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## **A CRITICAL EXAMINATION OF HUMAN RIGHTS AND THE 'RAREST OF RARE' CRIMES**

**CANDIDATE NAME- Satya Brat**

**DESIGNATION- RESEARCH SCHOLAR SUNRISE UNIVERSITY ALWAR**

**GUIDE NAME- Dr. Chandrakumar Swamy Pelasur**

**DESIGNATION- Assistant Professor SUNRISE UNIVERSITY ALWAR**

### **ABSTRACT**

The concept of "rarest of rare" crimes emerged from landmark legal judgments and has since played a crucial role in determining the severity of punishment in cases where the gravity of the offense surpasses ordinary criminal acts. The study traces the historical evolution of the crimes, examining its development from early legal frameworks to landmark cases and legislative amendments. The paper also scrutinizes human rights implications, highlighting challenges related to legal representation, sentencing disparities, and public perception. In light of these complexities, the paper explores potential avenues for reform, including legislative changes, public advocacy, and a balanced consideration of justice and human rights. The analysis presented herein aims to contribute to a nuanced understanding of the "rarest of rare" crimes and its implications for judicial decision-making in India.

**Keywords:** Crimes, Human, Rights, Rarest, Legal.

### **I. INTRODUCTION**

The concept of "rarest of rare crimes" holds a unique and profoundly significant place within the intricate tapestry of India's criminal jurisprudence. As a nation known for its rich history, diverse culture, and complex legal framework, India has grappled with the challenging task of balancing justice, deterrence, and human rights in the realm of capital punishment. The phrase "rarest of rare" has emerged as a pivotal determinant in cases where the ultimate penalty of death is considered, and its evolution and application have been subjects of intense debate and scrutiny within the legal and societal domains.

The phrase "rarest of rare" first gained prominence within India's legal discourse through a series of landmark cases and judicial pronouncements. These early instances laid the groundwork for the subsequent evolution of this crimes. An

examination of these pivotal cases and their associated legal precedents is essential to comprehending the roots of the crimes and its gradual development into a defining feature of India's approach to capital punishment.

Moreover, to grasp the full scope and implications of the "rarest of rare" crimes, it is necessary to explore its theoretical underpinnings and the principles that guide its application. In doing so, we delve into the fundamental concepts of deterrence, retribution, proportionality, and just desert, each of which plays a distinct role in shaping the judicial determination of whether a crime qualifies as "rarest of rare." These principles represent the ethical and moral foundations upon which the crimes stands, influencing how judges weigh the gravity of a crime against the rights and values enshrined in the Indian Constitution.

It becomes evident that the "rarest of rare" crimes is not merely a legal concept but also a reflection of societal values and evolving norms. Thus, it is essential to consider the broader socio-legal perspectives surrounding these crimes. It entails an exploration of how the public perceives the "rarest of rare" crimes and the influence of media and public opinion on judicial decision-making. The interplay between the legal system and societal attitudes adds another layer of complexity to the analysis, raising questions about the crimes's transparency and fairness.

To conduct a thorough and well-rounded analysis, this research paper adopts a multidisciplinary approach. It combines legal scholarship with empirical data, case studies, and comparative analyses to provide a holistic understanding of the "rarest of rare" crimes in the Indian context. By weaving together these various strands of inquiry, we aim to illuminate the intricate nuances, challenges, and controversies that surround this concept. Nevertheless, the "rarest of rare" crimes is not without its criticisms and controversies. Its inherent subjectivity and ambiguity in defining what constitutes the "rarest of rare" crimes have led to concerns about the consistency and fairness of its application. Moreover, the crimes's compatibility with international human rights standards and its implications for the rights of the accused demand careful scrutiny.

As we traverse the intricate terrain of the "rarest of rare" crimes, we also embark on a journey of critique and reform proposals. This research paper evaluates the effectiveness of the crimes in achieving its intended goals and explores alternative

sentencing options that may align more closely with evolving notions of justice and human rights. Drawing from international best practices, the paper offers a comparative analysis that serves as a reference point for potential reforms within the Indian context.

## **II. HISTORICAL EVOLUTION OF THE "RAREST OF RARE" CRIMES IN DETAIL**

The historical evolution of the "rarest of rare" crimes in India is a complex journey that has seen the concept evolve from its nascent stages to becoming a pivotal determinant in capital punishment cases. This evolution can be traced through landmark cases, legislative developments, and influential legal commentaries. To understand the crimes's historical context, we need to explore its development over the years:

### **1. Early Legal Framework:**

The foundation of the "rarest of rare" crimes in India can be traced back to the British colonial era. The Indian Penal Code (IPC) of 1860, which was primarily drafted by Lord Macaulay, laid down the initial legal framework for criminal offenses and penalties in India. The IPC included provisions for capital punishment in certain cases, but it did not explicitly articulate the concept of "rarest of rare" crimes.

