

---

# THE EVOLVING INTERPRETATION OF THE RIGHT TO LIFE IN THE CONTEXT OF THE DEATH PENALTY

---

V.C. Sukumar, B.CA. LL.B. (Hons.), Tamilnadu Dr. Ambedkar Law University (SOEL)

Sukashini. K, B.CA. LL.B. (Hons.), Tamilnadu Dr. Ambedkar Law University (SOEL)

## ABSTRACT

In the 21st century the death penalty has been abolished in most of the countries. The basis for the abolishment of the death penalty is that the innocent should not be the prey for such punishment. Of course we are opposing the death penalty but with respect to the seriousness of the crime it has to be given if the appropriate evidence is proved before the court of law. Even though our Indian Constitution does not support the death penalty, we are in the era to give the death penalty where Even our recent law Bharatiya Nyaya Sanhita, 2023 has imposed capital penalty for heinous crimes as numbers of rape cases, murder for gain cases, etc. has been increasing day by day. To avoid such crimes there is no way left than the capital punishment. Although it is necessary to take in hands the retributive theory of punishment for all such heinous crimes that has been happening around our state (India) there comes the questioning of the right to life of the accused. The debate involves in death penalty remains unpredictable, and the Supreme Court's approach has been mixed opinion, as analysed from its judgements. However, it is necessary to develop a depth understanding towards the value of human life and to endeavour towards a judicial system that works with principles of fair and natural justice. This paper aims to analyse the evolving interpretation of right to life in the context of death penalty with on-going issues and debates with landmark judgements. The importance is laid upon the discussion of death penalty with accordance to the provisions of the Indian Constitution and Bharatiya Nyaya Sanhita, 2023. This paper will provide an in-depth analysis of the facts and reports along with the strategies and recommendations for elucidating the concept of the death penalty.

**Keywords:** death penalty, heinous crimes, right to life, interpretation, natural justice

## INTRODUCTION:

*“The death penalty not only takes away the life of the person strapped to the table - it takes away a little bit of the humanity in each of us”*

*- Clint smith*

India, a democratic nation with a diverse population of over 1.3 billion people which guarantees right to life to every citizen. The controversy on capital punishment has gathered much attention in the present time. While in the execution of death sentence in *bachan singh v. state of Punjab*<sup>1</sup>, the Supreme Court held that the capital punishment must be sentenced in most heinous crimes where doctrine of rarest of rare case satisfies. There is a no precise format for the death penalty in India. The debates are still on-going over the world on capital punishment between citizens. In India, the death penalty is used as an effective deterrent against heinous crimes, with the fear of capital punishment discouraging potential offenders and remains a contemporary issue. Advocates claim it is an essential measure for deterring crime and providing justice to victims' families. However, opponents strongly criticize its potential for error, its irreversible nature, and its vulnerability to abuse. As a signatory to international human rights conventions, India's persistent use of the death penalty stands in stark contrast to the global move towards abolition. This divergence underscores the conflict between domestic justice and international human rights standards. Justice A.P. Shah's 262nd Law Commission report suggested that the death penalty should be retained only for terrorism and waging war against the State, and abolished for all other crimes. Although the judiciary has the discretionary power to impose capital punishment, it often aligns with public demand to ensure that individuals can live safely without fear.

## RESEARCH METHODOLOGY:

The research adopts a **Doctrinal Research Methodology**, which focuses on analysing existing laws, legal doctrines, judicial pronouncements, and academic literature. By utilizing this doctrinal research methodology with a focus on primary sources (statutes like IPC and BNS, case laws, and reports) and secondary sources (books, journals, and scholarly articles), the research will offer a comprehensive analysis of the evolving interpretation of the Right to Life

---

<sup>1</sup> 1982)3SCC24, [1983]1SCR145A

in the context of the death penalty.

### **RESEARCH OBJECTIVES:**

1. To analyse the evolution of the Right to Life under Article 21 of the Indian Constitution.
2. To critically evaluate the legal and moral foundations of the death penalty.
3. To examine relevant judicial pronouncements and the "rarest of rare" doctrine.
4. To study international laws and human rights frameworks concerning the abolition or retention of the death penalty.
5. To explore societal, ethical, and philosophical arguments surrounding capital punishment.

