
THE NEED FOR STRICTER RAPE PUNISHMENT IN INDIA: A CRITICAL LEGAL AND SOCIO-LEGAL ANALYSIS

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ABSTRACT

Sexual violence against women remains one of the most persistent and multi-dimensional problems confronting India's criminal justice system. Despite successive rounds of legislative amendment from the Criminal Law (Amendment) Act, 1983 through to the Bharatiya Nyaya Sanhita, 2023 (BNS) reported incidents of rape continue to rise, conviction rates remain low, and case pendency runs into hundreds of thousands.

This paper traces the doctrinal history of rape law in India, from its colonial origins under the Indian Penal Code, 1860 to the present regime under the BNS 2023, and examines landmark judicial decisions that have shaped the law. It supplements this doctrinal analysis with a socio-legal perspective, drawing on root-cause and policing scholarship to situate rape not merely as a legal category but as a product of patriarchal social structure, institutional failure, and policing culture.

The paper further reviews empirical evidence on case pendency and conviction rates, including findings that mandatory minimum sentencing introduced in 2013 may, counter-intuitively, have coincided with a fall in conviction rates in Delhi's trial courts, and evaluates the ongoing doctrinal debate on an affirmative standard of consent. It concludes that stricter statutory punishment, without parallel reform of investigation, prosecution, forensic infrastructure, policing culture and social attitudes, is unlikely by itself to secure either deterrence or justice for survivors.

Keywords: rape law, India, Bharatiya Nyaya Sanhita, IPC Section 375, Nirbhaya, marital rape, consent, policing, POCSO, capital punishment, criminal justice reform.

1. INTRODUCTION TO RAPE LAW IN INDIA AND OTHER COUNTRIES

Rape is universally regarded as one of the gravest offences against the human body, dignity and autonomy of a person. The term itself derives from the Latin *rapere*, meaning “to seize” or “to carry off by force.”¹

In India, rape is presently defined and punished under Sections 63 to 71 of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced Sections 375 to 376E of the Indian Penal Code, 1860 (IPC) with effect from 1 July 2024.²

The Indian framework criminalises non-consensual sexual acts committed against will, without consent, or where consent is vitiated by fear, fraud, intoxication, unsoundness of mind, or the victim's minority. Special legislation supplements the general criminal law: the Protection of Children from Sexual Offences Act, 2012 (POCSO) governs sexual offences against minors, while the Bharatiya Sakshya Adhiniyam, 2023 (which replaced the Indian Evidence Act, 1872) contains evidentiary presumptions favourable to survivors, such as the presumption of absence of consent once sexual intercourse is proved and the survivor testifies that she did not consent.³

Comparatively, jurisdictions vary widely in their treatment of rape. Common-law countries such as the United Kingdom, the United States, Canada, Australia and South Africa have since the late twentieth century moved toward gender-neutral, consent-based definitions of sexual assault and have criminalised marital rape without a spousal exception; more than 150 countries worldwide are estimated to have done so.⁴

India, by contrast, retains a largely gender-specific definition, prescribes some of the most severe statutory minimum sentences in the world including the death penalty for the rape of children and for repeat offenders and yet continues to exempt non-consensual intercourse within marriage from the definition of rape where the wife is over eighteen years of age. This tension between highly punitive treatment of stranger and custodial rape, and continued legal

¹The term rape originates in the Latin term *rapere* (supine stem *raptum*), meaning “to snatch, to grab, to carry off.” See Taxmann, BNS Section 63 – Definition, available at <https://www.taxmann.com/post/blog/bns-section-63> (last visited 16 July 2026).

²The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), s. 63; see also Rape in India, Wikipedia, https://en.wikipedia.org/wiki/Rape_in_India (last visited 16 July 2026).

³Bharatiya Sakshya Adhiniyam, 2023 (Act No. 47 of 2023), s. 120; BNS Section 63 – Definition, *supra* note 2.

⁴Marital Rape Exception in India: UPSC Current Affairs, IASGyan, <https://www.iasgyan.in/daily-editorials/marital-rape-exception-in-criminal-law-is-a-colonial-relic> (last visited 16 July 2026).

immunity for marital rape, forms an important backdrop to the debate on “stricter punishment” examined in this paper.

