
CAPITAL PUNISHMENT FOR RAPE: A PENOLOGICAL DEBATE IN INDIA

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ABSTRACT

Rape not only constitutes an assault on an individual but also represents a serious infringement upon one's personal dignity and right to one's own body. Amendments such as the Criminal Law (Amendment) Act, 2013 and the Criminal Law (Amendment) Act, 2018 generally received overwhelming support as a strong state response to such crimes; they have also revived significant constitutional and penological questions, which this paper addresses.

This paper examines the death penalty for rape through the penal theories of deterrence, retribution, reformation, and prevention, alongside key Supreme Court judgements and the constitutional framework of Articles 14 and 21. Empirical evidence does not support the death penalty as a deterrent against rape. It is also found that capital punishment falls disproportionately on the poor and marginalised, raising equality concerns under Article 14. In the most extreme cases, such as rape accompanied by murder, there remains a retributive justification for death within the rarest of rare framework. Overall, it is argued that faster and more certain punishment, combined with stronger survivor support systems, would do more to address sexual violence than expanding the scope of the death penalty.

Keywords: Death Penalty, Rape, Deterrence, Retribution, Rarest of Rare Doctrine, Indian Penal Code, Article 21, Criminal Law Amendment.

1. Introduction

Rape is one of the most serious crimes under Indian law. It violates not just the body but the fundamental dignity and autonomy of the survivor. In India, several brutal rape cases have shaken public faith in the criminal justice system and led to widespread demand for harsher punishment. In response, the Indian criminal justice system has moved towards increasingly harsh punishment, including the death penalty for some serious forms of rape. The Criminal Law (Amendment) Acts of 2013 and 2018 marked a decisive shift in India's approach towards sexual crimes by introducing the death penalty for rape in specific circumstances, especially where minors are involved. While these measures were welcomed as symbols of a strong state response, they also revived long-standing punitive and constitutional debates.

This research attempts to examine whether the death penalty for rape achieves the goal of justice, or whether it reflects a primarily retributive reaction driven by public sentiment. By analysing legislative developments, judicial trends, and penal principles, the study critically evaluates the role and relevance of the death penalty in addressing rape in contemporary India.

2. Research Problem

The increasing reliance on the death penalty for rape raises serious questions about its effectiveness as a deterrent against sexual violence.

The death penalty for rape raises constitutional concerns related to equality before law and the right to life under Articles 14 and 21 of the Indian Constitution.

The dominance of retributive justice in rape punishment risks marginalising restorative and rehabilitative approaches.

A gap exists between legislative intent and empirical evidence regarding the impact of the death penalty on rape prevention.

3. Research Objectives

The objectives of the present study are: (i) to trace the evolution of the death penalty for rape

under Indian criminal law; (ii) to analyse the death penalty for rape in light of classical, preventive, and corrective theories of punishment; (iii) to examine judicial attitudes towards awarding the death penalty in rape cases; and (iv) to critically evaluate whether the death penalty effectively serves the interests of justice and victim protection.

4. Research Questions

Q1: Whether capital punishment for rape in India fulfils the penological objectives of deterrence and retribution.

Q2: Whether the imposition of the death penalty for rape is compatible with constitutional principles and judicial doctrines governing capital punishment.

Q3: Whether alternative sentencing frameworks can better address sexual violence while preserving constitutional morality.

5. Literature Review

The Law Commission of India, The Death Penalty, Rep. No. 262 (2015) [1] is the most authoritative official Indian study on capital punishment. The Commission recommended abolition for all crimes except terrorism. It found no reliable empirical evidence that capital punishment deters crime and highlighted the irreversible risk of executing an innocent person.

The Justice J.S. Verma Committee, Report on Amendments to Criminal Law [2], set up after the December 2012 Delhi gang rape, recommended against the death penalty for rape even in that charged atmosphere. It argued that certainty of punishment deters crime more effectively than severity, and warned that equal punishment for rape and rape-murder would give offenders an incentive to kill victims to eliminate witnesses.

In *Mukesh v. State (NCT of Delhi)*, (2017) [3], the Supreme Court upheld death sentences for the December 2012 Delhi gang rape convicts, who were executed on 20 March 2020.

In *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [4], the death sentence was commuted. The court held that courts must assess the reformatory potential of the accused before awarding

death, making the reformatory theory a constitutional requirement.

