
THE DEATH PENALTY AS THE LAST RESORT FOR JUSTICE IN RAPE CASES: A CRITICAL EXAMINATION

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ABSTRACT

The use of the death penalty in rape cases remains one of the most controversial issues in criminal justice systems worldwide. This paper critically examines whether capital punishment can truly be considered a last resort for delivering justice to victims of rape. It explores the legal, ethical, and social dimensions of imposing the death penalty, particularly in cases involving extreme brutality. While proponents argue that it serves as a strong deterrent and reflects society's condemnation of heinous crimes, critics question its effectiveness in reducing sexual violence and highlight the risks of wrongful convictions and misuse. The study also considers whether the focus on harsh punishment diverts attention from systemic reforms such as improving law enforcement, ensuring speedy trials, and supporting survivors. By analyzing judicial perspectives and societal responses, the paper emphasizes the need for a balanced approach that prioritizes both justice and human rights. Ultimately, it argues that while the death penalty may be viewed as a last resort in exceptional cases, it is not a comprehensive solution to the broader issue of sexual violence.

KEYWORDS: *Death Penalty, Rape Cases, Justice System, Capital Punishment, Human Rights and etc.*

INTRODUCTION

*“Returning hate for hate multiplies hate, adding deeper darkness to a night already devoid of stars”*¹ In the view of the foregoing, we can say that retributivism and deterrence as a means of combating crimes often turns out to be majorly ineffective. The Indian Penal system though reformatory in nature, also incorporates the provisions for Capital Punishment. Capital punishment is the execution of a convict by the procedure established by law. India provides provisions for death penalty in heinous offences under Sections 4(a), 65(2), 66, 70(2), 71, 103(1), 102(2), 104, 107, 109(2), 111(2)(a), 113(2)(a) of Bhartiya Nyaya Sanhita, 2023 and Sections 5,407, 454, 412, 456, 472 of the Bhartiya Nagrik Suraksha Sanhita, 2023. The applicability of

¹ 1 Martin Luther King, Jr., Strength To Love 45 (1964).

death penalty alone, in offence of rape invites a significant debate on its ability to wipe off such crimes singlehandedly. With the astonishing rise in the figures of crime throughout the country, the reported cases of crimes against women in the year 2022 were 445256², out of which 31516³ cases stand of rape alone. The existence of such offences in abundance despite of stringent penalties hints upon the need to bring about additional reforms in society at the very elementary level, as mere deterrence lacks in delivering justice.

The Aparajita Women and Child Bill, 2024, brought forward into consideration by the West Bengal government, aims at penalising rape with death sentence. However, the need of the hour is to combat the root causes of such horrendous acts besides solely introducing stringent legislations. It can thus be inferred that “No punishment has ever possessed enough power of deterrence to prevent the commission of crimes. On the contrary, whatever the punishment, once a crime has appeared for the first time, its reappearance is more likely than its initial emergence could ever have been.”⁴

JUDICIARY ON DEATH PENALTY

In the 1973 case of *Jagmohan Singh v. State of Uttar Pradesh*⁵, the constitutional legitimacy of death penalty was contested. It was objected to be contravening the fundamental principles enshrined under Article 21, Article 14 and Article 19 of the Indian Constitution. It was argued that right to life cannot simultaneously exist with the legislative mandate to end the same. It further condemned that granting death sentence on discretionary power of judges was arbitrary and had no standard policy basis. The five judge bench consisting S. M. Sikri, C.J., A. N. Ray, J., D. G. Palekar, J., I. D. Dua, J., M. Hameedullah Beg, J. upheld the validity of death punishment in India, within the procedure established by law. They observed that Article 19 does not openly gives protection to the right to life and that Article 21 states that the right to life can be compromised to protect the general interest.

The validity of death penalty was again brought into question in **Bachan Singh v. State of Punjab**⁶, where the apex court maintained its constitutionality. It ruled that life sentence is the general rule, while death must only be awarded in exceptional and rarest of rare cases, whereby any alternative is strictly absent. However, what falls within this category shall be the discretionary power of the judge. To eliminate the on-going debate on the ambiguity of doctrine

² National Crime Records Bureau, Crime against Women (IPC+SLL) - 2020-2022 1(2022)

³ National Crime Records Bureau, Cases Registered under Rape-2022 4(2022)

⁴ HANNAH ARENDT, EICHMANN IN JERUSALEM 273 (2006).

⁵ *Jagmohan Singh v State of Uttar Pradesh*, (1973) 1 S.C.C. 20.

⁶ *Bachan Singh v. State of Punjab* (1982) 3 S.C.C 24.

of rarest of rare, the Honourable Supreme Court in *Machhi Singh v. State of Punjab*⁷ laid down a considerable framework to substantiate the death penalty. The aspects have been summarised as follows-

1. Modus operandi of Murder- A murder which is so brutal and heinous that it has led to intense public outrage in conditions such as-
 - ✓ Where the victim's residence is offered to fire so as to condemn him to the flames.
 - ✓ Where the aggrieved is subjected to acts of inhumanity like cruelty and torture with the intent to kill him or her.
 - ✓ Where the victim's body is reduced to parts and is heinously mutilated.
2. Driving force behind murder- Where the murder is the result of gross evil manifestation and wickedness. As an illustration, a premeditated and deliberate murder to acquire an estate, a contracted assassination for financial gains, and murder done in a treasonous course.
3. Crimes beyond social tolerance- Where a member of a Scheduled Caste or minority community is murdered, thereby resulting in mass condemnation. For example, murdering a member of such community in order to expel them through fear, dowry driven murder and burning of wife.
4. Gravity of the offence- Where the murder is astounding in size. For instance, where the murder of entire family takes place, where a significant number of killings of members of a certain community, area, or caste takes place.
5. The victim's demeanour- Where the victim is a blameless child, a vulnerable female, an abandoned old age person, or a social icon.