### **DEATH PENALTY IN INDIA: THE MAJOR CONCERN**

The death penalty, also known as capital punishment which means the execution of an offended person to death after conviction by a court of law for a criminal offence committed. The need of death penalty is to deter people from doing something by implanting fear in them about the consequences and it applies to heinous and serious crimes to the society such as rape, murder etc. death penalty in India, has been reported and published by project 39A, which is criminal law reforms advocacy group. This project 39A has been inspired by the article 39A of the Indian constitution which states, free legal aid to the poor and weaker sections of the society and ensures justices for all. At present the execution of death penalty in India is hanging the person by neck until the person is dead is followed. This is carried out by the executioner in jail followed by the government regulations. According to the report of project 39A, nationally, 74.1% of death row inmates in India are economically disadvantaged based on their occupation and land ownership. Among states with at least 10 death row inmates, Kerala had the highest proportion of economically vulnerable inmates, with 93.3% (14 out of 15) falling into this category. Bihar (75%), Chhattisgarh (75%), Delhi (80%), Gujarat (78.9%), Jharkhand (76.9%), Karnataka (75%), and Maharashtra (88.9%) also had 75% or more of their death row inmates from economically vulnerable backgrounds. Indian courts awarded a 165 death sentences in

2022.<sup>2</sup> The death penalty is awarded only after a fair trial and due process of law, in which the accused has right to represent his side. The supreme court of India has laid down some rules for awarding the death penalty in the landmark case of *Bachan singh v. State of Punjab (1980)*<sup>3</sup>, in which the rarest of rare doctrine is introduced which guides the imposition of death penalty in India. In this case bachan singh was convicted on murder and death sentence by the court of trial and by the Punjab and Haryana court. He appealed to the Supreme Court, challenging the constitutional validity of the verdict. This case introduced the greater standard impact in imposing capital punishment, insisting courts to carefully weigh the circumstances of each case with mitigating factors and need for individualized consideration. The bachan singh judgement remains a constant in Indian death penalty, which is shaping the approach of courts to capital punishment and ensuring its standards for heinous crimes and exceptional cases.

The Aparajita Woman and Child Bill, proposed by West Bengal in 2024, aims to introduce the death penalty for rape. This bill was proposed in reaction to a heinous rape and murder case in Kolkata. Having passed in the state assembly, it is now under consideration by India's President. The bill seeks to amend the death penalty in India, particularly for sexual offenses, against a backdrop of high rape statistics across the country. India has recently implemented the death penalty under the new Bharatiya Nyaya Sanhita (BNS). This new criminal law has increased the number of offenses punishable by death from 12 to 18. In the end of 2023, totally 64 cases of death sentence were given for murder involving sexual offences. Mostly compared to other countries India grants death penalty for sexual offences and mass murder.

In 2013, the Justice Verma Committee recommended against the use of the death penalty for rape cases, arguing that it would not deter such crimes, and thus, it was a step backward in terms of sentencing and reformation. They also proposed eliminating the exception for marital rape. The government did not consider these recommendations when amending the laws in 2013 and continued to expand eligible crimes related to death penalty.<sup>4</sup>

---

<sup>2</sup> Death penalty India report, available at <https://www.project39a.com/dpir>

<sup>3</sup> (1982)3SCC24, [1983]1SCR145A

<sup>4</sup> Lakshmi Menon, Snehla Dhote, "India's burgeoning death penalty Crisis", march 02, 2024, available at <https://www.thehindu.com/opinion/op-ed/indias-burgeoning-death-penalty-crisis/article67904333.ece>

**NIRBHAYA JUDGEMENT AND ITS IMPACT ON DEATH PENALTY IN INDIA:**

In the case of *Mukesh & anr v. state NCT of delhi & ors.*<sup>5</sup>, the hanging of the Nirbhaya case convicts on March 20, 2020, in Tihar Jail was seen as a victory for justice by the Prime Minister and a source of relief for the victim's family. However, Amnesty International India condemned the action, stating that the death penalty is not a solution and that the execution casts a shadow on India's human rights record. The heinous nature of the crime shocked the nation. The key legal questions raised were:

- Whether the convicts were liable for murder (Section 302), rape (Sections 375 and 377), and robbery (Section 397) of the Indian Penal Code.
- Whether the accused were also liable for criminal conspiracy (Section 120B).
- Whether the delays in the judicial process were justifiable.