Manoj v. State of Madhya Pradesh, (2023) [5] is the most recent landmark on capital sentencing procedure. A three-judge bench held that after conviction the trial court must hold a separate sentencing hearing with psychological, psychiatric, and social background reports of the accused before the death penalty can be imposed.

Shankar Kisanrao Khade v. State of Maharashtra, (2013) [6] introduced the three-point test: crime test, criminal test (whether the accused can be reformed), and the rarest of rare test. All three must be satisfied before death can be awarded.

The National Crime Records Bureau, *Crime in India Reports 2019–2023* [7] are official annual data showing no decline in reported rape cases after the 2013 and 2018 amendments, with the conviction rate for rape remaining around 27–28 per cent.

Cesare Beccaria, *On Crimes and Punishments* [8] is the foundational text of classical penology. Beccaria argued that the certainty and swiftness of punishment, not its severity, deters crime.

H.L.A. Hart, *Punishment and Responsibility* [9] — Hart's distinction between the general justifying aim of punishment and the distributional principles provides the philosophical basis for evaluating whether capital punishment for rape is truly proportionate.

Anup Surendranath and Maulshree Pathak, *Legislative Expansion and Judicial Confusion: Uncertain Trajectories of the Death Penalty in India* [10] found that 54 per cent of all death sentences in India were for sexual offences, yet rape figures showed no corresponding decline.

Kannan Jhunjhunwala, *A Case Against the Death Penalty for Child Sexual Abuse* [11] argues that Section 376AB IPC and Section 6 POCSO are inconsistent with the child-friendly framework of POCSO and conflict with Articles 14 and 21.

Surya Deva, *Death Penalty in the Rarest of Rare Cases* [12] examines all Supreme Court death sentence decisions between 2000 and 2011 and identifies serious inconsistencies in the application of the rarest of rare doctrine.

Project 39A, NLU Delhi, Death Penalty India Report [13] is India's first empirical study of death row prisoners. Over 74 per cent of death row prisoners were economically disadvantaged and 34.6 per cent belonged to socially backward communities.

Upendra Baxi, *The Right to Be Human* (1987) [14] raises the concern that capital punishment falls disproportionately on the poor and marginalised who cannot access good legal representation, making the process arbitrary and inconsistent with Article 14.

K.D. Gaur, *Criminal Law: Cases and Materials* [15] is a leading Indian criminal law textbook providing comprehensive coverage of rape laws, sentencing principles, and penological theories.

6. Research Methodology

The present research adopts a theoretical and doctrinal methodology. Primary sources include statutory provisions, constitutional articles, and judgements of the Supreme Court of India. Secondary sources include Law Commission reports, committee reports, scholarly articles, textbooks, and official National Crime Records Bureau (NCRB) publications. The aim of the study is to critically evaluate the existing legal framework.

7. Chapter 1: Conceptual and Legislative Framework of Capital Punishment for Rape in India

Initially, rape was regarded as a crime deserving a prison sentence as per the Indian Penal Code established in 1860. In *Tukaram v. State of Maharashtra*, decided on 15 September 1978 and reported as AIR 1979 SC 185 [16], two police constables attached to the Desai Gunj police station in Maharashtra were acquitted of raping Mathura, a young tribal girl, in police custody. The Supreme Court reversed the High Court conviction on the ground that the prosecution had failed to establish that the intercourse was without consent, noting the absence of injuries and holding that passive submission does not constitute rape. This decision caused massive public outrage, and Parliament responded by enacting the Criminal Law (Amendment) Act, 1983, which made rape in custody a separate crime, reversed the burden of proof in certain instances, and increased sentences. No death penalty was provided for rape under this Act.

A real change in the law occurred after the horrific gang-rape and murder of a woman in New Delhi in December 2012 [3]. Following this incident, the government established a committee led by Justice J.S. Verma to review laws concerning sexual assault and provide recommendations. The committee submitted its report in January 2013 and urged against applying the death penalty as a punishment for rape, arguing that certainty of punishment would deter sexual assault more effectively than severity of punishment. It also warned that if rape and rape-murder carry the same penalty, the offender has a clear incentive to kill the victim (who is typically their sole witness) in order to avoid conviction for rape [2].

