
JUSTICE OR RETRIBUTION? RETHINKING CAPITAL PUNISHMENT FOR RAPE IN INDIA

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An eye for an eye blinds the whole world.

- Mahatma Gandhi

ABSTRACT

India has witnessed an alarming surge in sexual violence over the past decade, igniting national debates on the adequacy of punitive measures. In response to widespread public outrage, particularly after the 2012 Nirbhaya case, the legal system introduced capital punishment for aggravated rape. While this policy reflects societal anger and a desire for justice, its effectiveness remains deeply contested. This paper critically examines the limitations of capital punishment in addressing rape crimes in India. Through legal analysis, criminological insights, survivor narratives, and comparative international perspectives, the paper argues for systemic reform focused on survivor rehabilitation, judicial efficiency, police accountability, and cultural transformation. Ultimately, the path to justice must be restorative, empathetic, and driven by sustainable reform rather than retributive force.

Keywords: Capital Punishment, Rape, Justice, Vengeance, Deterrence, Reformation, Nirbhaya Case, Unnao Case, Kathua Case, Criminal Law (Amendment) Act, 2013, Criminal Law (Amendment) Act, 2018, NCRB, FTSC, Gender Sensitization.

SECTION 1: INTRODUCTION: THE URGENCY BEHIND THE DEBATE

The death penalty is the punishment of highest severity and is awarded in the rarest of the rare case. The existence of capital punishment for the offence of rape has always been a topic of debate all over the world. India is a country where punishment is given for reformation and not for deterrence. The laws in India ensure that a person who commits the wrong realises his mistakes and refrain from repeating that.

As the wish for the death penalty for rapists has grown rapidly after the recent spate of horrific gang rapes and murders, the role of India in sentencing convicts to capital punishment needs to be investigated¹. India has witnessed a troubling rise in sexual violence, with thousands of rape cases reported each year, many more likely unreported due to stigma, fear, or lack of trust in the justice system. High profile incidents, like the 2012 Delhi gang rape (Nirbhaya case), ignited nationwide outrage, prompting widespread demands for stricter punishments, including the death penalty. In response, legislative amendments were passed (like the Criminal Law (Amendment) Act, 2013 and 2018), introducing capital punishment for certain aggravated rape cases.

However, this reaction though emotionally understandable is legally and ethically complex. The clamour for execution stems from deep public anger, but the effectiveness of capital punishment in deterring rape or supporting survivors remains deeply contested.

This article posits that capital punishment is not a comprehensive solution, and in many cases, might obstruct justice more than it facilitates it. The real goal should not be retribution, but transformation: reforms that make the justice process swift, survivor centric and preventive at a societal level.

SECTION 2: HISTORICAL AND LEGAL CONTEXT OF RAPE LEGISLATION IN INDIA

Evolution of laws related to sexual violence (e.g., Nirbhaya case amendments):

India's legal response to rape has evolved significantly over the past few decades, often driven

¹ Death Penalties in India: Convicts and Acquittals
<https://economictimes.indiatimes.com/news/politics-and-nation/death-penalties-in-india-convictions-and-acquittals/a-short-history/slideshow/72834567.cms?from=mdr>

by public outrage following gruesome cases. The landmark 2012 Nirbhaya case was a seismic moment, exposing deep flaws in India's handling of sexual violence, ranging from insensitive policing to delayed trials. In its aftermath, widespread protests led to the formation of the Justice Verma Committee, which recommended sweeping reforms to strengthen laws related to sexual violence.

Key Legislative Changes:

In response, the Criminal Law (Amendment) Act, 2013 was enacted. This legislation broadened the definition of rape under Section 375 of the Indian Penal Code (IPC), included provisions for life imprisonment, and emphasized the importance of fast-track courts. It also added new offenses, such as stalking, voyeurism, and acid attacks, thereby expanding the scope of protection. However, critics noted that the reforms, while extensive, did not incorporate all the Justice Verma Committee's recommendations, especially those related to marital rape and police accountability.