The Supreme Court held that the conviction of the defendant under the said Sections was completely legitimate. Furthermore, the capital punishment was additionally being maintained. Simultaneously, the clemency was being dismissed. Petition and review petition of the convicts of Nirbhaya, it was held that there was no substance to maintain the legitimacy of the petition that is being submitted. Additionally, the Supreme Court upheld the action taken in this regard the actions of the accused were of such a nature that they caused profound disturbance to the collective conscience of society. It has the horrific incident happened, and no one should ever think of committing such brutality. Not even the Supreme Court judges described the offense as one which represented a particular sphere. It was held that the conviction classified as the rarest of rare crimes was fully legitimate and therefore justified. The question of whether alternative punishments were feasible was clearly settled. The judges declared that it appears to hail from a completely different sphere in which humankind is subjugated to irreverence.

**DISTRIBUTION OF DEATH ROW INMATES BY STATE:**

States	No. Of Prisoner on Death Row
Uttar Pradesh	119

---

<sup>5</sup> AIR 2017 SUPREME COURT 2161

Gujarat	72
Maharastra	41
Jharkhand	39
Madhya pradesh	30
Haryana	8
Kerala	23
Uttarakhand	23
Jammu & Kashmir	18
Andhra Pradesh	17
Odisha	15
Manipur	14
Bihar	11
Tamil Nadu	11
Telangana	11
Chhattisgarh	6
Delhi	4
Assam	4
Himachal Pradesh	3
Tripura	3
Telangana	11
Punjab	12
Rajasthan	11
West bengal	21
Karnataka	25

Figure no.1 available at <https://www.project39a.com/annual-statistics-report-2023>

## RAREST OF RAREST DOCTRINE: A CRITICAL ANALYSIS

In the case of *Bachan Singh v. State of Punjab*<sup>6</sup>, the Indian judiciary has established the "rarest of rare" doctrine. The supreme court drew on the decisions of the *case jagmohan singh v. state of uttar Pradesh*<sup>7</sup> and *Rajendra Prasad v. state of uttar Pradesh*<sup>8</sup>, in which the following major concepts has been implemented,

- 1) The death penalty should be reserved for only the most heinous crimes and the most culpable offenders.
- 2) The circumstances of both the crime and the offender must be carefully considered before imposing the death penalty.
- 3) The default punishment is life imprisonment, with the death penalty as an exception which states that the capital punishment should be imposed only when life imprisonment is completely insufficient in the given facts of the crime, and when implementing a life sentence is not capable in nature and circumstances of the offence.
- 4) A careful balance must be struck between mitigating and aggravating factors, with due weight given to mitigating circumstances.

In *Mithu Singh v. State of Punjab*<sup>9</sup>, The Apex Court determined that the death sentence is not mandated by law and should be employed only in "rarest of the rare" scenarios, where capital punishment is necessary to restore societal conscience. The court emphasized that life imprisonment is the standard punishment, and the death penalty is an exceptional measure.

In *Machi singh & ors v. state of punjab*<sup>10</sup>, The "rarest of rare" doctrine was reaffirmed, with the Supreme Court outlining specific criteria for imposing capital punishment. The court clarified that the death penalty should only be considered in exceptionally heinous cases where

---

<sup>6</sup> (1982)3SCC24, [1983]1SCR145A

<sup>7</sup> 1973 AIR 947

<sup>8</sup> 1979 AIR 916

<sup>9</sup> 1983 AIR 473, 1983 SCR (2) 690, 1983 SCC (2) 277

<sup>10</sup> 1983 Air 957, 1983 Scr (3) 413

society demands it, regardless of individual judicial beliefs about capital punishment. The judge some considerations to pass death sentence those were,

- 1) The way in which the murder was committed
- 2) The murder's motive
- 3) The socially repulsive aspect or anti-social of the offence
- 4) The extent of criminality
- 5) Characteristics of murder.

In the case of *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*<sup>11</sup>, the Supreme Court reaffirmed the "rarest of rare" doctrine, emphasizing the need for case assessment of appropriate punishment. The death penalty should only be considered in exceptional circumstances where rehabilitation is not possible. The court noted the inconsistent application of the "rarest of rare" doctrine, with courts often upholding or rejecting death sentences without clear guidelines.

