviction under Section 302, I.P.C., but in view of the failure of the prosecution to prove the motive and the possibility that the quarrel might have started over the misbehavior of the deceased towards the daughter of other appellant held that it was not a case where the extreme penalty of law should be imposed. A sentence for transportation for life would fully meet the ends of justice.\textsuperscript{90}

(4) **Pre mediation**: There is no law which says that in the absence of premeditation death sentence can not be passed, and therefore the mere absence of premeditation is not such an extenuating circumstances as will constitute a ground for awarding the lesser sentence on a conviction for cold blooded murder. However, absence of me pre-meditation along with other circumstances will provide a ground for awarding life imprisonment. Pre meditation by itself is not treated by the courts as ground for imposing the high penalty.\textsuperscript{91} I seems natural to assume that if a murder is premeditated, the sentence of death would be justified, and otherwise it would not be.

In *Balbir Chand V. State of Punjab*\textsuperscript{92}, absence of previous enmity between the accused on one hand and the deceased on the other and wholly un-pre-mediated occurrence resulting from a sudden quarrel were taken as circumstances in converting the death sentence into one for life imprisonment. Where the deceased intervened in a fight between the appellant and the son-in-law of the deceased and was stabbed on his chest with a pen-knife which the appellant drew from his waist, the Supreme Court observed:

\textsuperscript{89} Kalua Vs. State of UP AIR 1958 SC 180.
\textsuperscript{90} Lal Singh Vs. Crown 48 Criminal Law Journal, 786 p. 788
\textsuperscript{91} In re. Bhri Rajayya AIR 1921 Mad 303.
\textsuperscript{92} 1975 Criminal Law Journal 130.
"We feel that on the question of sentence that is not the type of case in which the death sentence is called for. There was no pre-mediation and the knife was not ready in the hand but was drawn from the waist after the appellant had been stopped and the quarrel between the (son-in-law) and him had started."93

5. **Mental state of the Accused**: Courts may, while considering the question of sentence, be expected to take into account the mental state of the accused, even if falls short of legal insanity.94 Jealousy, excitement, indignation, imbalance of mind, suspicion enraged honour, desperation, ill treatment, stress of emotion, may in appropriate cases amounts to an extenuating circumstances.95

On this subject the Law Commission has observed as under:

"Since in India, the question of sentence is entirely in the discretion of the court, and the sentence of death is not mandatory, such a provision does not appear to be necessary. Courts may, while considering the question of sentence, be expected to take into account the mental state of the accused, even if falls short of legal insanity.96

Jealousy, excitement, indignation, imbalance of mind, suspicion, outraged honour, desperation, ill-treatment, stress of emotion, may in appropriate cases amount to an extenuating circumstance. In the *Gopal Nair V. State of Kerala*97, Justice Grover observed,

"Where previous to committing murder the accused was suffering from mental trouble and the possibility of the accused suffering at the time of committing murder from a

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95 Piara Dusadh Vs. emperor AIR 1944 FCI.
ment obsession could not be ruled out, life imprisonment should be preferred to death sentence."

In *Piara Dusadh V. Emperor*\(^98\), it was proved that the accused was suffering from an unbalanced mind, and in committing the murder, though a brutal one, he was actuated by jealousy or by indignation, either of which would have tended further to disturb the balance of his mind, their Lordships of the Federal Court were of the opinion that the lesser sentence would be appropriate one. Where the wife administered cleaner poison to her husband, the extreme penalty of death was not awarded because of the family squabbles that existed between her and her husband and which had distracted her mental equilibrium\(^99\). Where a girl of fifteen killed her newly born illegitimate child, while awarding the punishment of transportation for life it was held that child birth occasionally produces peculiar reactions to the mother, and that the girl could hardly be held responsible for her actions and that the case called for not only the passing of the lesser sentence, but a recommendation to the Government for commutation of the sentence\(^100\). The accused laboured under the strong delusion of unfaithfulness of his wife. The brooding over the character of the wife took the form of a kind of temporary insanity. Disturbed by the thoughts about the unchastity of his wife, during the night of occurrence, the accused caused her death by throwing nitric acid on her. The medical evidence showed that he was capable of knowing what he was doing and had ordinary concept of right and wrong. It was held to be not a fit case for the extreme penalty provided for the offence\(^101\).

In *Vasant Laxman More V. State of Maharasthra*\(^102\) the appellant had killed his lover with a razor and then taken poison himself in an attempt at suicide. The dead woman was a young widow, who had developed her friendship with the appellant after her husband’s death. He resented that the

\(^98\) AIR 1944 SC 1.
\(^99\) State of Orissa Vs. Kaushalya Devi AIR 1965 Orissa, 381.
\(^100\) Smt. Talian Vs. Emperor AIR 1938 Lahore 473.
\(^101\) Hazara Singh Vs. State AIR 1958 Pub. 104.
\(^102\) AIR 1974 SC 1697

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deceased should got to cinema houses in the company of others in preference to him.

