

New Paradigms of Death Sentencing in India: An Analysis of Manoj v. State of Madhya Pradesh

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Abstract

Human life is significant, and causing or leading another human being to cause human life to cease to exist is one of the gravest offences in the world. In other words, a person who voluntarily causes the loss of life of another person commits an offence of 'murder' and the punishment which has been reserved for such an offence since time immemorial is the 'death penalty' which is also commonly known as 'Capital Punishment'. The Supreme Court of India broadened the scope of Article 21 of the Indian Constitution's protection of the right to life when it ruled that the "Right to Life may include any aspect of life which makes it dignified but not that which extinguishes it and, therefore, any act or activity inconsistent with the continued existence of life shall be constitutionally void". The Indian Penal Code of 1860 states that "in Section 302, anybody found guilty of murder faces the death penalty or life in jail in addition to a fine". However, the doctrine of 'rarest of rare' has been evolved by the Indian judiciary through its experience over the years, which makes capital punishment an exception and emphasizes balancing the aggravating circumstances equally with the mitigating circumstances of the offender for the commission of the offence. In other words, it focuses on 'individualised, principled sentencing' based both on the crime as well as the criminal. The present case of Manoj & Ors. v. the State of Madhya Pradesh is one such, wherein the Hon'ble Apex Court of India tried to strike the balance between the aggravating and mitigating circumstances by invoking the 'rarest of rare' doctrine and evolving some new practical guidelines to collect mitigating circumstances, keeping in view the contemporary relevance and status of the death penalty in India. This is an attempt by the author to critique this conclusion.

Keywords: Capital punishment, mitigating circumstances, murder, rarest of rare

INTRODUCTION AND BACKGROUND

According to the statistics of the National Crime Records Bureau of India, in total, 29,272 cases of murder have been registered in 2021, which shows a marginal increase of 0.3% over the year 2020 [1, 2]. The analysis of the criminal records for the year 2021 reveals that almost 82 murders, *inter alia*, have taken place every day in India.

A murderer is subject to a fine in addition to being sentenced to death or life in prison under Section 302 of the Indian Penal Code. The trial court in this case found the appellants Manoj, Rahul, and Neha Verma guilty of three counts of an offence punishable under the mentioned provision and condemned them to death (along with a fine) for killing the victims while robbing them, Mrs. Megha Deshpande, Ms. Ashlesha Deshpande, and Smt. Rohini Phadke (aged 46, 22, and 76 years, respectively). The incident was heinous because of the diabolic manner of commission of the murders. The victims suffered grave injuries across their bodies, including shoulders, abdomens, and chests. The substantial stabbing given by the accused

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caused numerous injuries, which also resulted in the piercing of the vital organs of the victims, leading to their instantaneous deaths.

The trial court, considering the magnitude and the diabolic manner in which the murders were committed, found the case fit to be in the category of ‘rarest of rare’ and awarded the death penaltyⁱ *inter alia*, to all three accused [3]. The High Courtⁱⁱ, after examining whether or not this case will fall under the category of ‘rarest of rare’ for the justification of capital punishment imposed upon the appellants, was of the view that [4]:

“[...] as the incident shook the collective conscience of the community, and the acts of murder committed by the appellants were so gruesome, merciless, and brutal, the aggravating circumstances far outweighed the mitigating circumstances, and hence, this case fell under the category of ‘rarest of the rare’ which manifests society’s abhorrence of such crime.”

Thus, affirming the sentence of death imposed upon the appellants by the trial court.

Feeling aggrieved by the sentence of capital punishment imposed upon them by the trial court and its affirmation by the high court, the three accused in the present case preferred the appeal before the Supreme Court with contentions such as “there is no material to suggest that they had shared any common intention with each other, much less a common intention to commit murder” [5], lacunae in the test identification parade [6], and forensic procedures [7], etc. Also, it was contended that ‘both the high court and the trial court had not considered the possibility of reforms in the accused as they all were of young age, and except for, Manoj, none of them (Rahul and Neha) had any criminal antecedents either’. Thus, both the high court and the trial court violated the rule laid down in *Bachan Singh* [8].

One of the main issues before the Supreme Court was, whether the case was fit to fall into the category of “rarest of rare”, and if yes, was the death penalty imposed upon the accused warranted (if looked at through the lens of the list of mitigating circumstances recognized in *Bachan Singh*’s case)?