*Ajmal Kasab v. State of Maharashtra*<sup>12</sup>, In a historic ruling, the Supreme Court upheld the death sentence for Ajmal Kasab, one of the culprits behind the 2008 Mumbai terrorist attacks. The court underscored the emphasized the nature of the crime, which caused numerous fatalities and deeply affected the nation's conscience. This case proved the application of the doctrine in instances of terrorism and large-scale violence.

## GLOBAL TRENDS IN DEATH PENALTY:

As of 2023, many capital punishment executions took place in China, Saudi Arabia, Iran, Somalia and the USA. China stands the number one executioner of the death penalty in the year 2023. But the reason for the death penalty is not known as it is maintained as the secret of that state. Nearly 1153 cases of the death penalty have been executed at global level in 2023. Except China, 89% of executions took place in Saudi Arabia and Iran.<sup>13</sup> In the year 2022,

---

<sup>11</sup> 2009 INSC 808

<sup>12</sup> AIR 2012 SUPREME COURT 3565

<sup>13</sup> Amnesty international, available at <https://www.amnesty.org/en/what-we-do/death-penalty/>



Kazakhstan, Papua New Guinea, Sierra Leone and the Central African Republic have completely abolished the death penalty. Whereas Equatorial Guinea and Zambia have not abolished it completely but have said that they will use it for serious offences.<sup>14</sup> On the International Day against the Death Penalty, the ASEAN Parliamentarians for Human Rights (APHR) calls on the Governments to take decisive steps toward making Southeast Asia a death penalty-free region. APHR is concerned that despite global momentum towards the abolition of the death penalty, several Southeast Asian countries continue to retain capital punishment, undermining human rights and justice in the region. As of 2024, countries such as Indonesia, Singapore, Malaysia, and Vietnam continue to use capital punishment, often justifying it as a deterrent to crime.<sup>15</sup>

### INFLUENCE OF INTERNATIONAL ORGANISATIONS:

For over 45 years, *Amnesty International* has campaigned to abolish the death penalty globally. Amnesty International monitors its use by all states to expose and hold accountable governments that continue to enforce this ultimate cruel, inhuman, and degrading punishment. We publish an annual report, detailing figures and analysing trends for each country. Amnesty International's latest report, *Death Sentences and Executions 2023*, was released in May 2024. The organization's work against the death penalty includes targeted advocacy and campaign-based projects in sub-Saharan Africa, Asia-Pacific, the Americas, Europe and Central Asia, and the Middle East and North Africa. This work also involves strengthening national and international standards against the death penalty, supporting the adoption of UN General Assembly resolutions on a moratorium on its use, and applying pressure on behalf of people facing imminent execution. Additionally, we support actions and efforts by the abolitionist movement at national, regional, and global levels. When Amnesty International began its work in 1977, only 16 countries had completely abolished the death penalty. Today, that number has increased to 112, more than half the world's countries. Over two-thirds are abolitionist in law or practice.

The death penalty is an out-dated and inhumane practice that has no place in modern justice systems. By abolishing capital punishment, Southeast Asia can foster a future cantered on

---

<sup>14</sup> 14<sup>th</sup> October, 2018, bbc, available at <https://www.bbc.com/news/world-45835584>

<sup>15</sup> A Southeast Asia Free from the Death Penalty: A Vision of Justice and Human Rights in ASEAN, October 10, 2024, available at <https://aseanmp.org/publications/post/a-southeast-asia-free-from-the-death-penalty-a-vision-of-justice-and-human-rights-in-asean/>

justice, rehabilitation, and respect for human dignity," said Kasit Piromya, *APHR* Board Member and former Thai Parliament member. Research and experiences from abolitionist countries have shown that the death penalty is no more effective as a deterrent than life imprisonment. Therefore, APHR urges Southeast Asian governments to shift away from retributive justice and focus on establishing a fairer system that addresses the root causes of crime.