Regarding sentence, the Supreme Court observed:

“the appellant laboured under the belief that the deceased had transferred her attentions and lost his monopoly. That explains his high pitched enquiry as to why she visited picture houses in the company of others. The rebuff given by the deceased that it was none of his business sparked a serious quarrel leading to her murder. The provocation not being grave enough to justify the killing, the act of the appellant is plainly murder. But the sudden quarrel which preceded the murder and the mental distress under which the appellant was smarting would justify the award of a lesser penalty. The crime was evidently committed in a state of mental imbalance.

In Faqira V. State of U.P.\textsuperscript{103}, two rickshaw pullers, known as Chhanga and Bhukan got engaged in an exchange of hot words and abuses in which ultimately Bhukan took hold of Chhanga, dragged him across the street, and held him down while one Faqira stabbed him to death.

There was evidence that Bhukan had remarked to Faqira that Chhanga was “a great bully”; and the violence of the attack showed said the court, that Faqira:

“must have been incensed over something. These circumstances do indicate that the deceased had said something which strongly disturbed the mental balance of Faqira and his companions. All we can do, in such circumstances, is to reduce the sentence of Faqira from one of death to one of life imprisonment. We accordingly do so.”

\textsuperscript{103} AIR 1976 SC 915
6. **INTOXICATION:** Voluntary drunkness is no defence to a criminal charge but may be taken into consideration along with other facts and circumstances of the case, in determining the sentence to be awarded. Voluntary drunkness is, therefore, not necessarily by itself, a sufficient ground for not passing the sentence of death on an accused found guilty of murder.

In *Narasimha Raju V. State*\(^{104}\) four accused were convicted under section 302 I.P.C., for murdering nine persons. Sessions Judge awarded life imprisonment on the ground that at the time of commission of the offence, accused were in state of drunkenness. Supreme Court not treating drunkenness as an extenuating circumstances observed: “In certain circumstances drunkenness can be pleaded to bring an offence under an exception provided in the Penal Code but it cannot be treated as a mitigating circumstance particularly when accused may have consumed alcohol to get into proper mood to commit the offence.

7. **STARVATION:** Starvation alone has not been considered as an extenuating circumstances by the Courts, however, it may be one of the factors combined effect of which may justify the lesser punishment.

In *Mahajan Bibi Vs. Emperor*\(^{105}\) the accused owing to starvation murdered her child and also attempted to commit suicide afterwards. It was held that though she was guilty of murder, yet keeping in view the circumstances of the case, a sentence of life imprisonment would meet the ends of justice.

However, the High Court of Madhya Pradesh did not consider starvation of the accused as an extenuating circumstances in *Mojiya Ratna Bhil V. State*\(^{106}\). In this case, the accused committed robbery in order to save himself from starvation but the deceased was killed in this process. While sentencing him to death it was held by the Court that the fact of starvation of

\(^{104}\) AIR 1971 SC 1232.
\(^{105}\) AIR 1932 Cal 658 (660)
\(^{106}\) AIR 1961 MP 10 (12)
the accused cannot be treated as an extenuating factor for awarding life imprisonment.

8. **EMOTIONAL OR ANY OTHER STRESS** – The supreme Court in a number of judgements has given due consideration to the emotional or sudden impulse of the appellant, under shich the crime was committed.

The supreme Court in *Carloz Jagmond Vs. State of Kerala*\(^{107}\) laid down, that where the accused persons were in the grip of emotional stress at the time of committing the offence, it would not be a case where death sentence would meet the end of justice.

The sentence for the imprisonment for life was held to be adequate one. The court also in *Ummihal V. State of M.P.*\(^{108}\) where the appellant was convicted for committing double murder, reduced the death sentence to that of life imprisonment on the ground that the offence was committed in a fit of rage.

9. **ACCUSED HAVING YOUNG CHILDREN** : The fact that the accused had young children, who would become orphans and left helpless if death penalty is imposed, is not a consideration for awarding the lesser sentence though it may be a ground for the exercise of the clemency by the government.

In *Sadhu Singh Vs. State*\(^{109}\), in similar circumstances though the High Court of Punjab confirmed the death sentence, but recommended the case as fit for clemency on the ground of compassion.

10. **STATUS OF THE ACCUSED**\(^{110}\) - The fact that a accused is a man of culture and education\(^{111}\) or that the murder was committed in order to maintain the family honour\(^{112}\) or that he belongs to a community which is singularly free from criminal proactivities, is not extenuating circumstances of awarding the lesser punishment.

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\(^{107}\) AIR 1974 SC 1115

\(^{108}\) AIR 1981 SC 1710

\(^{109}\) 1969 Cr. L.J. 483 (486)

\(^{110}\) Subhash C. Kashyap – Crime & Punishment.

\(^{111}\) In re Sona Mir AIR 1952 Tripura 16/18

\(^{112}\) Niana Mohmad Vs. State AIR 1960 Mad 218 (223)
However, in *Ramkali V. State*\(^\text{113}\) the Allahabad High Court awarded the lesser punishment to the accused on the ground that he belonged to a respectable family and had a child of six months old. It is submitted that this view cannot be supported on principle.