2. HISTORY OF RAPE LAW IN INDIA

The statutory history of rape law in India begins with the enactment of the Indian Penal Code in 1860, which contained the offence under Sections 375 and 376.⁵

Under the original 1860 formulation, rape was defined narrowly as non-consensual peno-vaginal intercourse, and the law contained an exception permitting a husband to have intercourse with his wife provided she was not below fifteen years of age reflecting Victorian-era assumptions about marital consent and female legal capacity that persisted largely unexamined for over a century.

For more than a hundred years thereafter, the law remained largely static. The first major turning point came with the Supreme Court's decision in *Tukaram v. State of Maharashtra* (1979), commonly known as the *Mathura* case, in which two police constables who had raped a young tribal girl inside a police station were acquitted by the Supreme Court on the ground that she had not raised an alarm and her “passive submission” amounted to consent.⁶

The judgment provoked nationwide outrage, an open letter from four law professors, and sustained public protest, and is widely credited as the catalyst for India's first comprehensive rape law reform in 1983.

3. DEVELOPMENT OF RAPE LAWS

A. The Criminal Law (Amendment) Act, 1983

In direct response to the Mathura case, Parliament amended Sections 375 and 376 of the IPC and inserted new custodial-rape provisions Sections 376A to 376 punishing sexual intercourse by police officers, public servants, jail or remand-home staff, and hospital staff with women in their custody or care.⁷

The Act also inserted Section 114A into the Indian Evidence Act, 1872, creating a presumption

⁵The Indian Penal Code, 1860 (Act No. 45 of 1860) [repealed 2024]

⁶*Tukaram v. State of Maharashtra*, (1979) 2 SCC 143

⁷Section 375 IPC: Rape

of absence of consent in prosecutions for custodial rape once intercourse was proved and the survivor testified that she had not consented, and mandated in-camera trials and restrictions on publishing details that could identify the survivor.

B. The Criminal Law (Amendment) Act, 2013

The next, and by far the most significant, wave of reform followed the brutal gang rape and murder of a 23-year-old physiotherapy student on a moving bus in Delhi in December 2012, widely referred to as the Nirbhaya case.⁸

The Government constituted the Justice J.S. Verma Committee, which submitted its report within thirty days and recommended a wide range of reforms, including expansion of the definition of rape beyond peno-vaginal penetration, removal of the marital rape exception, and improved police accountability.⁹

Parliament acted swiftly, enacting the Criminal Law (Amendment) Act, 2013, which substantially broadened Section 375 to cover penetration of the vagina, urethra or anus by the penis or by an object or body part, oral sex, and manipulation of any part of the body to cause penetration; it fixed a minimum sentence of seven years (later ten years for aggravated categories), created new offences of acid attack, stalking, voyeurism and sexual harassment, and enhanced sentences for gang rape and for rape resulting in death or a persistent vegetative state. The Committee's recommendation to remove the marital rape exception was, however, not accepted by Parliament, and the exception survived the 2013 amendments largely intact save for a later change in the age threshold.

C. The Criminal Law (Amendment) Act, 2018

Following the rape and murder of an eight-year-old girl in Kathua, Jammu and Kashmir, and the rape of a minor in Unnao, Uttar Pradesh, both in 2018, Parliament passed a further amendment introducing the death penalty for the rape of girls under twelve years of age, a minimum sentence of twenty years (extendable to life) for rape of girls under sixteen, and provisions mandating that investigation and trial in such cases be completed within strict time

⁸*Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1.