THE DOCTRINE OF ‘RAREST OF RARE’ AND THE SENTENCING POLICY

The doctrine of ‘Rarest of Rare’ is an invention of the Supreme Court of India carried out while dealing with the case of *Bachan Singh*, wherein it upholds the constitutionality of capital punishment by observing that:

“It is not possible to hold that the provision of the death penalty as an alternative punishment for murder is unreasonable and not in the public interest. The deprivation of freedom consequence upon an order of conviction and sentence is not a direct and inevitable consequences of law but is merely incidental to the order of conviction and sentence is not a direct and inevitable consequences of the penal law, but is merely incidental to the order of conviction and sentence which may or may not come into play, that is to say, which may or may not be passed. Thus, Section 302 of the Indian Penal Code does not have to stand the test of Article 19(1) of the Constitution of India, 1950” [9].

Though it constitutionally validated capital punishment, it also contributed to improving the scope of Section 302 by ruling that, “A real and abiding concern for the dignity of human life postulates resistance to taking a life through the law’s instrumentality. Thus, the death penalty will be awarded only on the rarest of rare (category of) crimes, where the other remedy of life imprisonment is unquestionably foreclosedⁱⁱⁱ.” Referring to *Bachan Singh and Machhi Singh*, the Supreme Court explained the circumstances that constitute ‘rarest of rare’ cases, and observed, “It is ‘rarest of rare’ case when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining the death penalty, death sentence can be awarded^{iv}.”

In Santosh Bariyar’s case, the Supreme Court further explained that the “rarest of rare” category “must adhere to the highest norms of judicial rigour and thoroughness”. This ‘rarest of rare’ was

described as a two-step process in Santosh Bariyar itself to assess whether a case merits the death penalty. In this process, the court must first determine whether the case fits within the 'rarest of rare' category, and then it must be confirmed that the alternative of life in prison will not be sufficient. The purpose of creating a concept like 'rarest of rare' is to make the imposition of the death penalty a wholly rare, extremely limited exception. In addition, "introducing rigour in terms of looking at the facts and the circumstances of the case combined with those of the offender is to be absolutely sure that no one is granted the death penalty, simply because it seems to be the most apparent punishment". Instead, only when it is appropriate and just should the death sentence be used [10]. And to find out whether any particular case is fit for an award of the death penalty, the Supreme Court suggested that:

"[...] judicial opinion does not necessarily reflect the moral attitudes of the people, [and] judges should not take upon themselves the responsibility of becoming oracles or spokesmen of public opinion. When judges take upon themselves the responsibility of setting down social norms of conduct, there is every danger, despite their effort to make a rational guess of the notions of right and wrong prevailing in the community at large. The perception of 'community' standards or ethics may vary from judge to judge. Judges have no divining rod to accurately divine the will of the people [11]."

To avoid such judicial errors, guidelines were indicated with regards to sentencing of capital punishment, which were also deliberately culled out in *Machhi Singh* [12]. The guidelines were as follows:

- The extreme penalty of death need not be inflicted except in the gravest cases of extreme culpability.
- Before opting for the death penalty, the circumstances of the 'offender' also need to be taken into consideration along with the circumstances of the 'crime'.
- Life imprisonment is the rule, and a death sentence is an exception. In other words, a 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 only if the option to impose a sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
- A balance sheet of aggravating and mitigating circumstances has to be drawn up, and in doing so, the mitigating circumstances 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.

In order to apply these guidelines, inter alia, the following questions may be asked and answered:

- Is there something uncommon about the crime which renders a sentence of imprisonment for life inadequate and calls for a death sentence?
- Are the circumstances of the crime such that there is no alternative but to impose a death sentence even after giving maximum weightage to the mitigating circumstances which speak in favour of the offender?

If, upon taking an overall global view of all the circumstances in light of the aforesaid proposition and taking into account the answers to the questions posed herein, the circumstances of the case are such that a death sentence is warranted, the court would proceed to do so [13].

It was also observed while referring to the 262nd Law Commission Report which extensively provided the penological justifications for death penalty, and stated that, "*Capital punishment fails to achieve any constitutionally valid penological goals. In focusing on death penalty as the ultimate measure of justice for victims, the restorative and rehabilitative aspects of justice are lost sight of. Reliance on the death penalty diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention, and rights of victims of crime*" [14]. Therefore, it was implicit in this shift to understand that "*the criminal is not a product of only their own decisions, but also a product of the state's and society's failings, which is what entitles the accused to a chance of reformation. Thus, making life imprisonment the norm and the death penalty the exception* [15]."