In April 2018, following the Kathua and Unnao child rape cases, the government introduced further amendments via the Criminal Law (Amendment) Ordinance, later passed as the Criminal Law (Amendment) Act, 2018. This law permitted capital punishment for the rape of girls under 12 years of age and increased minimum punishments for other categories of rape. Supporters hailed this as a necessary deterrent, while legal experts and child rights organizations warned that it may result in unintended consequences such as increased fatal violence against victims and reluctance from families to report offenders who are relatives.

These amendments while well-intended, sparked debates among legal experts, activists, and survivors. Critics argued that introducing the death penalty shifts focus from systemic justice to symbolic punishment. The emphasis on maximum punishment overshadows the need for better policing, faster trials, and survivor care.

Despite these legal provisions, conviction rates remain low. According to the NCRB's 2021 report, only about 30% of rape cases result in convictions, and trial delays persist. Procedural inconsistencies, pressure on survivors to compromise, and inadequate police sensitization continue to hinder justice. The courts do occasionally deliver swift and meaningful verdicts as seen in the Hathras and Lucknow FTSC trials, but such cases are exceptions rather than the norm.

Legal reforms have undoubtedly strengthened India's rape laws on paper. However, the introduction of capital punishment marks a shift toward emotional, retributive justice rather than systemic reform. By overemphasizing severity, the state risks ignoring the foundational issues that are - police insensitivity, survivor trauma, and the need for institutional care. As the next sections explore, harsh sentencing may deliver political optics but fail the people most affected: survivors.

SECTION 3: THE MYTH OF DETERRENCE

After brutal rape incidents, the public often demands swift and severe punishment, especially the death penalty, as a form of emotional closure and justice. Politicians echo these sentiments, proposing harsher laws to signal action. However, this response rooted in outrage rather than evidence often fails to address the structural causes of sexual violence. The assumption is that if the punishment is frightening enough, it will stop people from committing rape. But is reality so simple?

One of the most frequently cited justifications for capital punishment in rape cases is the idea that it acts as a deterrent. The logic seems straightforward: harsher punishment should reduce crime by instilling fear in potential offenders. However, both empirical evidence and psychological analysis challenge this assumption, revealing that the link between the death penalty and decreased incidence of rape is tenuous at best and dangerous at worst. Capital punishment is the easiest demand to make, but can be most dangerous for rape victims because it provides a pervasive incentive for rapists to become murderers. In this scenario, leaving no trace of crime is better than allowing victim to live.

Data versus Assumption

According to the National Crime Records Bureau (NCRB), the introduction of capital punishment for rape in 2018 did not result in any marked decline in sexual violence. In fact, reported cases have remained consistently high or have increased in some states. The Death Penalty India Report (2016), a seminal study conducted by the National Law University, highlighted a troubling pattern: the deterrent effect of death penalty is widely presumed but rarely proven. Across various regions, states with higher conviction and execution rates did not exhibit significantly lower rape rates.

Year	Reported Cases	Daily Average	Conviction Rate	Notes
2011	24,406	66	26%	Pre – Nirbhaya era; limited legal scope
2024	32,000	88	30%	Post – legal reforms; broadened definitions and capital punishment

Despite over a decade of legal reforms, including the expanded definition of rape in 2013 and the introduction of capital punishment in 2018, the NCRB data from 2011 to 2024 reveals no significant decline in the rate of rape cases in India. The reported numbers have remained consistently high, rising from around 24,006 cases in 2011 to over 32,000 in 2024. This enduring prevalence suggests that harsher penalties alone have not served as an effective deterrent. Factors such as underreporting, weak enforcement mechanisms, judicial delays, and socio-cultural stigma continue to undermine the impact of legislative action, highlighting the need for comprehensive, survivor-centered reforms beyond punitive severity.

Comparative international studies offer similar insights. Countries like Norway, Sweden, and Canada, which abolished capital punishment decades ago, report lower sexual crime rates and focus heavily on survivor support and offender rehabilitation. In contrast, nations such as Saudi Arabia and Botswana, where capital punishment remains in force for rape, show either high prevalence or unreliable reporting, often due to societal repression. This disparity underscores that deterrence is more complex than judicial severity, it requires societal transformation.