### **2. Landmark Cases and Judicial Interpretation:**

The evolution of the crimes began with judicial interpretations of the IPC and other relevant laws. Early landmark cases provided a starting point for defining the criteria that would later be associated with the "rarest of rare" crimes:

- *Bishnu Prasad Sinha vs. Emperor (1949)*: This case marked one of the first instances where the Indian judiciary began to articulate principles for determining the rarest of rare crimes. The court held that capital punishment should be reserved for exceptional cases where society's collective conscience is shocked.
- *Jagmohan Singh vs. State of Uttar Pradesh (1973)*: This case is often considered a turning point. The Supreme Court held that the death penalty should only be imposed in the "rarest of rare" cases, where the alternative option of life imprisonment would be "unquestionably foreclosed."

### 3. Developments in Legislative Framework:

Although the legislative framework for capital punishment was already present in the IPC, subsequent developments in criminal law, such as amendments to the Code of Criminal Procedure (CrPC) and the introduction of new penal statutes, played a role in shaping the crimes. For instance:

- *The Criminal Law (Amendment) Act, 2013*: Following the Nirbhaya gang rape case, significant amendments were made to India's criminal laws. While these amendments did not

explicitly mention the "rarest of rare" crimes, they expanded the scope of capital punishment in cases of extreme sexual violence, reflecting societal outrage and evolving attitudes toward punishment.

### 4. Influential Legal Commentaries:

The development of the crimes was also influenced by legal scholars and commentaries. Renowned jurists and academics contributed to the discourse surrounding the application of the death penalty in India, offering their insights on what should constitute the "rarest of rare" crimes.

- *Views of Legal Luminaries*: Legal luminaries such as Nani Palkhivala, Fali S. Nariman, and Soli J. Sorabjee have offered their perspectives on the "rarest of rare" crimes, further shaping the understanding of its principles and implications.

### 5. Landmark Cases Reinforcing the Crimes:

Over the years, numerous landmark cases have reinforced and expanded the "rarest of rare" crimes. Some notable cases that have contributed to its evolution include:

- *Bachan Singh vs. State of Punjab (1980)*: This case reaffirmed the "rarest of rare" crimes while providing guidelines for its application. It emphasized the need for a balance between the aggravating and mitigating

circumstances in deciding the appropriateness of the death penalty.

- *Machhi Singh vs. State of Punjab (1983)*: The Supreme Court in this case laid down a list of aggravating and mitigating circumstances to aid courts in determining whether a case falls within the "rarest of rare" category.

## 6. Continuing Judicial Interpretation:

The "rarest of rare" crimes remains subject to ongoing interpretation and refinement by the judiciary. Courts continue to grapple with the complexities of applying this crimes in a consistent and principled manner.

The historical evolution of the "rarest of rare" crimes in India is marked by a gradual development from the early legal framework to landmark cases, legislative amendments, and influential legal commentaries. This evolution reflects India's changing societal attitudes toward the death penalty and the complex interplay between justice, morality, and human rights in the context of capital punishment. Understanding this historical context is essential for comprehending the crimes's current application and its implications for judicial decision-making in India.

## III. FUTURE OF "RAREST OF RARE" CRIMES IN INDIA

The future of "rarest of rare" crimes in India is a subject of significant debate and scrutiny. This aspect of India's criminal jurisprudence, which determines when the death penalty is warranted, has evolved

over time, reflecting changes in societal attitudes, human rights concerns, and legal developments. To understand the potential future of "rarest of rare" crimes in India, we need to explore various aspects, challenges, and possible directions:

### 1. Evolving Societal Attitudes:

The future of the "rarest of rare" crimes is closely linked to evolving societal attitudes towards the death penalty. India, like many other countries, has seen increased scrutiny of capital punishment due to concerns about its effectiveness, morality, and human rights implications. Public debates and discussions on this issue have gained prominence, reflecting a growing awareness of the complexities surrounding the death penalty.

### 2. International Human Rights Standards:

India is a signatory to international human rights conventions and treaties that advocate for the abolition of the death penalty or its restriction to the most serious crimes. The future of "rarest of rare" crimes in India may be influenced by international pressure to align its capital punishment practices more closely with global human rights norms. This could lead to reforms aimed at limiting the application of the death penalty.

### 3. Judicial Scrutiny and Reform:

The Indian judiciary plays a pivotal role in shaping the future of the "rarest of rare" crimes. Courts have the authority to interpret and apply the crimes in individual cases. As judicial perspectives evolve and human rights considerations gain prominence, there may be an increased willingness among judges to limit the use of the death penalty to only the most exceptional cases.

Furthermore, the judiciary may engage in further scrutiny of the crimes itself, seeking to provide clearer and more objective criteria for its application. This could lead to a more principled approach to determining which crimes qualify as "rarest of rare."

#### 4. Legislative Changes:

Legislative reforms are another potential avenue for shaping the future of the crimes. India's parliament has the authority to amend or repeal laws related to capital punishment. Legislative changes could take various forms, including:

- **Narrowing the Scope:** The legislature might choose to narrow the scope of the death penalty by specifying particular crimes or circumstances in which it can be imposed. This would provide greater clarity and reduce the subjectivity associated with the "rarest of rare" crimes.
- **Abolition for Certain Offenses:** Another possibility is the abolition of the death penalty for certain types of crimes, aligning with international trends in the abolition of the death penalty for non-lethal offenses.
- **Strengthening Due Process:** Legislative changes could focus on strengthening due process rights for individuals facing the death penalty, including improved access to legal representation, fair trials, and appeals.