⁹Justice J.S. Verma, Leila Seth & Gopal Subramaniam, Report of the Committee on Amendments to Criminal Law (2013), available at <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>.

limits.¹⁰

D. *Independent Thought* v. *Union of India* (2017)

In *Independent Thought v. Union of India*, the Supreme Court read down Exception 2 to Section 375 IPC to hold that sexual intercourse by a man with his wife, where the wife is below eighteen years of age, constitutes rape, thereby aligning the age of marital consent with the general age of consent under POCSO, although the Court expressly declined to extend this reasoning to adult married women.¹¹

E. The Bharatiya Nyaya Sanhita, 2023

With effect from 1 July 2024, the IPC was replaced in its entirety by the Bharatiya Nyaya Sanhita, 2023. The offence of rape, formerly under Section 375 IPC, is now defined in Section 63 BNS, punishment for rape is set out in Section 64, aggravated categories (including custodial rape and rape by persons in positions of authority) in Section 65, punishment for rape causing death or a persistent vegetative state in Section 66, and punishment for repeat offenders imprisonment for the remainder of natural life or death in Section 71.¹²

The BNS largely codifies the post-2013 definition of rape and retains the presumption of absence of consent, now located in the Bharatiya Sakshya Adhiniyam, 2023. Critically, however, the marital rape exception survives in near-identical form as Exception 2 to Section 63 BNS, the only material change being that the wife must not be under eighteen years of age (raised from fifteen), reflecting the 2017 *Independent Thought* ruling rather than any fresh legislative departure.¹³

F. The Standard of Consent: An Unresolved Doctrinal Debate

A distinct but closely related strand of scholarship interrogates not the definition of rape but the standard by which consent itself is proved and assessed at trial. Nikunj Kulshreshtha's doctrinal analysis of Indian rape jurisprudence argues that Indian courts continue to rely heavily on the complainant's conduct, demeanour and post-incident behaviour to infer consent, rather

¹⁰Amendments in Rape Laws, Drishti Judiciary, <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/amendments-in-rape-laws> (last visited 16 July 2026).

¹¹*Independent Thought v. Union of India*, (2017) 10 SCC 800.

¹²Bharatiya Nyaya Sanhita, 2023, ss. 63–71; Punishment for Rape under the Bharatiya Nyaya Sanhita, 2023,

¹³Amendments in Rape Laws, Drishti Judiciary, *supra* note 10.

than requiring the accused to demonstrate that affirmative steps were taken to ascertain consent.¹⁴

Comparing the Indian position with the English and Canadian jurisdictions, both of which have moved toward an affirmative or “yes means yes” standard requiring communicated, contemporaneous consent, the article contends that an affirmative standard could reduce Indian courts' reliance on extraneous factors such as the survivor's sexual history, her relationship with the accused, or her conduct after the incident that continue to influence findings of consent despite statutory reform. This debate on the standard of proof of consent is, this paper suggests, at least as consequential for justice outcomes as debates over the severity of the sentence that follows conviction, since a stricter sentence is irrelevant if the prosecution cannot establish absence of consent to the requisite standard in the first place.

4. LANDMARK CASES OVER THE YEARS

Tukaram v. State of Maharashtra (1979) The Mathura case: Discussed above, this case exposed the inadequacy of a consent standard that equated the absence of physical resistance with consent and directly triggered the 1983 amendments.

Bodhisattwa Gautam v. Subhra Chakraborty (1996): The Supreme Court held that rape is “a crime against basic human rights” and a violation of the survivor's right to life under Article 21 of the Constitution, entitling survivors to interim compensation.¹⁵

Mukesh & Anr. v. State (NCT of Delhi) (2017) The Nirbhaya case: The Supreme Court confirmed the death sentences of four convicts in the 2012 Delhi gang rape, holding the crime to fall within the “rarest of rare” category warranting capital punishment; the convicts were executed in March 2020.¹⁶

Independent Thought v. Union of India (2017): Discussed above, read down the marital rape exception insofar as it applied to minor wives.

The Kathua case (2018): The gang rape and murder of an eight-year-old nomadic girl in

¹⁴Nikunj Kulshreshtha, A Critical Analysis of the Standard of Consent in Rape Law in India, 13(4) *Oñati Socio-Legal Series* 1428 (2023), <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1398>.

¹⁵*Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

¹⁶*Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1.

Jammu and Kashmir, which involved communal overtones and allegations of police complicity, resulted in life-sentence convictions in 2019 and contributed to the Criminal Law (Amendment) Act, 2018.¹⁷

The Hathras case (2020): The gang rape of a young Dalit woman in Uttar Pradesh, who later died of her injuries, drew national attention after allegations that police cremated her body without her family's consent and attempted to suppress evidence of sexual assault, reigniting debate on caste and police accountability in rape investigations.