11. **ROLE OF VICTIM**— The Supreme Court and other courts have also taken cognizance of the role played by the victim, at the time of commission of the offence, in order to adjust the sentence in accordance with the canons of justice.

In *Nika Ram V. State of H.P.*\(^\text{114}\), where the deceased abused the accused and in *Subhash Thever V. State of T.N.*, where the appellants were smarting under the feeling that their community had been humiliated by the deceased, the Supreme Court laid down that, in such circumstances, the extreme penalty of death was not called for, and that the lesser sentence of imprisonment for life would meet the ends of justice. On the other hand in the cases where there was no provocation, the Supreme Court refused to interfere with the death sentence. In *Suresh V. State of Maharashtra*, the accused was lying on her cot, when the appellant came and stabbed her to death. The Supreme Court refused to alter the sentence of death to that of life imprisonment.

12. **MURDER COMMITTED BY HIRED PERSON** : It has been held in some cases that a youth committing murder under the influence of elders, may be given the lesser sentence of imprisonment for life. This can not apply to persons who are hired to commit murder or who commit the murder in order to please the master or the landlord or in order to oblige a friend.

In *Narayan Vs. State*\(^\text{115}\), the Court observed that the accused who committed murder was hired assassins is no reason to award the lesser sentence of life imprisonment.

\(^{113}\) ILR 1958 (2) All. 698 (719)
\(^{114}\) AIR 1972 SC 2077.
\(^{115}\) AIR 1953 Hyd. 161 (166).
13. MODUS OPERANDI OF THE ACCUSED — The Supreme Court in a majority of cases has given due consideration to the mode and manner in which the offence has been committed.

*Lajar Masih Vs. State of UP*116

The Supreme Court in this case, in respect of the award of sentence observed that the horrendous features of the crime, and hopeless and helpless state of the victim, steel the heart of the law for a sterner sentence.

14. SUPERSTITION — The mere fact that the murder is committed when the accused suffering from superstition, is not extenuating circumstance, unless such superstitious belief mentally disturbs the accused.

In *State V. Ramavtar Singh*117, the accused about 20 years old and belonging to backward class killed the deceased acting under the stress of great emotion caused by the belief that the deceased practiced witch-craft and was responsible for the death of his bullock. Keeping in view the circumstances of the case, it was held that the lesser sentence of imprisonment for life would meet the ends of justice.

15. COMMunal AND POLITICAL MURDER — Murder committed out of political and communal feelings should not be treated with leniency.

In *D. R. Bhagre V. State*118, maintaining the sentence of death, Justice I.D. Dua of the Supreme Court observed “Where the Constitution, guarantees to all individuals freedom of religious faith, thought, belief and expression and here no particular religion is accorded a superior status and none subjected to hostile discrimination, the commission of offences motivated only by the fact that the victim professes a different religious faith, cannot be treated with leniency. They are not only destructive of our basic traditional social order founded on toleration in recognition of the dignity of the individual and other cherished human values, but have also a tendency to mar our national solidarity. In such cases sentence of death is just proper.”

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116 AIR 1976 SC 653.
117 AIR 1956 Patna 10 (15)
118 AIR 1973 SC 476.
16. **ACQUITTAL OF CO ACCUSED**— The fact that the accused who actually committed the murder was tendered pardon and went free, can not be a mitigating circumstances in awarding the sentence to the co-accused, who, though did not actually commit the act was the person who concerned and instigated the murder.\(^{119}\)

In *Moorthy V. State*\(^{120}\) the Madras High Court observed:

“The fact that the principal instigator has been acquitted, is not a proper case to act under Section 402 Criminal Procedure Code, this would not be an extenuating circumstance.”

**IV CONCLUSION**

The main thrust of the judiciary, therefore, is not on the vastness of discretion between death penalty and life imprisonment but on the mode of its exercise. There appears to be an overwhelming need to canalize discretion. The power of exercise of discretion essentially rests with the trial court and no interference is generally permissible. In the cases analysed above, no doubt the 'special reason' extenuating and mitigating circumstances, the seriousness of the crime, the criterion of rarest of rare cases have all been taken into account but all these factors singly and cumulatively indicate not merely that there is an enormous potential of arbitrary award of death penalty by the High Courts and the Supreme Court but that in fact, death sentences have been awarded arbitrarily and freakishly.\(^{121}\)

No doubt the judge will have to give ‘special reasons’ if he opt in favour of inflecting the death penalty, but that does not eliminate arbitrariness, caprice, firstly because there being no guidelines provided by the legislature, the reasons which may appeal to one Judge as ‘special reason’ may not appeal to one Judge as ‘special reason’ may not appeal to another, and secondly, because reasons can always be

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\(^{119}\) Public Prosecutor Vs. Ventakatasukramaniam AIR 1941 Mad 358 (359).

\(^{120}\) AIR 1956 Madras 536 (540)

\(^{121}\) Dr. Upendra Bakshi’s Note on “Arbitrariness of Judicial Imposition of Capital Punishment : Quoted in AIR 1987 SC 1325 at P. 1302.
found for a conclusion that the Judge instinctively wishes to reach and the Judge can bonafide and conscientiously find such reasons to be 'special reasons'.