Parliament passed the Criminal Law (Amendment) Act, 2013 [17], which added Section 376A to the Indian Penal Code [18]. This section provides for the death penalty in the event of gang rape resulting in the victim's death or in the event of gang rape putting the victim in a persistent vegetative state. Following the gang rape and murder of an 8-year-old girl in Kathua and events in Unnao in 2018, Parliament passed the Criminal Law (Amendment) Act, 2018 [19] and added Section 376AB IPC providing for the death penalty for the rape of any girl below the age of 12. Additionally, the Protection of Children from Sexual Offences (Amendment) Act, 2019 [20] added the death penalty for aggravated penetrative sexual assault on children. All of these provisions now form part of the Bharatiya Nyaya Sanhita (BNS), 2023, found in Sections 63–70 of the BNS [21], which replaces the Indian Penal Code from 1 July 2024.

Chapter 2: Whether Capital Punishment for Rape in India Fulfils the Penological Objectives of Deterrence and Retribution

2.1 Deterrent Theory: Theory, Data, and Its Failure in Practice

Cesare Beccaria [8] stated that the biggest flaw in deterrence theory is that it is the certainty of punishment that deters crime, not its severity. A punishment that is imposed rarely and with great delay will not deter anyone from committing the crime, regardless of how harsh it appears on paper. According to NCRB reports [7], 24,923 rapes were reported in 2012 (the year before the death penalty was introduced for certain offences), 32,033 rapes were reported in 2019, and 31,516 rapes were reported in 2022.

The data shows that the use of capital punishment for sexual crimes in India has not acted as a deterrent. A study by Surendranath and Pathak [10], published in the International Journal of

Crime, Justice and Social Democracy, found that as of 2021, 54 per cent of all individuals sentenced to death in India were sentenced for sexual offences, yet there has been no decrease in the rate of rape. The Law Commission of India also reviewed this issue in its 262nd Report [1] and determined there is insufficient evidence to establish a connection between capital punishment and a reduction in sexual assaults in India.

Rape is a crime driven primarily by the desire for power and control. Studies in penology and psychology indicate that a substantial proportion of offenders act under psychological compulsion and do not stop to rationally weigh consequences before acting. This is why harsher punishments do not stop such crimes. What actually deters offenders is the real probability of being caught, tried, and convicted. In India, the rape conviction rate is only around 27–28 per cent [7], which means most offenders expect to escape punishment entirely. When that is the reality, the severity of the maximum sentence makes no practical difference.

One important unintended consequence was identified by the Verma Committee [2], which warned that if the maximum penalty for rape and rape-murder is the same, there is no reason not to kill the victim after committing rape. The Supreme Court recognised this risk in *Bantu v. State of Uttar Pradesh* [22], holding that a primary reason for differentiating the penalty for rape and rape-murder is to deter the offender from killing a rape survivor. Accordingly, the death penalty for rape may place rape survivors at an even greater risk of murder.

2.2 Retribution: Proportional Justice and Its Constitutional Boundaries

Retribution does not ask whether the punishment will prevent future crimes. It asks whether the offender deserves this punishment for what has been done. Immanuel Kant, the German moral philosopher, argued that punishment is a matter of justice and moral desert, and its severity must match the gravity of the harm caused. From this perspective, the retributive case for the death penalty in the most heinous rape cases carries some genuine force.

The retributive rationale has been accepted by Indian courts in extreme instances of violent crimes. The Supreme Court ruled in *Mukesh v. State (NCT of Delhi)* [3] that the death penalty for the December 2012 Delhi gang rape was warranted by the extreme brutality of the crime, and that the crime therefore fell within the rarest of rare framework. In *Dhananjay Chatterjee v. State of West Bengal* [23], a security guard who raped and murdered an 18-year-old girl was

given the death penalty on the basis of his abuse of positional authority as a security officer. In *Shyam Narain v. State (NCT of Delhi)* [24], the court determined that the rape and murder of a five-year-old girl warranted the imposition of capital punishment. Similarly, in *Laxman Naik v. State of Orissa* [25], it was held that the rape and murder of a seven-year-old girl by her uncle also warranted the imposition of capital punishment.

Nonetheless, capital punishment cannot be applied without limit within the framework of retribution, because retribution demands proportionality. The court in *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra* [26] created a dual standard through which a sentencing court must both demonstrate how atrocious the crime was and prove that the accused has no realistic prospect of rehabilitation; neither circumstance alone is sufficient. In *Atbir v. Government of NCT of Delhi* [27], the court ruled that death should only be imposed in the most egregious cases of rape and cannot serve as a general deterrent for all serious rapes.