The Kolkata (R.G. Kar Medical College) case (2024): The rape and murder of a postgraduate trainee doctor inside her own hospital in Kolkata prompted the Supreme Court to take suo motu cognisance, constitute a national task force on the safety of medical professionals, and hear the matter on multiple occasions; the West Bengal Assembly separately passed the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024, seeking the death penalty for rape resulting in the victim's death or vegetative state. The principal accused, a civic volunteer attached to Kolkata Police, was convicted by the trial court in 2025.¹⁸

Hrishikesh Sahoo v. State of Karnataka (pending): This case, together with a batch of connected petitions, is currently before the Supreme Court challenging the constitutional validity of the marital rape exception. The Karnataka High Court had earlier declined to quash rape proceedings against a husband, observing that “rape is rape,” but its order was stayed by the Supreme Court pending final adjudication; as of mid-2026 the matter remains undecided before a reconstituted bench.¹⁹

5. ROOT CAUSES: A MULTI-DIMENSIONAL PERSPECTIVE

A purely doctrinal reading of rape law risks treating the offence as though it occurs in a social vacuum. A root-cause analysis of the 2012 Delhi gang rape, undertaken using a five-step methodology adapted from organisational problem-solving literature, situates the offence within overlapping social, cultural, institutional, environmental and individual-level

¹⁷Police Responses to Rape in Metropolitan India, 14(3) International Journal for Crime, Justice and Social Democracy 91, 91 (2025).

¹⁸R.G. Kar Medical College Rape and Murder Case

¹⁹*Hrishikesh Sahoo v. State of Karnataka*, 2022 SCC OnLine Kar 371

conditions, and offers a useful complementary lens to the doctrinal history traced above.²⁰

A. Social and Cultural Factors

At the social level, this scholarship attributes the persistence of sexual violence in India substantially to entrenched patriarchal social structure, in which women's subordinate status within the family and community is treated as normal, and to measurable gender inequality reflected in a declining child sex ratio over the twentieth and early twenty-first centuries.²¹

At the cultural level, the same analysis draws on Hofstede's cross-cultural dimensions of power distance and masculinity to argue that Indian society's comparatively high tolerance for social hierarchy, combined with a masculine gender-role culture in which men are expected to control female sexuality as a matter of family honour, creates conditions in which sexual coercion is more likely to be normalised or excused.²²

B. Institutional and Educational Factors

At the institutional level, the analysis identifies specific statutory gaps – such as the pre-2013 definition of rape, which excluded forced oral sex, sodomy and object penetration from the core offence and relegated such acts to the lesser offence of outraging a woman's modesty – as well as non-standardised forensic and evidence-collection procedures, as factors that reduce both the certainty of prosecution and the willingness of survivors to report. It further points to the absence of formal sex education in Indian schools, attributed to political and cultural conservatism, as a contributing institutional gap, noting the World Health Organization's finding that early, comprehensive sex education is associated with delayed and safer sexual activity among young people rather than increased sexual activity.²³

C. Environmental and Individual-Level Factors

At the environmental level, the analysis links large-scale rural-to-urban migration and rapid urbanisation to a loosening of traditional social controls and family oversight, while cultural

²⁰The Problem of Rape in India: A Multi-dimensional Analysis (Working Paper), at 3–4 (applying the five-step root cause analysis methodology of Mind Tools, Root Cause Analysis: Tracing a Problem to its Origin (2013)).

²¹*Id.* at 6–7 (citing Sylvia Walby, *Theorising Patriarchy* (1990) and Census of India sex-ratio data for 1901, 2001 and 2011).

²²*Id.* at 7–8 (citing Geert Hofstede, *Culture's Consequences: International Differences in Work-Related Values* (1980)).