Hence, emphasis was laid on considering the mitigating circumstances of the criminals, which were recognized in *Bachan Singh* itself, for the courts to take into account while exercising their discretion in sentencing in such cases. The mitigating circumstances listed in *Bachan Singh* are as follows:

1. That the offence was committed under the influence of extreme mental or emotional disturbance.
2. The age of the accused. If the accused is young or old, he shall not be sentenced to death.
3. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
4. The probability that the accused can be reformed and rehabilitated. The state shall, by evidence, prove that the accused does not satisfy the conditions (3) and (4) as mentioned.
5. That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.
6. That the accused acted under the duress or dominion of another person.
7. That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

However, there have been numerous instances where it has been observed that the mentioned guidelines have been time and again not followed by the courts. Perhaps due to its own perception, or “the discretion afforded to the court in sentencing, to enable the court with flexibility in considering the case-specific factors relating to the crime and criminal [16].” For example, in the case of *State of Maharashtra v. Shivaji* [17], the accused, who was guilty of rape and stabbing strangulation of a minor girl to death, was awarded death penalty by the Bombay High Court, considering the crime to be ‘rarest of rare’. In *Dayanidhi Bisoi v. State of Orissa* [18], the accused murdered four of his relatives in a brutal manner “not only in execution of his intention to commit robbery but also to erase the possible evidence of his act”. The Supreme Court held that the crime falls into the category of ‘rarest of rare’ and awarded death penalty. Again in *Shri Mahendra Nath Das v. State of Assam* [19], in which “The accused inflicted a sword blow on the deceased, who fell down and thereafter the accused amputated and also severed his head and carried the head in one hand and the sword in another hand to the police station. The mitigating circumstances showed that the appellant was a young man of 33 years of age with three unmarried sisters and aged parents, and he was not well at the time of the incident, but not so enough well to prevent him from awarding the death penalty. The case was considered to be a ‘rarest of rare’ one and the Supreme Court upheld the death penalty. However, in some cases, like *Surendra Pal Shivbalakpal v. State of Gujarat* [20], the accused committed rape on a minor child and caused her death. The trial court imposed the death penalty which was affirmed by the high court. But the Supreme Court commuted the sentence to life imprisonment by reasoning that, the accused was of young age (36 years) and had no criminal antecedents. Again, in *Lahukumar S/o Ramachandra Dhekane v. State of Maharashtra* [21], the accused was charged with kidnapping of a child for ransom and subsequent murder of the kidnapped child and destroying the evidence. The Supreme Court again commuted the death sentence to life imprisonment, holding that the accused was just 24 years of age and that a death sentence would not be warranted in such a case^v.

After going through all these judicial pronouncements, it can be observed that judicial discretion can be exercised in any ordinary manner, and even if it is erroneous, it must be accepted. However, a sensitive matter of someone’s life and death cannot be excused in the same way. “The doctrine of ‘rarest of rare’ has often masked the arbitrary choice of sentencing judge and lulled us into a complacent belief that the sentencing judge has made the right choice between life and death. “Such wide discretion resulted in enormously varying judgements, which do not portray a good picture of the justice delivery system [22].”

Prof. Faizan Mustafa proves in his research [23] that “after the doctrine of rarest of rare, there has been no substantive change in the award of death penalty”. It has been found out in his research that the attitude of both the high courts and the Supreme Court differ when it comes to death sentencing. The Supreme Court appears to be less inclined towards awarding of death penalty as compared to the high

courts. He substantiated this phenomenon by referring to a theory according to which “The greater the distance from the scene of the crime, the more lenient would be the attitude of the court in awarding the sentence”. And thus, since high courts are closer to the crime scene, it preferred to be more of the realist view than that of a philosophical view as that of the Supreme Court [24].

The Supreme Court considered its decision in *Ravji v. State of Rajasthan* [25] in which it imposed death penalty on the appellant/accused who was guilty of murdering five persons and attempting to murder his mother and a neighbour’s wife in a brutal and barbaric manner. The court found this decision in total contravention of the guidelines given in *Bachan Singh* [26] as it held that, “...it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial” [27]. However, again in its own decision in *Rajesh Kumar v. State* [28], in which the accused was convicted for murder of two children in a brutal and inhumane manner. It was held that, “brutality in itself, was not enough to impose death sentence and that due consideration to the mitigating circumstances of the criminal still had to be given” [29]. Due to such awards of non-identical degrees, there aroused a condition when a convict sentenced to death may say, “why me and not him who escaped with a lesser punishment?” The Supreme Court observed that such unguided discretion of the courts and its deviation from the principle carved out in *Bachan Singh* would clearly lead to bad law [30]. Hence, it was high time for the Indian Judiciary to come up with some solutions for this emerging problem.