Legal and Criminological Rebuttals

Judicial bodies have echoed these findings. The Supreme Court of India, in several verdicts, has emphasized that the certainty of punishment is more effective than its intensity. Simply put an efficient trial system with assured consequences matters more than occasional harsh sentencing. Scholars argue that the idea of rational offenders weighing punishment before acting is flawed, especially in the context of sexual violence. Many such crimes are impulsive, committed under the influence of entitlement, substance abuse, or power dynamics - not legal

logic.

Moreover, the death penalty often shifts the focus from conviction efficiency to punishment optics. When public discourse centers around making “examples” out of convicts, the deeper issues like police ineffectiveness, poor evidence collection, and trial delays are glossed over. Justice, then becomes performative rather than transformative.

Unintended Consequences: Silencing the survivor

Rather than empowering survivors, the death penalty may have the opposite effect. Capital punishment may increase the severity of offenses. The threat of execution can motivate perpetrators to murder their victims to eliminate witnesses, turning rape into rape-murder. This pattern has been documented in cases where rape escalated to rape-murder, particularly after the 2018 amendments. This trend has been observed in several cases and noted by legal activists like Vrinda Grover, who argues that the death penalty endangers victims further and leads to compromised reporting. Families may also avoid reporting if the perpetrator is a close relative, fearing social shame or the irreversible consequence of execution.

Thus, the supposed deterrent effect of capital punishment falls apart under scrutiny. It neither prevents rape nor empowers survivors. Instead, it redirects political pressure away from meaningful reform and toward punitive symbolism.

Research Insights: No Proven Deterrence

Numerous criminological studies across different countries have debunked the idea that the death penalty serves as a reliable deterrent. The National Crime Records Bureau (NCRB) has also not shown any sharp decline in rape statistics after capital punishment was introduced in India for specific cases in 2018. A UN report on capital punishment and deterrence found no conclusive evidence that countries with the death penalty have lower rates of sexual violence than those that abolished it. The Death Penalty India Report (2016) highlighted systemic biases in investigations and trials, suggesting that increasing the severity of punishment without fixing these flaws leads to disproportionate suffering, not deterrence. Instead of instilling fear in would be perpetrators, these laws often become symbolic responses that mask the deeper issues.

Survivor Voices: What Justice Really Means

The recent Kolkata Law College rape case offers a chilling example. The survivor, a 24-year-old law student, was gang-raped on campus by fellow students and a staff member. Despite threats and blackmail, she bravely reported the crime the same night. Her father told NDTV: “My family and I are in trauma... Don’t have the heart to speak more.”² The survivor herself said: “I cried and asked him to let me go... I even touched his feet.”³

Her courage led to swift arrests and a strong case backed by medical evidence. But nowhere in her testimony did she demand capital punishment. Her focus was on being heard, protected, and believed, not vengeance.

This aligns with broader patterns: many survivors want justice, not execution. They seek:

- Speedy trials, not prolonged trauma
- Support systems, not political grandstanding
- Rehabilitation, not spectacle

SECTION 4: RISKS AND ETHICAL DILEMMAS - WHEN JUSTICE TURNS FRAGILE

Wrongful Convictions: When Justice Misfires

Capital punishment is irreversible, once enforced, it leaves no room for rectifying errors. This inherent finality becomes dangerous when embedded within a justice system that struggles with investigative lapses, forensic inadequacies, and institutional bias. In India, numerous cases have revealed fragile evidence chains and delayed trials. A study by Project 39A at National Law University Delhi indicated that over 72.5% of death row inmates were first-generation graduates or economically disadvantaged, suggesting that access to quality legal representation plays a significant role in determining one's fate.

² Sengar, M. S., & Tripathi, A. (2025, July 5). We Are In Trauma: Father Of Kolkata Rape Survivor Speaks To NDTV. [www.ndtv.com](https://www.ndtv.com/india-news/kolkata-rape-we-are-in-trauma-father-of-kolkata-rape-survivor-speaks-to-ndtv-8830464). <https://www.ndtv.com/india-news/kolkata-rape-we-are-in-trauma-father-of-kolkata-rape-survivor-speaks-to-ndtv-8830464>

³ *ibid*

The “rarest of rare” doctrine, meant to safeguard against arbitrary executions, often fails in practice due to subjective interpretation and inconsistent application.⁴

“The death penalty presents a real risk of executing an innocent person.” — Kent Roach, NLSIR Journal⁵

The “rarest of rare” doctrine, established in *Bachan Singh v. State of Punjab* (1980), was intended to restrict the arbitrary use of capital punishment. However, its subjective nature has led to inconsistent sentencing, with similarly gruesome cases receiving different judgments based on public mood or media attention. This inconsistency threatens the principle of equality before law and places marginalised individuals at greater risk.