²³*Id.* at 8–9.

change associated with globalisation is identified as a further contributing environmental factor. At the individual level, psychological and motivational theories including Erikson's psychosocial identity theory (applied to the case of the juvenile offender in the 2012 case) and general strain theory, which links criminal behaviour to blocked aspirations among economically disadvantaged individuals are used to explain offender behaviour, without excusing it.²⁴

Whatever view one takes of the explanatory weight of any single theory, this body of scholarship underscores an important point for law reform: legislative severity targets only the final stage of a causal chain that begins much earlier, in patriarchal socialisation, gender inequality, inadequate sex education, and the erosion of community and family oversight during urban migration. A purely punitive legislative response, unaccompanied by social and institutional reform addressing these upstream causes, is correspondingly unlikely to address the problem at its source.

6. CASES PENDING: THE GAP BETWEEN LAW AND ENFORCEMENT

A. Statistical Overview

However stringent the statutory punishment on paper, the deterrent effect of criminal law depends on the certainty and speed of enforcement, and it is here that the Indian system shows its most serious weaknesses. According to National Crime Records Bureau (NCRB) data, 31,677 rape cases were registered across India in 2022, an increase of roughly 26.6% over the 28,046 cases registered in 2018.²⁵

Case pendency is the more troubling figure. Independent analyses of NCRB court-disposal data indicate that roughly 1.2 lakh (120,000) rape trials remained pending at the end of 2022, and that the national conviction rate for rape has hovered between 27% and 28% for over a decade, having fallen from 44.3% in 1973.²⁶

²⁴*Id.* at 9–15 (applying Erik Erikson, *Identity, Youth, and Crisis* (1968) and Robert Agnew, *Foundation for a General Strain Theory of Crime and Delinquency*, 30 *Criminology* 47 (1992)).

²⁵Commonwealth Human Rights Initiative, *Rape and Rape/Gangrape with Murder in India: Incidence of Cases (2014–2022)*, Part 1, at 2 (Sept. 2024), available at <https://www.humanrightsinitiative.org/download/CHRI-NCRBData-RapeStats-Analysis-Part1-Sep24.pdf>.

²⁶India Rape Statistics, Gitnux (2026), <https://gitnux.org/india-rape-statistics/> (last visited 16 July 2026); Rape in India, Wikipedia, *supra* note 2 (citing NCRB 2019 Compendium).

Multiple factors contribute to this backlog: an acute shortage of trial-court judges relative to population, understaffed forensic laboratories, delays in medical examination and chargesheeting, witness hostility and intimidation, and the sheer volume of cases directed to a limited number of fast-track special courts that were themselves created as an emergency response to the Nirbhaya case rather than as a permanent structural solution.²⁷

A separate and striking data point comes from an empirical study of 1,635 rape judgments from Delhi's trial courts pronounced between 2013 and 2018. Of the 726 cases adjudicated under the pre-2013 law, 16.11% resulted in conviction; of the 909 cases adjudicated under the Criminal Law (Amendment) Act, 2013, only 5.72% resulted in conviction.²⁸

The author attributes this counter-intuitive fall in convictions, at least in part, to the introduction of mandatory minimum sentences, arguing that judges and fact-finders may become more reluctant to convict when the statutorily mandated sentence is perceived as disproportionate to the facts of a particular case—a phenomenon documented more broadly in criminal justice literature linking mandatory minimums to elevated acquittal rates. If correct, this finding complicates any straightforward assumption that raising minimum sentences necessarily increases either deterrence or the likelihood of conviction, and is addressed further in Part VIII below.

B. Policing as a Bottleneck: Evidence from Metropolitan India

Recent qualitative research on policing in Kolkata offers granular insight into why registered cases so often fail to result in conviction. Based on in-depth interviews with three rape survivors and fifteen police personnel, this study found that police responses to rape complaints were frequently governed by informal discretion rather than by the legal requirement, confirmed by the Supreme Court, that a First Information Report be registered for a cognizable offence such as rape without any preliminary inquiry.²⁹

Survivors in the study reported humiliation and derision by investigating officers, including

²⁷Over 1,000 Fast Track Special Courts (FTSCs) were directed to be established exclusively for rape and POCSO cases; see Rape in India, Wikipedia, *supra* note 2.

²⁸Preeti Pratishruti Dash, Rape Adjudication in India in the Aftermath of the Criminal Law Amendment Act, 2013: Findings from Trial Courts of Delhi (SSRN Working Paper, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3622538.