DIRECTIONS OF THE SUPREME COURT

It was unfortunate for the Supreme Court to observe the incorrect application of the guidelines framed by its constitutional bench in *Bachan Singh* due to the absence of well-documented materials proving the mitigating circumstances at the level of trial. Because there are no established mitigating factors, the aggravating circumstances appear to be much more severe and convincing, which makes the sentencing court more likely to order the death penalty [31]. In order to avoid delving too deeply into a retaliatory response to the atrocity of the crime, the following practical rules for compiling the mitigating circumstances were set for the trial courts [32].

The trial court must first get all essential information from both the state and the accused. For a crime that carries a death penalty, the state must present evidence to the session court at the appropriate time that is preferably pre-gathered. This evidence must include the accused’s psychiatric and psychological evaluation, which will help establish proximity to the accused’s state of mind at the time of the crime in terms of timing and provide guidance on *Bachan Singh*’s mitigating factors nos. 1, 5, 6, and 7 [33].

Secondly, the state, in a time bound manner, must collect additional information related to the accused, for which an illustrative list is as follows:

- Age
- Early family background^{vi}
- Present family background^{vii}
- Type and level of education
- Socio-economic background^{viii}
- Criminal antecedents^{ix}
- Income and the kind of employment^x
- Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual, etc.

The trial court must be required to have access to these materials at the time of sentence, and the accused must also be given the chance to provide rebuttal evidence to show all relevant mitigating circumstances [34].

The trial court must also request any reports from the probation and welfare officer, the jail superintendent, or other relevant jail officials including information about the behaviour, activities, and

employment that the accused has engaged in while incarcerated. And if the appeal is heard a long time after the trial court's conviction or the high court's confirmation, as the case may be, a new report from the jail authorities must be requested in order to have a more accurate and full understanding of the accused's continued progress throughout that time. Additionally, the jail authorities must provide a brand-new psychiatric and psychological assessment that will demonstrate the inmate's ongoing reformatory efforts and, if necessary, identify any post-conviction mental disorder [35].

Emphasis was also laid down by the Supreme Court on its direction given to the courts of session to call for additional materials in *Anil v. State of Maharashtra* [36]. It was directed to the courts of sessions that, "...while dealing with the offences like Section 302 IPC, after conviction, the court may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."

The following justifications were quoted by the Supreme Court in support of the directions given:

1. The probability that the accused would not commit criminal acts of violence that would constitute a continuing threat to society is a relevant circumstance, which must be given great weight in the determination of sentence.
2. The conduct of the convict in prison cannot be lost sight of. The fact that the prisoner has displayed good behaviour in prison certainly goes on to show that he is not beyond reform [37].
3. In the matter of the probability and possibility of reforming of a criminal, we do not find that a proper psychological/psychiatric evaluation is done. Without the assistance of such a psychological/psychiatric assessment and evaluation, it would not be proper to hold that there is no possibility or probability of reform. The state has to bear in mind this important aspect while proving by evidence that the convict cannot be reformed or rehabilitated [38].
4. There is no conclusive evidence that capital punishment has more of a deterrent effect, in comparison to life imprisonment [39].

SENTENCING OF THE ACCUSED IN THE PRESENT CASE

The fact that the crime committed by the three accused in this case was grotesque and brutal was undeniable for the court. Having killed three generations of women in toto, was in the opinion of the court, grotesque indeed. To quote the words of Justice Ravindra Bhat, "*The crime in itself, could no doubt be characterised as 'extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community' as defined in Machhi Singh.*" All these factors were considered as the aggravating circumstances. The three accused individuals' mitigating circumstances were also taken into account after the *Bachan Singh* test was applied. The probation officer got all the information required and turned it into a report.