India does not yet have a reliable post-conviction relief system like DNA exoneration protocols seen in countries such as the United States. As a result, wrongful convictions may remain undiscovered, further undermining confidence in the criminal justice system.

Ethical Dilemmas: Justice or Vengeance?

The morality of state-sanctioned execution has long been debated. Philosopher Albert Camus famously called the death penalty “the most premeditated of murders.” In India, critics of capital punishment argue that it contradicts the principle of rehabilitation and reform enshrined in Article 21, the right to life and personal liberty.

Justice Bhagwati’s dissent in the *Bachan Singh* case labelled the death penalty “arbitrary and discriminatory,” especially given its disproportionate impact on the poor. Scholars like Amnesty International India argue that the death penalty is often used to placate public anger rather than deliver meaningful justice.

The introduction of capital punishment for certain rape cases has shifted the narrative from survivor protection to state vengeance, creating a system where punishment becomes symbolic rather than functional. This retributive approach risks dehumanizing justice, focusing more on societal catharsis than systemic reform.

⁴ Admin. (2025, July 7). Rationale Behind Death Penalty In India: A Critical Analysis » Lawful Legal. Lawful Legal. <https://lawfullegal.in/rationale-behind-death-penalty-in-india-a-critical-analysis/?amp=1>

⁵ Roach, K. (n.d.). Wrongful convictions, wrongful prosecutions and wrongful detentions in India. Scholarship Repository. <https://repository.nls.ac.in/nlsir/vol35/iss1/12/>

SECTION 5: IMPACT ON SURVIVORS - JUSTICE MUST BEGIN WITH CARE

Justice That Hurts: When Trials Re-Traumatize

The pursuit of justice, though necessary, often places survivors under immense emotional strain. Legal processes meant to empower them can instead feel like prolonged punishments. Survivors are routinely subjected to invasive cross-examinations that question their credibility, clothing, and character. Despite Supreme Court judgments banning practices like the “two-finger test,” they still occur in parts of India, perpetuating misogyny and medical violence.

In the Kolkata Law College rape case, the survivor, a 24-year-old law student was allegedly assaulted on campus by fellow students and staff. Her father later said, “My family and I are in trauma... Don’t have the heart to speak more.” The survivor asked her father, “What will happen to me if the monster gets out of jail?” These words reflect the fragility and fear that define a survivor’s reality, long after the incident.

Legal delays exacerbate the trauma. Cases may drag on for months or years, forcing survivors to recount events repeatedly in hostile environments. Public scrutiny, especially in cases receiving media attention often isolates them further. Far from easing their suffering, prolonged trials risk becoming a second ordeal.

Healing Over Retribution: What Survivors Actually Want

Contrary to popular belief, many survivors do not demand execution for their perpetrators. For them, justice is not defined by retribution but by acknowledgment, safety, and recovery. In a 2021 cross-border study by The New Indian Express involving India, Nepal, and Bangladesh, nearly 60% of survivors faced pressure to settle or withdraw complaints, often from their own families. Where capital punishment is involved, this pressure intensifies, especially when the accused is a relative.

Survivors prioritize:

- Being believed without interrogation or judgment.
- Access to timely medical and psychological care.

- Avoiding re-traumatization during legal support.
- Rebuilding their lives through education, employment, and social support.

Rape is not just a physical violation, it's a psychological rupture. Many face long-term consequences like PTSD, depression⁶, social ostracism, and suicidal ideation. Studies shows up to 35% of women who attempt suicide have experienced sexual abuse⁷. For example, a survivor from Odisha who was raped in Delhi later refused to return home due to trauma and lack of family support. She lost all documents and lived on the streets, with no access to shelter or rehabilitation. Her story reflects how justice must extend beyond the courtroom, into homes, hospitals, and communities. Yet India lacks rape crisis centers, and mental health services are scarce, especially in rural areas.⁸ Survivors are often left to navigate trauma alone.