²⁹Police Responses to Rape in Metropolitan India, *supra* note 17, at 91–95 (discussing *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1).

officers questioning their credibility based on their alcohol consumption or social conduct; disbelief and intimidation, particularly where the survivor was poor, of lower caste, or a religious minority; and outright inaction linked in one instance to a police officer's personal relationship with the accused, which was resolved only after a witness's suicide drew media attention to the case.³⁰

Interviews with the police themselves identified four structural drivers of these insensitive responses: an occupational culture in which rape investigations are viewed as unusually resource- and time-intensive and therefore avoided; a socio-political environment in which some officers openly subscribed to the belief that a majority of rape complaints are false, and in which rape allegations were, in at least one region, described as being used for political ends; a police–criminal nexus, in which informants and local power-brokers accused of sexual offences were shielded by officers with whom they had ongoing relationships; and a pronounced responsiveness to media attention, such that police action was frequently triggered only once a case attracted public scrutiny rather than as a matter of routine legal obligation.³¹

The study further found that the mere presence of women police personnel or women's cells does not guarantee sensitive handling of rape complaints where those officers have themselves absorbed a masculinist occupational culture, and points instead to more structurally embedded reforms such as Madhya Pradesh's Women's Help Desks, which are staffed by senior female officers, subject to routine monitoring, and associated in a randomised evaluation with significantly higher rates of case registration as more promising than symbolic measures alone.³²

Read together with the Delhi conviction-rate data above, this research suggests that the pendency and low-conviction crisis in Indian rape adjudication is driven at least as much by front-line institutional failure under-resourced and culturally resistant policing as by any deficiency in the severity of the statute book, reinforcing the case made in Part V that upstream, structural reform deserves at least as much attention as headline sentencing provisions.

³⁰*Id.* at 95–97.

³¹*Id.* at 97–99.

³²*Id.* at 99 (citing Sandip Sukhtankar, Gabriella Kruks-Wisner & Akshay Mangla, Policing in Patriarchy: An Experimental Evaluation of Reforms to Improve Police Responsiveness to Women in India, 377(6602) *Science* 191 (2022)).

7. RECENT OCCURRENCES

The years since 2018 have seen a series of high-profile incidents that have kept sexual violence at the centre of Indian public discourse. The Kathua and Unnao cases of 2018 led directly to the death penalty for child rape under the 2018 amendment. The 2020 Hathras case renewed scrutiny of caste-based impunity and police conduct in the investigation of sexual offences against Dalit women. Sexual violence during the 2023 ethnic conflict in Manipur, including the widely circulated video of two women being paraded naked, led the Supreme Court to take suo motu cognisance and constitute a committee to oversee relief, rehabilitation and prosecution.³³

Most recently, the August 2024 rape and murder of a trainee doctor at R.G. Kar Medical College, Kolkata triggered nationwide protests by medical professionals demanding safer workplaces, a Supreme Court-mandated national task force on healthcare worker safety, and state-level legislative responses including West Bengal's Aparajita Bill proposing the death penalty for rape causing death. These recurring incidents illustrate that despite nearly a decade and a half of progressively stricter statutory punishment since 2013, incidents of extreme sexual violence continue to occur in institutional settings – buses, police stations, hospitals, and educational institutions – that ought to be among the safest environments for women.

8. THE CASE FOR STRICTER PUNISHMENT

A. Arguments in Favour

Proponents of stricter punishment for rape in India advance several arguments. First, they argue that the deterrence value of criminal law depends on proportionality between the gravity of the offence and the severity of punishment, and that a crime that inflicts lifelong physical and psychological trauma warrants the harshest available sanctions, including the death penalty for the most heinous categories such as child rape, gang rape resulting in death, and repeat offences. Second, they point to the symbolic and retributive function of harsh sentencing in affirming the value the state places on women's bodily autonomy and dignity, particularly given India's historically poor record on women's safety. Third, they argue that fast-track prosecution and certainty of punishment not merely statutory severity – are necessary to restore public confidence in the justice system, since the low conviction rate undermines whatever deterrent

³³R.G. Kar Medical College Rape and Murder Case: Updates from the Supreme Court, *supra* note 18.

value harsher sentences might otherwise carry.