According to the material forwarded by the state, Manoj's conduct appeared to be disciplined and correctional in nature. He has a wife and two young children with whom he has repaired relations and is regularly in touch. He made a special effort to be a part of his growing children's lives, demonstrating strong family ties. And most importantly, the probation officer's report concludes that he seems remorseful, and keen to reintegrate into society with his family. Except of the fact that he had one criminal antecedent prior to the present one to his record [40]. Rahul's conduct also appeared to be normal and correctional in nature. Among other things, he had also completed his higher secondary education and went on to pursue a B.Com. from the Indira Gandhi National Open University. His family consists of his ailing father, mother, and three married sisters. He had expressed concern for his old parents and wished to help them financially by re-joining society [41]. Neha's conduct was somewhat aggressive in the beginning as she engaged in fights with jail inmates on a few occasions; however, her conduct was seen to improve with the passing of time. She had received a national award for *Jardosi's* work in Indore District Court and has received numerous other accolades for her participation in activities. Her family consisted of her parents and two married brothers (of whom, one is paralysed), whom she is regularly in touch with [42].

It was yet again unfortunate for the Supreme Court to note that neither the trial court nor the high court provided an effective sentence hearing to the accused at the relevant stage, which is their right U/s 235 (2) of the Code of Criminal Procedure. None of the mitigating circumstances of the accused were considered by both courts, which the Supreme Court found to be in total contravention of the guidelines framed in *Bachan Singh*.

Considering the young age of all three accused at the time of the incident, coupled with the fact that one of the accused was a novice, the court had a good basis to believe that the suspects were novices involved in a robbery gone bad and that they had no previous intention of killing the three women because Rahul was wounded in the leg during the commission of the crime [43]. In the opinion of the court, it was perhaps the resistance of the victims, which the victims could not contemplate, due to which they ended up killing all three ladies to ensure that they did not survive and put them in trouble [44].

The Supreme Court determined that the possibility of life imprisonment in the specific case is unquestionably not eliminated after taking into account the criminal's entire circumstances. With careful consideration for the incident's impact on society, the court reaffirmed that "*Public opinion is neither an objective circumstance relating to the crime, nor the criminal, and thus, courts must exercise judicial restraint and play a balancing role*" [45]. In light of all the relevant facts and circumstances, the court determined that the death penalty would not be appropriate in this instance and reduced the death sentences of all three defendants to life in prison with a minimum period of 25 years [46].

EASE OF GETTING JUSTICE OR HURDLES IN WAY OF JUSTICE: AN ANALYSIS

The Supreme Court has framed the practical guidelines to avoid the trial courts slipping into a retributive response to the brutality of the crime and rather emphasizing and understanding the circumstances of the criminals which led them to end up committing the crime^{xi}, and reforming the criminals in a way that they can restart their new good lives by re-integrating with society instead of hanging them to death. But at this juncture, a question which is posed before us is 'Is it necessary that every criminal had some legitimate circumstances which led him/her to commit the crime?' Almost every criminal thinks himself to be morally justified in committing the crime. Every criminal has some circumstances posing before him which leads him towards committing a crime^{xii}. For example, a thief considers himself morally justified in committing robbery because he thinks that the victim has more of the wealth than he deserves and it is no offence if he takes out some of it. In the same way, a murderer can consider himself to be morally justified due to many reasons like envy, vindictiveness, or because the courts could not provide him proper justice^{xiii}. All these are circumstances which leads the criminal to commit one or the other kind of a crime. But can the court simply neglect the loss caused to the victims in such cases, even if it were the 'rarest of rare', just because it were the circumstances of the offender which compelled him to do so? What will be the impact of the practical guidelines that the Supreme Court has framed in this case on the sentencing of offenders in some 'rarest of rare' cases in which the offender was morally justified in committing the crime due the circumstances posing before him, but those circumstances are not considerable as legitimate ones both from the eyes of law, and that of the society? Let us consider some of the examples.

Recently, an incident has took place in the Union Territory of Puducherry, wherein a 42 year old woman allegedly poisoned and killed the classmate of her daughter because the boy always topped in academic and extracurricular activities. The mom was allegedly jealous of the boy, aged 13, who often outperformed her daughter in class. The woman identified herself as the youngster's mother and requested two bottles of soft drinks be given to the boy after he participated in a cultural activity at the school's annual day function. Unaware of what was happening, the young man drank from a bottle before beginning to throw up when he got home. He received treatment at a private hospital with the help of his parents, then was brought back home. He was ill once again, was taken to the government main hospital, and passed on that night [47]. As per the Senior Superintendent of Police, "It was a clear