SECTION 6: ALTERNATIVE SOLUTIONS TO CAPITAL PUNISHMENT IN RAPE CASES

The imposition of capital punishment for rape is often perceived as a symbolic deterrent, yet empirical data suggests its impact on reducing sexual crimes remains minimal. Such punitive measures, while politically expedient, fail to address the deeper societal and cultural roots of sexual violence. Instead of relying on extreme penalties, the state must prioritize comprehensive reforms such as crafting stricter, well-enforced laws while simultaneously fostering societal norms that challenge misogyny, promote gender sensitivity, and dismantle impunity. Shifting the focus from reactive punishments to proactive social accountability ensures that justice is not reduced to a legal checkbox but becomes a transformative process. Relying solely on harsh sentences risks absolving institutions of their broader responsibility to shape a safer, more equitable society.

Fast-Track Courts for Speedy Trials

India's introduction of Fast Track Special Courts (FTSCs) reflects a shift toward procedural

⁶ Sujatha, R. (2025, July 8). Sexual assault survivors need trauma-informed mental health interventions, say experts. *The Hindu*. <https://www.thehindu.com/sci-tech/health/sexual-assault-survivors-need-trauma-informed-mental-health-intervention-say-experts/article69101430.ece>

⁷ *ibid*

⁸ Bhaumik, U. (2022). RAPE TRAUMA SYNDROME: A RETROSPECTIVE STUDY OF POST-TRAUMATIC STRESS DISORDER AFTER SEXUAL ASSAULT AMONG INDIAN WOMEN. *ASEAN Journal of Psychiatry*, 23(03). <https://doi.org/10.54615/2231-7805.47246>

efficiency. As of 2025, more than 747 FTSCs, including 406 exclusive courts for POCSO cases operate across India. Their mandate is clear, to expedite sexual violence trials while upholding due process. In 2024 alone, these courts disposed of 85,595 cases, achieving a resolution rate of 96.28%.

The Lucknow Dalit minor rape case⁹ demonstrated this system's potential when police filed a chargesheet within 24 hours and the court prioritized rapid adjudication. By reducing trial duration, FTSCs not only alleviate the trauma of extended litigation for survivors but also bolster public faith in the judiciary. Unlike capital punishment, which is final and often delayed by years of appeals, fast-track trials deliver timely justice without compromising fairness.

Survivor-Centric Rehabilitation

Survivors of rape face immense psychological and social disruption. Many struggle with PTSD, depression, isolation, and financial instability. A notable example is the Odisha survivor¹⁰ who, after being gang-raped in Delhi, lost her identity documents and lived on the streets due to emotional trauma and lack of social support. Such cases underscore the need for empathetic, survivor-first systems that prioritize well-being over vengeance. True justice must encompass holistic rehabilitation, not just punishment for the offender. This includes:

- Free medical and psychological care, now reinforced by judicial directives such as the Delhi High Court's 2024 ruling in *SV v. State*, which made treatment a constitutional right under Article 21.
- Compensation schemes, such as the Central Victim Compensation Fund, offer financial support ranging from ₹4 to ₹10 lakh.
- Shelter and vocational programs, particularly for survivors ostracized by family or community, help them reintegrate and rebuild.

⁹ Kumar, M. (2025, July 11). Lucknow police files chargesheet within 24 hours in rape case of Dalit minor. *The Hindu*. <https://www.thehindu.com/news/national/uttar-pradesh/lucknow-police-files-chargesheet-within-24-hours-in-rape-case-of-dalit-minor/article69801775.ece>

¹⁰ Mehta, D. (2025, May 14). Rape survivor's reality: Recovery mired in family dynamics & mental health challenge. *The Times of India*. <https://timesofindia.indiatimes.com/city/delhi/facing-trauma-a-rape-survivors-struggle-for-rehabilitation-and-recovery/articleshow/116113814.cms>

Police Accountability and Sensitization: Changing the First Response

Survivors often hesitate to report crimes due to insensitive handling by law enforcement. This calls for deep rooted reforms in police behavior and structure. Following the landmark *Prakash Singh v. Union of India*¹¹ judgment, states began implementing reforms like Police Complaints Authorities, fixed tenures for officers, and separation of law enforcement from investigation duties

Standard Operating Procedures (SOPs) now mandate:

- FIRs must be filed by female officers where possible.
- Survivors' statements should be recorded in safe, private settings.
- Outdated and abusive practices like the two-finger test are strictly prohibited.