Our introduction (**project 39A**) to the criminal justice system began with the death penalty in India. Despite being the harshest punishment in our legal framework, there was a lack of empirical data on its administration, including uncertainties about the number of executions or information about death row prisoners. To address this gap, we undertook our foundational work - the Death Penalty India Report (May 2016). Between 2013 and 2015, we interviewed all of India's death row prisoners and their families to document their socio-economic profiles and map their interactions with the criminal justice system. The information gathered during the fieldwork for the Death Penalty India Report highlighted the urgent need to design interventions that ensure quality legal representation for individuals sentenced to death. Our litigation efforts over the years have consistently drawn lessons from this experience, and many of the practices we have adopted aim to fill the gaps identified.<sup>16</sup>

## CONTEMPORARY ISSUES IN DEATH PENALTY:

Capital punishment entails legally inflicting death as a consequence for breaking criminal law. Throughout history, people have been executed for various offenses, using methods such as crucifixion, stoning, drowning, burning at the stake, impaling, and beheading. Today, executions are typically carried out via lethal gas or injection, electrocution, hanging, or shooting. The death penalty remains the most controversial form of penal practice in the modern world. Severe punishments, known as corporal punishment, have largely been discarded in modern times as they are deemed uncivilized and unnecessary. In most countries, contemporary forms of punishment, such as imprisonment or fines, no longer involve physical pain. While imprisonment and fines are universally recognized as necessary for crime control, the world is divided on capital punishment. Approximately 90 nations have abolished the death penalty, while an almost equal number, mostly developing countries, retain it. The trend in most

---

<sup>16</sup> Death penalty, available at <https://www.project39a.com/death-penalty#:~:text=The%20study%20was%20conceived%20out,knowledge%20on%20the%20death%20penalty.>

industrialized nations has been to cease executing prisoners and replace the death penalty with long-term imprisonment as the most severe punishment.<sup>17</sup>

- **Failed attempt of Apex court:**

Despite the Supreme Court's attempt to reform the death penalty through a Constitution Bench in September 2022, the persistent flaws in India's sentencing system cast doubt on the effectiveness of such efforts.

- **Issues faced by trial courts:**

Trial courts continue to impose death sentences without adequate consideration of the accused's circumstances, as evidenced by Project 39A's 2023 report. In 2023, 86.96% of death sentences were imposed by trial courts without access to relevant information about the accused.

- **Reluctance of high court:**

High Courts remain hesitant to confirm death sentences, with only 4.9% of Death Sentences imposed between 2000 and 2015 being upheld on appeal, as per the Death Penalty India Report (2016).

- **Dominance of acquittals:**

A significant trend in 2023 was the high number of acquittals in death penalty cases, highlighting systemic failures in policing, prosecution, and trial court proceedings. These acquittals often resulted from fabricated evidence, manipulated FIRs, and questionable forensic evidence.

- **Ignoring the systemic problems:**

The court's focuses on the individual cases in decision related to acquittal and has indistinct the systematic issues that contribute to wrongful convictions and the imposition of death penalty.

---

<sup>17</sup> Somya deshwal, available at <https://www.indianbarassociation.org/death-penalty-contemporary-issues/>

- **State of the prisoners:**

Apparently the death row prisoners constantly live in a distress condition due to the fear of execution. Death row prisoners endure harsh conditions, including violence, humiliation, and isolation, which can have long-lasting psychological effects, even after acquittal or commutation

- **Inequities in justice delivery:**

A significant number of death row in India, results approximately 74.1%, come from economically disadvantaged backgrounds.

The ambiguity of what constitutes "rarest of rare" cases in the application of the death penalty remains a significant issue. In *Jagmohan Singh vs State of Uttar Pradesh* (1973)<sup>18</sup>, the Supreme Court affirmed the constitutional validity of the death penalty, stating it should be awarded only in the rarest of rare cases. However, the judgments do not clearly define these cases. Moreover, research has repeatedly failed to provide solid proof that the death penalty is more effective at deterring crime than other forms of punishment. The extensive delay in the execution of death sentences serves no purpose and violates Article 21, leading to calls for substituting the death penalty with life imprisonment. On moral grounds, the death penalty achieves nothing except more death, suffering, and pain. If society truly believes that killing is wrong, then the death penalty should be abolished as it legitimizes an irreversible act of violence by the state.<sup>19</sup>