cut murder case...and she admitted to handing over two bottles of soft drinks laced with 'laxative pills gotten from someone who makes country medicines to cause diarrhoea but the postmortem exam report has found traces of poison' [48]. In this case, if the trial court applies the practical guidelines to collect mitigating circumstances of the lady, then she cannot be awarded with death penalty even if the crime committed by her falls within the category of 'rarest of rare', as defined in *Lehna* [49], because firstly, she is a quadragenarian, and secondly, she has her family behind her which she has to serve. Thirdly, she has no criminal antecedents and lastly, she has no mental or psychological ailment. All that she has done is out of envy for the 13-year-old boy. Not awarding death penalty will be in total contravention of *Lehna*, however, the same cannot be opposed due to the consideration of mitigating circumstances of the accused. Hence, the maximum punishment the court could impose upon her would be life imprisonment or probably something even lesser than that. Whilst the question which remains unsolved here is "whether the victim family of the 13 year old child would be brought to justice?"

Another recent incident, wherein the accused and his family murdered his wife, aged between 25 and 27 years, in a brutal and diabolical manner because of her refusal to give up her 3-years-old daughter to her sister-in-law, who was childless. The husband, aged 31, and in laws of the victim decapitated her, packed her body in a suitcase, and dumped both the head and the suitcase containing the body in different places. Identification marks such as moles, etc. were scooped over from the body of the victim so that no one could identify her [50].

Was that a fault on the part of the victim that she refused to give up on her daughter? Will the court yet again consider the age, family background, educational background, and criminal antecedents of the accused and impose a lesser punishment than the death penalty? If yes, can it be said that the minor daughter of the victim will be brought to justice?

LIFE IMPRISONMENT: A TRUE PUNISHMENT?

What do we mean by life imprisonment? As held in *Laxman Naskar v. State of W.B.* [51], imprisonment for life, necessarily means 'rigorous imprisonment' and cannot be 'simple imprisonment'. Hard labour is a requirement of rigorous imprisonment. The inmates are forced to perform laborious tasks like breaking rocks, digging holes in the ground, farming, carpentry, etc. during this time. As a result of, "*while undergoing rigorous imprisonment a prisoner is forced to do hard labour as part of his punishment for the crime committed by him and this punishment is imposed upon him by a court of competent jurisdiction in accordance with law*" [52]. As per the report of the Indian Jails Committee, 1919–20, "*The object of [life imprisonment] must be the prevention of further crime by the reformation of the criminal... [which] may be brought about partly by exacting such labour or such an amount of labour as will be distasteful and irksome to the prisoner and so leading him to avoid conduct which will bring him back to prison* [53]." However, according to the statement of the then president of the 'All India Prison Officers Association', "*Only 10% of our rigorous imprisonment prisoners get work, and the rest sit idle as there is no work...*" [54]. "*A look at different jail manuals in the country shows that 99% of the convicts being awarded RI may actually be undergoing simple imprisonment in reality*", the report says [55].

Is this, what we are supposed to expect? The public is being made to believe that life imprisonment is an alternative by which criminals can be reformed with an aim to make them able to reintegrate with society. Reformation through what? As we went through the objective of life imprisonment earlier [56], a life convict is meant to undergo hard labour of distasteful and irksome kind so that he should regret and avoid any such conduct in the future, which may end up landing him in prison again. However, coming to know such unfortunate information about the prison management, can it be assumed that the punishment imposed upon the convicts meets the end of justice? Or can a life convict, who has been sentenced to rigorous imprisonment, but has not been reformed by the hard labour and rigorous environment of the prison be believed to not commit any crime in the future? Does the reformatory aspect of the Indian Criminal Justice System compel us to believe that a criminal has received

satisfactory punishment for the crime that he has committed, whilst he ends up having more than a decade long picnic in jail at the expense of the taxpayers.

Considering the practical guidelines of this case, in future, a greater number of criminals will be sentenced to life imprisonment instead of death penalty^{xiv} ultimately leading to an increase in the number of life convicts and probably proportionally less work in prison. The question still remains: 'Whether life imprisonment is a punishment in its true sense? The effects of this ruling on the penalty of life imprisonment will be interesting to see.