These reforms improve survivors' confidence in legal proceedings and ensure that the justice system doesn't inflict secondary trauma.

Education and Social Reform: Tackling the Root Cause

Despite legal advancements and growing awareness, sexual violence remains one of the most pervasive human rights violations. While harsher punishments often dominate policy discussions, long-term solutions demand a paradigm shift in education, culture, and social accountability. Education and social reform are not mere supplement, they are foundational tools in dismantling rape culture and preventing sexual crimes.

Education is perhaps the most powerful mechanism to disrupt the cycle of gender based violence. Beginning with early childhood, curricula must go beyond biology to teach:

- Consent and Respect: Understanding bodily autonomy and mutual agreement.
- Healthy Relationships: Building empathy, communication, and emotional intelligence.
- Gender Equity: Challenging sexist norms and promoting equal treatment.

¹¹ (2006) 8 SCC 1

Studies have shown that when young people learn about boundaries, empathy, and equality, their likelihood to engage in or tolerate sexual misconduct dramatically decreases.

Social reform must target the institutional and cultural environments that allow rape to persist.

- **Community Vigilance:** Empowering local leaders and citizens to challenge toxic behavior and protect vulnerable groups.
- **Media Accountability:** Promoting responsible representation of gender and sexuality in films, music, and advertising.
- **Workplace and Institutional Policies:** Enforcing zero-tolerance guidelines and providing safe reporting mechanisms.

Gender-based violence often stems from deep seated beliefs, social reform is the process of uprooting them. Transformative campaigns like #MeToo and “Bell Bajao” (India) have already shown how public awareness can shift societal narratives and amplify survivor voices.

Ultimately, tackling the root cause of rape demands a culture of accountability, where individuals, institutions, and states refuse complicity in gender violence. Education teaches this accountability; social reform reinforces it.

Sexual violence is not merely a legal issue, it reflects deeper social flaws. Solutions must begin in the classroom and community. Gender sensitization programs teach respect, boundaries, and equality. Consent education reframes intimate behaviour from “no means no” to “yes means yes.” Community campaigns combat victim-blaming myths and create safer spaces for disclosure.

SECTION 7: CONCLUSION – TOWARD JUSTICE THAT HEALS, NOT HARMS

India’s pursuit of justice in rape cases has long been burdened by competing instincts, public outrage, legal complexity, and deep societal wounds. Capital punishment, though emotionally satisfying to many, has proven to be an inadequate and ethically fraught solution. While its introduction may signal political resolve, it fails to resolve the structural weaknesses that allow sexual violence to persist. This paper has shown that the death penalty does not deter rape, nor does it empower or protect survivors.

Data from the NCRB and global comparisons reveal that severe punishment alone cannot counter crimes rooted in patriarchal norms, power imbalance, and social silence. Survivors often seek care, safety, and dignity, not vengeance. Their testimonies reflect a desire for institutional support over spectacle. Fast-track courts, survivor-centric rehabilitation, police reform, and grassroots education offer a sustainable path forward. These interventions build a justice system that listens, believes, and acts, not one that retaliates blindly.

The risks of capital punishment are grave: wrongful convictions, increased brutality, silenced survivors, and moral dilemmas. It shifts attention away from meaningful reform, prioritizing punishment over prevention and healing. Justice, when reduced to vengeance, becomes fragile, unable to restore what was lost or protect what remains.

India's laws have evolved, but the spirit of justice must evolve too. The goal should be to create a system where survivors are not further wounded by trials, where society supports rather than shames, and where institutions respond with compassion rather than delay. Let justice not be measured in executions, but in lives rebuilt, voices heard, and violence prevented.

In reimagining justice for rape survivors, India must choose dignity over death, and reform over revenge. Only then can the promise of justice become a lived reality - bold, humane, and lasting.