## **WHETHER DEATH PENALTY CURES THE PROBLEM OR NOT?**

Accordance to the sociological theories, every individual plays an important role in the society, being a child, father, mother and members of the society. If any individual is taken away from the society which results in taking a member from their part of contribution. Basically death penalty causes disruption to the society. This even falls under two aspects by economically and emotionally. One of the alternatives to the death penalty that is practiced in the world is life imprisonment to the convicted person. In most of the countries death penalty is abolished and

---

<sup>18</sup> 1973 AIR 947

<sup>19</sup> Amnesty international, available at <https://www.amnesty.org/en/wp-content/uploads/2021/07/asa200072008eng.pdf>

life imprisonment is followed. Rehabilitation has been advanced as one of the solution to the problem faced with death penalty.<sup>20</sup> The constitutionality of capital punishment has been contested in various cases, including *Jagmohan Singh v. State of U.P.*<sup>21</sup>, where the Supreme Court dismissed the argument that it violates the "right to life" under Article 19. However, in *Rajendra Prasad v. State of U.P.*<sup>22</sup>, Justice Krishna Iyer argued that capital punishment contravenes Articles 14, 19, and 21. Subsequently, in the landmark case of *Bachan Singh v. State of Punjab*<sup>23</sup>, the Supreme Court, by a majority, upheld the constitutionality of capital punishment, overruling the earlier decision in *Rajendra Prasad*. It introduced the "rarest of rare" doctrine, limiting the imposition of the death penalty to exceptional cases. Further, *Machhi Singh v. State of Punjab*<sup>24</sup> outlined specific circumstances warranting the death penalty.

Five reasons in which India's rape crisis could not solve,<sup>25</sup>

- 1) There is no evidence that severe sentences, including death, act as deterrents. If anything, rape numbers have gone up since the 2013 amendments that made punishment for rape is tough. In 2023, mostly sessions courts across the country handed down 120 death sentences of which 53.3% were for sexual offences, according to Project 39A. By the end of 2023, there were 561 prisoners on death row, the highest since Project 39A began tracking data in 2016. The number of reported rapes is 31,516 for 2022 compared to 24,923 in 2012 before the law was changed, according to the National Crime Records Bureau (NCRB) then it is clear that more rapes are being reported after the law was made even severe.
- 2) Lawyer mihira sood, who served on the justice verma commission sets up in the aftermath of the December 2012 gang rape in Delhi states, no judge wants to make an error when handing down a death sentence. But if the death penalty is the only option then judges may be reluctant to convict.
- 3) The death sentence actually makes the legal process longer not shorter. Even in a high-

---

<sup>20</sup> Somya deshwal, available at <https://www.indianbarassociation.org/death-penalty-contemporary-issues/>

<sup>21</sup> 1973 AIR 947

<sup>22</sup> 1979 AIR 916

<sup>23</sup> (1982)3SCC24, [1983]1SCR145A

<sup>24</sup> 1983 AIR 957

<sup>25</sup> Namita bhandare, Sep 08,2024, the death penalty cannot fix India's rape problem, available at <https://www.hindustantimes.com/opinion/the-death-penalty-cannot-fix-india-s-rape-problem-here-s-why-101725739033368.html>

profile case like the 2012 Delhi gang-rape, it took seven years to execute the death sentence on the convicts. In a democracy, due process must be followed and convicts have the right to appeal all the way up to a presidential pardon.

- 4) By mandating the death penalty in certain cases, the Bengal bill removes judicial discretion and undermines the "rarest of rare" doctrine. Arghya Sengupta, research director for Vidhi Centre for Legal Policy, criticized this move, stating that it is unconstitutional and undermines the principles of judicial independence.
- 5) Lawyer Mihira Sood also says "You need to see how much of the delay is caused by general tardiness and how much by an over-burdened system."