CONCLUSION

The death sentence is the most expected punishment by the common people of a nation, particularly when such inhumane, grotesque, brutal, and diabolical crimes get unleashed, which shake the conscience of society collectively. Not only it is preferred by society due to the fear that, if the convict is released, the next he could cause harm to anyone of them, but also because capital punishment holds a different significance over time. To recite the sacred Gita:

"[...] Although the justice of the peace awards capital punishment to a person condemned for murder, the justice of the peace cannot be blamed, because he orders violence against another person according to the codes of justice. In Manu-samhitā, the law book for mankind, it is supported that a murderer should be condemned to death so that in his next life he will not have to suffer for the great sin he has committed. Therefore, the king's punishment of hanging a murderer is actually beneficial" [57]

Nonetheless, it is undeniable that the National and International Human Rights Commission, and other international organizations have evolved certain principles which are indeed beneficial for mankind; and the Supreme Court of India in association with these principles has done a great job over the years. *Manoj v. the State of Madhya Pradesh* is one such landmark which stands to the credit of the Supreme Court. However, it comes to the observation of the researcher that ambiguities still exist, whether it comes to lawmaking, or its interpretation or execution when it comes to capital sentencing and many more questions other than those posed in this paper remain unsolved due to the same. Perhaps this is the reason why the Hon'ble Chief Justice of India, Shri. U. U. Lalit held that "When the death sentence is an option for punishment, it is essential for the top court to render an authoritative judgement on numerous sentencing issues [58]."

It is critical that concerns regarding the death penalty and life imprisonment be given serious consideration as discussions concerning the functioning of the criminal justice system in India get more heated. There are no simple answers to these problems. But we have to respond to them. Not only will the victims receive justice if these concerns are addressed, but it would also be futile to criticise the criminal justice system's operation without taking into account how it impacts others outside of it.

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14. Report No. 262 of Law Commission of India on 'The Death Penalty', Government of India, August 2015. Para 7.1.2 and 7.1.3.
15. Para 203 of the Original Judgment.
16. Ibid. Para 196.
17. 2004 Bom 1116.
18. AIR 2003 SC 3915.
19. AIR 1999 SC 1926.
20. Cri. Appeal No. 259 of 2004.
21. AIR 2004 SC 4862.
22. Suraiya Saleem. Rarest of rare cases: An appraisal. Aligarh Law Journal. 2012; 20: 230–242.
23. Faizan Mustafa, Yogesh Pratap Singh. On Capital Punishment. RMLNLUJ. 2017; 9(1).
24. Ibid. at p. 17.
25. (1996) 2 SCC 175.
26. Para 198 of the Original Judgment.
27. Para 25 of Ravji's Judgment.
28. (2011) 13 SCC 706.
29. Para 76 of Rajesh's Judgment.
30. Para 198 of the Original Judgment.
31. Para 213 of the Original Judgment.
32. Para 211 of the Original Judgment.
33. Para 214 of the Original Judgment.
34. Para 215 of the Original Judgment.
35. Para 216 of the Original Judgment.
36. (2014) 4 SCC 69.
37. Channu Lal v. State of Chhattisgarh, Cri. Appl. No(s). 1482–1483 of 2018.
38. Ibid.
39. Supra 18 n. **Error! Bookmark not defined.**
40. Para 220 of the Original Judgment.
41. Para 221 of the Original Judgment.
42. Para 222 of the Original Judgment.
43. Para 261 of "Manoj v. State of Madhya Pradesh".
44. Para 225 of the Original Judgment.
45. Ibid. Para 227. See. Para 25 of Channu Lal Verma, Para 80–89 of Santosh Bariyar and Para 126 of Bachan Singh.
46. Id. Para 228.
47. Divya Chandrababu. Puducherry woman poisons and kills topper classmate of daughter. Hindustan Times. (2022). [Online] Available from: <https://www.hindustantimes.com/india-news/tn-woman-poisons-daughter-s-classmate-to-death-for-performing-better-at-school-exams-101662314721952.html>.
48. Ibid.
49. See Supra 13 n.
50. Economic Times. 2022 Mumbai: Cops crack headless body case; man held for killing wife. The Economic Times. Economic Times; 2022 Online Available from: <https://economictimes.indiatimes.com/news/mumbai-news/mumbai-cops-crack-headless-body-case-man-held-for-killing-wife/articleshow/94238050.cms>.
51. (2000), 7 SCC 626.
52. State of Gujarat v. Hon'ble High Court of Gujarat, AIR 1998 SC 3164.
53. Chapter IX. Prison Labour and, Manufactures, Report of the Indian Jails Committee, Vol. 1, Para 191, p. 118.