Chapter 3: Whether the Imposition of the Death Penalty for Rape Is Compatible with the Constitutional Principles and Judicial Doctrines Governing Capital Punishment

3.1 Judicial Trends: The Rarest of Rare Test and Its Inconsistent Application

Ratiofying death sentences: In *State of Karnataka v. Puttaraja* [28] and *Shyam Narain v. State (NCT of Delhi)* [24], death sentences following murder and rape were upheld. The Supreme Court upheld the death sentences for the Delhi gang rape convicts in *Mukesh* [3], and the convicts were executed on 20 March 2020.

Commuting death sentences: In *State of Madhya Pradesh v. Babulal* [29] and *Dilip Tiwari v. State of Maharashtra* [30], death was commuted to life imprisonment on appeal. In *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [4], the Supreme Court commuted a death sentence in a rape-murder conviction concerning a three-year-old victim because the lower court had not adequately considered the possibility of the accused being reformed.

The Supreme Court recognised an inconsistency in the application of the rarest of rare test in *Mohd. Arif @ Ashfaq v. State (NCT of Delhi)* [31]. A three-point test, applied in *Shankar Kisanrao Khade v. State of Maharashtra* [6], attempted to establish greater structure in this determination. However, data from Project 39A at NLU Delhi [13] demonstrate that death

sentences imposed by trial courts are, by and large, overturned or commuted on appeal. This pattern indicates that death sentences at trial are occurring in an inconsistent and potentially arbitrary manner, raising grave constitutional concerns.

The most important modern ruling on capital sentencing is *Manoj v. State of Madhya Pradesh* [5]. In this case, a three-judge bench ruled that the trial court must conduct a separate, independent sentencing hearing after conviction, obtaining psychological, psychiatric, and social background reports of the accused, before imposing a death sentence. If this separate hearing is not conducted, the death sentence shall be without effect. This applies to all cases currently under appeal. In *Vasanta Sampat Dupare v. Union of India* [32], decided by the Supreme Court in August 2025, a previously confirmed death sentence imposed for the rape and murder of a four-year-old child was overturned and a fresh sentencing hearing was ordered in accordance with the guidelines in *Manoj*.

3.2 Constitutional Analysis: Articles 14 and 21

In *Maneka Gandhi v. Union of India* [33], the Supreme Court held that procedures must be fair, just, and reasonable. Article 21 of the Constitution of India, 1950 [34] provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Punishment that is disproportionate or imposed without adequate procedural safeguards therefore violates Article 21. The requirement in *Manoj v. State of Madhya Pradesh* [5] for a separate sentencing hearing with expert reports before imposing the death penalty is a direct application of this standard.

Article 14 [35] of the Constitution of India guarantees equality before the law. In *Ediga Anamma v. State of Andhra Pradesh* [36], Justice V.R. Krishna Iyer explained that poor and disadvantaged accused persons have a greater likelihood of receiving the death penalty not due to the severity of their crime but due to the weakness of their legal defence. Research by Project 39A at NLU Delhi [13] demonstrates that an overwhelming majority — over 80 per cent — of death row inmates come from marginalised and poor sections of society. This structural inequality constitutes an obstacle to the Article 14 guarantee of equality under the law.

The Supreme Court in *Swamy Shraddhananda v. State of Karnataka* [37] created an intermediate sentencing category: imprisonment for life for the remainder of the natural life of the accused

without the possibility of remission or early release. This was affirmed as a valid sentencing power in *Union of India v. V. Sriharan @ Murugan* [39]. This sentencing option achieves full incapacitation without the irreversibility of execution and constitutes an important constitutional alternative in serious sexual violence cases.

3.3 International Human Rights Standards

India has ratified the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR [38] restricts capital punishment to the most serious crimes. The United Nations Human Rights Committee interprets this limitation as applying only to intentional killings. The death penalty for rape without murder, as provided under Section 376AB IPC and its Bharatiya Nyaya Sanhita counterpart, therefore creates a conflict between Indian law and India's ICCPR treaty obligations.

Chapter 4: Whether Alternative Sentencing Frameworks Can Better Address Sexual Violence While Preserving Constitutional Morality

4.1 Life Imprisonment Without Remission: A Better Constitutional Option

The constitutionally sound alternative to the death penalty for serious rape cases is life without remission, as established in *Swamy Shraddananda v. State of Karnataka* [37] and confirmed in *Union of India v. V. Sriharan @ Murugan* [39]. Under this alternative, the offender spends their entire natural life in prison without any possibility of release. It serves the same preventative purpose as the death penalty with comparable deterrent and retributive impact, but with the additional benefit of being reversible in light of new evidence.