### WHY RAPE CONVICTS REQUIRE DEATH PENALTY?

In accordance to courts in India, Death Sentences violates Articles 19, 20, 21 of the Indian constitution. Sexual criminal activities violates the victims fundamental right to life and personal liberty under article 21 of the Indian constitution. It violates the victim's body, mind, privacy which is the severe ethical and physical crime in society. In the case of *laxman naik v. state of Orissa (1994)*<sup>26</sup>, a 7-year old girl was sexually abused by her neighbour uncle, in which the person convicted is sentenced to death. The major example for death penalty is Nirbhaya gang rape case 2013. Section 375 of Bharatiya Nyaya Sanhita (BNS) has broadly defined the act of rape under various circumstances including will, with or without consent. According to the National Crime Record Bureau, India is the fourth leading crime against women in which 7.1% of total crimes against women are rape and 18.7% cases are assault. Section 376 of BNS provides for minimum of 10 years of imprisonment. Section 376A of BNS provides 10 years of imprisonment for having an intercourse with a woman by deceitful means or by making a promise to marry a woman without any intention in real. Section 376B of BNS provides rigorous imprisonment upto minimum of 20 years. Sections 376C, 376D, and 376E(2) of the BNS Act prescribe the death penalty for the gang rape of a minor. Section 375 also states that the sexual intercourse or acts by a man with his wife not being under 18 years of age, is not considered as rape. In India rape victims should be punished with the death penalty as a legal weapon to eliminate the evil wrong doers in the society to strongly reduce the growth of

---

<sup>26</sup> 1995 AIR 1387 1994 SCC (3) 381 JT 1994 (2) 39 1994 SCALE (1)692 ACT

the sexual offenders without considering human rights perspectives as a interpretation to right to life.

### **SUGGESTIONS:**

To ensure consistent application of the "rarest of rare" doctrine, clear criteria should be established to identify such cases. This would help eliminate confusion among judges. Even in heinous crimes, the death penalty should only be imposed if there's no chance of the accused re-offending. Once a death sentence is imposed, there should be no undue delay in its execution, though reasonable appeal periods should be allowed. The constitutional bench must carefully review all relevant facts before imposing the death penalty, ensuring it's not a hasty decision. The punishment should be proportionate to the crime, with the death penalty reserved for the most serious offenses. This proportionality principle is essential to deter potential criminals and maintain public confidence in the justice system. The death penalty should be strictly followed for rarest of rare cases. There should be a clear guidelines for imposing death penalty which reduces the ambiguity in sentencing the convict and ensuring safe and consistency in nature. A mandatory judicial review process should be there for all death penalty cases which reduces the wrongful convictions. Mental health conditions of the victim should be examined. The death penalty should be in transparency manner and all legal processes should be open to public and relatives. This process enriches the fair and just process. There has to be a alternative sentence for death penalty which is life imprisonment without parole which allows the possibility of rehabilitation and reducers the moral and ethical concerns in death penalty. International laws should be considered with human right standards to advocate for the abolition of death penalty. Increase in public awareness and broader education about the implications of death penalty which helps the public understand the issue.

### **CONCLUSION:**

The larger rate of acquittals with a growing death row population should urge the court to consider reforming the criminal justice system in a whole for capital punishment or death penalty. In this context, it is necessary to reform the police and judicial systems to fast-track trials and reinforce public faith in our legal system. The 262nd report of Law Commission which was being chaired by Justice A.P. Shah has submitted in its recommendation that death penalty need to be abolished for all the crimes except the crimes related to terrorism and waging

war against the State. It has been further suggested by that there is an urgent need for the inclusion of provisions pertaining to police reforms, the protection of witness scheme and victim compensation scheme. The 262nd report of the Law Commission, chaired by Justice A.P. Shah, recommended abolishing the death penalty for all crimes except those related to terrorism and waging war against the State. Additionally, it suggested the urgent inclusion of provisions for police reforms, witness protection schemes, and victim compensation schemes. Deterrence is most effective when the punishment occurs soon after the crime. The more the legal process separates the punishment from the crime whether by time or uncertainty, the less effective the deterrent effect of the punishment will likely be. India is awaiting the execution of Nirbhaya's rapists; the excessive delay in carrying out the death penalty has diminished its impact. This is why the Hyderabad police encounter in Disha's case was widely praised by the public. In this context, it is necessary to expedite investigations through a well-trained and equipped police system, supported by fast-track trials, to restore public faith in our legal system.

In this paper I would like to conclude that a new rules and regulations should be added within the existing laws for the death penalty to get most outcome for proper execution of the victim and with fair and justice manner. The capital punishment or death penalty should be imposed only in the heinous crimes and it must be imposed to the sexual offenders and rape victims for the betterment of the nation. Therefore, there should be proper justification for death penalty and appropriate laws governing the execution of the victim. As India grapples with rising sexual violence and other crimes, the death penalty remains a persistent solution, ensuring its continued presence in our legal system.