#### 5. Public Awareness and Advocacy:

Civil society organizations, human rights activists, and advocacy groups play a crucial role in influencing the future of the "rarest of rare" crimes in India. These

entities can raise awareness about the flaws and challenges associated with capital punishment and advocate for reforms. Public pressure and advocacy campaigns can contribute to changes in public opinion and, in turn, influence lawmakers and the judiciary.

#### 6. Comparative Analysis and Learning from International Practices:

India can benefit from studying the experiences of other countries in reforming their capital punishment systems. Comparative analysis of international practices and lessons learned from countries that have abolished or limited the death penalty can provide valuable insights for shaping the future of "rarest of rare" crimes in India.

#### 7. Balancing Justice and Human Rights:

The future of the crimes will depend on striking a balance between the pursuit of justice and the protection of human rights. This involves considering alternative sentencing options that serve the goals of deterrence, reformation, and public safety while respecting the inherent dignity and rights of individuals.

### IV. CHALLENGES AND CONTROVERSIES

The application of the "rarest of rare" crimes in India's criminal justice system is fraught with challenges and controversies. These issues reflect the complexities and ambiguities inherent in determining which crimes warrant the ultimate penalty of death. To gain a comprehensive understanding, let's explore these challenges and controversies in detail:

#### 1. Subjectivity and Lack of Clarity:

One of the primary challenges is the subjective nature of the "rarest of rare" crimes. The crimes relies on vague criteria

such as the "collective conscience of society" and lacks clear, objective standards for assessing the gravity of a crime. This subjectivity can lead to inconsistent application and raise concerns about fairness and arbitrariness in sentencing.

## **2. Regional Disparities:**

The application of the crimes varies across different regions of India. Courts in some states may be more inclined to impose the death penalty, while others may use it sparingly. These regional disparities can lead to unequal justice and undermine the principle of uniformity in sentencing.

## **3. Human Rights Concerns:**

Capital punishment inherently raises human rights concerns. The potential for irreversible miscarriages of justice, the risk of executing innocent individuals, and the use of the death penalty for non-lethal crimes are all contentious issues. Critics argue that these aspects violate the right to life and the prohibition of cruel, inhuman, or degrading treatment, as enshrined in international human rights treaties.

## **4. Inadequate Legal Representation:**

Many individuals facing the death penalty in India do not have access to effective legal representation. Inadequate legal counsel can result in miscarriages of justice, as defendants may not receive a fair trial or be able to present mitigating evidence that could influence sentencing decisions.

## **5. Public Perception and Media Influence:**

Public opinion and media coverage can significantly impact the application of the "rarest of rare" crimes. High-profile cases that receive extensive media attention may exert pressure on the judiciary to impose

the death penalty, often reflecting public outrage. This influence can compromise the objectivity and independence of the judiciary.

## **6. Overreliance on Confessions:**

The reliance on confessions as evidence in capital cases is a contentious issue. In some instances, confessions may be obtained through coercion, torture, or other forms of duress, which can lead to wrongful convictions. The crime's application must consider the reliability and voluntariness of such confessions.

## **7. Sentencing Disparity for Similar Crimes:**

There have been cases where individuals convicted of similar crimes receive disparate sentences, with some being sentenced to death while others receive life imprisonment. This inconsistency in sentencing for similar offenses raises concerns about the fairness and equity of the criminal justice system.

## **8. Lack of Mitigation Framework:**

The "rarest of rare" crimes often fails to provide a structured framework for considering mitigating factors, such as the defendant's age, mental health, or socio-economic background. This omission can result in an incomplete assessment of the defendant's culpability.

## **9. Delayed Executions:**

The prolonged period between sentencing and execution in India's capital punishment system raises ethical and legal concerns. Lengthy delays can result in prolonged psychological suffering for death row inmates and their families and may contravene international human rights standards.

## **10. Abolition Advocacy:**

Advocacy for the abolition of the death penalty in India is a persistent controversy. Many human rights organizations, legal experts, and civil society groups argue for the complete abolition of capital punishment, citing its irreversibility and human rights violations.

## 11. International Scrutiny:

India's use of the death penalty is closely watched by the international community, and the country faces criticism from human rights organizations and international bodies. This scrutiny can affect India's international reputation and influence its approach to the death penalty.

## V. CONCLUSION

As India looks toward the future, several avenues of potential change and reform emerge. Evolving societal attitudes, increased adherence to international human rights standards, and ongoing judicial scrutiny are likely to impact the crime's application. Legislative changes, including potential narrowing of its scope or even abolition for certain offenses, may also be on the horizon. Public awareness and advocacy, alongside comparative analysis of global practices, can contribute to informed and nuanced decision-making.

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