The Supreme Court in *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [4] held that the reformatory potential of the accused must be assessed prior to imposing a death sentence. Life imprisonment without the possibility of parole preserves this possibility of reform, whereas the death penalty extinguishes it. H.L.A. Hart's framework [9] for evaluating punishment includes assessment of both the social purpose of the punishment and its proportionality and fairness in application. Death as a punishment is arbitrary and irreversible; life without parole meets both Hart's standards.

4.2 Certainty of Punishment and Fast-Track Courts

Based on Beccaria's principle [8] and the Verma Committee's 2013 finding [2] that punishment must be certain rather than merely harsh, the strongest case against the death penalty for rape rests on the certainty argument. A rape conviction rate of only 27–28 per cent in India [7] means most offenders expect to escape any punishment. In that situation, even the most severe maximum sentence has no real deterrent effect, because offenders do not seriously believe they will ever face it.

The creation of Fast-Track Special Courts in 2019 under the Nirbhaya Fund is a more evidence-based solution to these problems, focusing on improving certainty and speed of justice rather than increasing the severity of punishment.

4.3 Justice for Survivors and Constitutional Morality

A full understanding of justice in rape cases must include the needs of the victim. In *State of Punjab v. Gurmit Singh* [40], the Supreme Court stated that all trial courts must be aware of the trauma that victims experience and must not subject the victim to further trauma through the trial process. In *Bodhisattwa Gautam v. Subhra Chakraborty* [41], the Supreme Court indicated that rape is an offence against society as a whole and that the State has a duty to provide restitution or compensation, counselling, and rehabilitation services to victims.

As set forth by the Supreme Court in *Navtej Singh Johar v. Union of India* [42], constitutional morality requires that laws be analysed based on whether they are consistent with the fundamental constitutional values of dignity, equality, and liberty. A law that expands the scope of the death penalty primarily on the basis of public sentiment, without empirical support and adequate procedural safeguards, cannot be said to accord with constitutional morality.

4.4 Assessment of the Competing Arguments

First, after analysing the materials discussed in previous chapters, it is concluded that there is no evidence that the death penalty causes a decrease in reported rapes [1, 7, 10].

Second, the death penalty for rape may place victims at greater risk, as offenders have no

incentive not to kill their victim after committing rape. The Verma Committee [2] identified this as one of the potential consequences of establishing a penalty of death for rape, and the Supreme Court of India recognised this danger in *Bantu v. State of Uttar Pradesh* [22].

Third, the application of the rarest of rare doctrine has led to inconsistent imposition of death sentences, as recognised by the Supreme Court in *Mohd. Arif* [31]. Data from Project 39A [13] showing the high rate of reversal or commutation of trial court death sentences emphasises the significant level of arbitrariness in these decisions, which raises concerns regarding Article 14 of the Indian Constitution [35].

Fourth, very extreme cases involving deliberate murder in conjunction with rape, or rape of very young children carried out in a highly calculated and violent manner, may justify the death penalty on retributive grounds within the constitutional framework, as established in *Mukesh* [3], *Shyam Narain* [24], *Dhananjoy Chatterjee* [23], and *Laxman Naik* [25].

Fifth, life imprisonment without parole, as established in *Swamy Shraddananda* [37] and affirmed in *V. Sriharan* [39], is constitutionally sound and pragmatically effective in most rape cases.

5. Conclusion

On the basis of deterrence, there is no justification for imposing the death penalty for rape. Data collected over the ten years following the 2013 amendment shows no decrease in the overall rate of rape [7]. Retributive arguments for capital punishment remain valid but only for a narrow range of heinous offences, such as murder accompanied by calculated premeditation alongside rape, or the sexual assault and homicide of a young child with extreme violence.

Outside this narrow set of constitutional conditions, there exists a far quicker, more certain, and more equitable means of punishing individuals who commit sexual violence. The use of Fast-Track Special Courts and the requirement to conduct separate sentencing hearings as mandated by Manoj (2023) [5], together with the constitutional alternative of life imprisonment without the possibility of parole established in *Swamy Shraddananda* (2008) [37], provide an evidence-based and survivor-centred approach to addressing sexual violence in India.

Endnotes:

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