54. HT Correspondent. How rigorous is rigorous imprisonment? Hindustan Times. (2011). Online Available from: <https://www.hindustantimes.com/delhi/how-rigorous-is-rigorous-imprisonment/story-iI9IUQGLwcZsoGckuIb3IL.html>.
55. Ibid.
56. Supra 66 n.
57. AC Bhaktivedanta Swami Prabhupāda, 'Bhagavad-gītā As It Is', Purport to text 21, Chapter 2, The Bhaktivedanta Book Trust, India, 1972.
58. Anand U. Constitution bench to rule on the death penalty: Supreme Court. Hindustan Times. (2022). Online Available from: <https://www.hindustantimes.com/india-news/constitution-bench-to-rule-on-death-penalty-101663610427671.html>.

END NOTES

- i. In simple terms, 'death penalty' refers to a phenomenon wherein the state, following the due procedure established by law, takes away the life of a person, who is convicted of committing grave offences as per the Indian Penal Code, 1860. A death sentence may be awarded to an offender accused of waging war against the Government of India [Sec. 121]; abetting a mutiny actually committed [Sec. 132]; giving or fabricating false evidence upon which an innocent person suffers death [Sec. 194]; murder [Sec. 302]; abetment of suicide of a minor, insane, or intoxicated person, if suicide is committed [Sec. 305]; attempt to murder by a life convict if hurt is caused [Sec. 307]; Kidnapping for ransom [Sec. 364-A] and dacoity with murder [Sec. 396] inter alia
- ii. High Court of Madhya Pradesh, Bench at Indore
- iii. Para 215 of the Original Judgment. The remedy of Life Imprisonment was unquestionably foreclosed by the Supreme Court in *Mukesh & Ors. v. State of NCT of Delhi, 2017*, commonly known as the 'Nirbhaya's Case' wherein the bench led by Justice Dipak Misra, Justice R. Banumathi, and Justice Ashok Bhushan cited *Machhi Singh* and observed that, "It has been consistently held that the courts have a duty towards society and that the punishment should be corresponding to the crime and should act as a soothing balm to the suffering of the victim and their family." The Court also reiterated what it previously held in *Mohfil Khan and Anr. v. State of Jharkhand, 2014*, that "The courts while considering the issue of sentencing, are bound to acknowledge the rights of the victims, and their families, apart from the rights of society and the accused. The agony suffered by the family of the victims cannot be ignored in any case [and] it would be the paramount duty of the Court to provide justice to the incidental victims of the crime—the family members of the deceased persons". The factors like young age, post-crime good conduct, and absence of criminal antecedents of the accused were not considered and they were sentenced to death penalty in 2014, considering the case to fall under the category of 'rarest of rare', given the reason of their brutal, diabolic, inhumane, and heinous manner of commissioning of gang-rape using iron-rods in the moving bus. After a long hustle and bustle, they were finally hanged till death on 20th of March 2020.
- iv. *Lehna v. State of Haryana, Criminal Appeal No. 733 of 2001*. The Court in this case defined the following circumstances as 'rarest of rare':
 - "When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
 - When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder or gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course of betrayal of the motherland.
 - When murder of a member of a scheduled caste of a minority community, etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
 - When the crime is enormous in proportion. For instance, when multiple murders, say of all or almost all the members of a family or a large number or persons of a particular caste,

- community, or locality, are committed. When the victim of murder is an innocent child, or a helpless woman or old or infirm person, and the murderer is in a dominating position, or a public figure generally loved and respected by the community”
- v. However, the Supreme Court did neither consider the age of the accused, (wherein all the accused were aged between 25 and 30 years) nor any other mitigating circumstances in *Mukesh & Ors. v. State of NCT Delhi* and directly awarded death penalty.
 - vi. Siblings, protection of parents, any history of violence or neglect.
 - vii. Surviving family members, whether married, having children, etc.
 - viii. Including conditions of poverty or deprivation, if any.
 - ix. Details of the offence and whether convicted, and sentence served, if any.
 - x. Whether none, temporary, permanent, etc.
 - xi. Mostly in cases of murder.
 - xii. Provided that the offender is not a psycho and is mentally stable.
 - xiii. For example, the case of Ram Niranjana alias ‘Raja Kolander’, who murdered 14 persons (in such a heinous and brutal way, which perhaps a common human being could not even think about), was consequently due to different reasons, which he thought were legitimate circumstances, which compelled him to do so. See ‘The Indian Predator’ for more information.
 - xiv. Provided the judgment in the present case is not overturned or modified by a larger bench in the future.