B. Counter-Considerations: Does Severity Actually Deter?

At the same time, a substantial body of criminological and feminist legal scholarship cautions against treating sentence severity, particularly capital punishment, as a self-sufficient solution. Empirical studies of the deterrent effect of the death penalty for rape have not established a clear causal reduction in incidence; some scholars and women's rights organisations have expressed concern that mandatory death sentences may perversely incentivise perpetrators, particularly those known to the victim, to kill her in order to eliminate the sole witness, since the marginal punishment for murder following rape may not differ greatly from that for rape alone.

The Delhi trial-court data discussed in Part VI adds a further empirical dimension to this debate: the finding that conviction rates roughly halved after the introduction of mandatory minimum sentences in 2013 suggests that judicial reluctance to impose severe, inflexible sentences in borderline or ambiguous cases may itself depress the conviction rate, producing the paradoxical result that a statutorily “stricter” regime secures justice for fewer survivors in practice than a more calibrated one might.³⁴

Critics also point out that the overwhelming majority of rape survivors know their assailant, so that excessively harsh, inflexible sentencing regimes may deter reporting by victims and their families, especially in intra-familial cases. The consent-standard literature discussed in Part III(F) suggests a related concern: that debates over sentence severity can distract from the prior, and arguably more consequential, question of how consent itself is proved and assessed at trial, since no sentence however severe on paper can be imposed unless the prosecution first succeeds in establishing want of consent to the court's satisfaction.

Others argue that the more urgent priorities are improving conviction rates through better forensic infrastructure, victim protection and witness support, judicial capacity, police sensitisation of the kind documented in Part VI(B), and closing the marital rape exception, rather than further raising already-severe statutory ceilings that are seldom actually reached in practice given the pendency crisis documented in Part VI. These are legitimate empirical and policy disputes rather than settled conclusions, and readers should weigh both perspectives in

³⁴Preeti Pratishruti Dash, *supra* note 28.

evaluating what “stricter punishment” should mean in practice heavier sentences on the statute book, faster and more certain enforcement of existing sentences, or both.

9. CONCLUSION AND RECOMMENDATIONS

India's rape law has travelled a considerable distance since 1860 from a narrow, marriage-exempted offence to a broadly defined crime carrying some of the most severe statutory penalties in the world, including death for the rape of children and for repeat offenders. Yet the persistence of high-profile atrocities, a conviction rate that has hovered around 27–28% for over a decade (and fell further, to under 6%, in Delhi's trial courts after the 2013 mandatory-minimum reform), a pending caseload running into hundreds of thousands, well-documented failures of front-line policing, and the continued survival of the marital rape exception all indicate that legislative severity alone has not translated into either deterrence or justice for survivors.

Based on the foregoing analysis, this paper recommends:

- (i) time-bound investigation and trial through adequately staffed, permanent (rather than emergency) fast-track courts;
- (ii) expansion of forensic laboratory capacity and mandatory, standardised medico-legal protocols;
- (iii) structural policing reforms of the kind piloted through Women's Help Desks senior female leadership, routine monitoring, and training for both male and female officers rather than symbolic measures alone;
- (iv) resolution of the pending constitutional challenge to the marital rape exception in a manner consistent with the equality and dignity guarantees of the Constitution;
- (v) doctrinal movement toward an affirmative standard of consent to reduce reliance on extraneous factors in assessing complainant credibility;
- (vi) victim and witness protection schemes to counter hostility and intimidation, which remain a leading cause of acquittal; and
- (vii) sustained public education addressing the upstream social and institutional conditions

patriarchal socialisation, gender inequality, inadequate sex education, and eroded community oversight amid rapid urbanisation that enable sexual violence to recur across contexts as varied as a moving bus, a police station, and a hospital seminar room.

Stricter punishment, in other words, must be understood not merely as higher maximum sentences but as the credible, swift and certain enforcement of the punishments the law already prescribes, built on a justice system and a society capable of delivering that certainty.

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