INTERNATIONAL STANCE ON DEATH PENALTY

At the global scale, law permits the death penalty in certain special circumstances, however it has been abolished by several countries globally. The Article 6 of The International Covenant on Civil and Political Rights⁸ consents the sentencing of death in grave circumstances, but it has imposed certain restrictions such as “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant”⁹ The Second optional protocol, which was adopted in the year 1986, aimed at prohibition of death penalty. The United Nations Human Rights Office, encourages the global termination of death penalty, as every human life possesses fundamental right to life. Capital punishment is often

⁷ Machhi Singh v. State of Punjab (1983) 3 S.C.C 470.

⁸ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

⁹ United Nations Human Rights Office Of The High Commissioner, Death Penalty: The International Framework, <https://www.ohchr.org/en/topic/death-penalty/international-framework> (last visited Feb. 21, 2025).

accompanied by an intolerable danger of wrongful execution of an innocent, and there exists no evidence on its efficacy in deterring crime.

According to the reports of Amnesty International, the world witnessed 1153 known executions in 2023, which was an escalation by 31% since the year 2022, whereby the number of known executions was 883¹⁰. This figure however does not include the executions from countries such as China, North Korea and Viet Nam. In recent years, several countries of the world for instance, Zimbabwe, Malaysia, Ghana, Kazakhstan, Sierra Leone, Central African Republic, Papua New Guinea, etc. have abolished the capital punishment.¹¹ Nevertheless, many countries of the globe such as United States of America, Guyana, Belarus, Indonesia, Botswana, Lesotho, Nigeria, Sudan, Congo, Libya, Uganda, Somalia, Ethiopia, South Sudan, Arab Republic Of Egypt, Republic Of Yemen, Saudi Arabia, Jordan, West Bank and Gaza, Lebanon, Syrian Arab Republic, Iraq, Oman, United Arab Emirates, Qatar, Islamic Republic Of Iran, Afghanistan, Pakistan, India, Bangladesh, Myanmar, Thailand, Vietnam, China, Taiwan, Japan still retain its practise.¹² Such large disparity among countries exists by the reason of multiple rationales opposing and advocating for its practise.

ARGUMENTS SANCTIONING THE DEATH PENALTY

The paramount goal of sentencing is the imposition of justice. Sometimes, justice is dismissing a charge, granting a plea bargain, expunging a past conviction, seeking a prison sentence, or—in a very few cases, for the worst of the worst murderers—sometimes, justice is death....A drug cartel member who murders a rival cartel member faces life in prison without parole. What if he murders two, three, or 12 people? Or the victim is a child or multiple children? What if the murder was preceded by torture or rape? How about a serial killer? or a terrorist who kills dozens, hundreds or thousands? The repeal of the death penalty treats all murders as the same. Once a person commits a single act of murder, each additional murder is a freebie. That is not justice.¹³ The common backing of capital punishment is due to the belief that-

- It serves as a means of deterrence. In the absence of such strict penalties, the already existing criminal activities will become uncontrolled.
- It evens the gravity of crime with severity of punishment, thereby giving the society a sense of reassurance and resolution.

¹⁰ Amnesty International, *Death Penalty*, Amnesty International <https://www.amnesty.org/en/what-we-do/death-penalty/> (last visited Feb. 20 2026).

¹¹ Amnesty International Global Report, *Death Sentences And Executions 2023*, at 41, AI Index No. ACT 50/7952/2024 (2024), <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.

¹² Amnesty International Global Report, *Death Sentences And Executions 2023*, at 42, AI Index No. ACT 50/7952/2024 (2024), <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.

¹³ The Editors of ProCon, *Death Penalty: Should Death Penalty Be Legal*, Britannica (Feb. 5, 2026) <https://www.britannica.com/procon/death-penalty-debate#ref396490>.

DISSENTING VIEWS ON DEATH PENALTY

- Death penalty once executed becomes irrevocable. It has an expected exposure of an innocent life, which cannot be negated.
- It promotes a false sense of deterrence among society and is against a individuals basic human right to be alive.
- Many convicts become successful in evading the capital punishment by the power of pardoning or by means of appeal.

The rationale of Indian Criminal Law upholds the validity of capital punishment in certain special circumstances.¹⁴ However, despite the presence of stringent penalties, the crime rates continue to rise alarmingly. According to the reports of National Crime Records Bureau, there is a significant acceleration in the rates of crimes against women from 3,37,922¹⁵ incidences in 2014 to 4,45,256¹⁶ cases in 2022, which is an hike of 31.76%. Out of the 4,45,256 cases, 31,516¹⁷ cases stand of rape alone, amounting to 7.08% of the total crime rate against women. The question arises upon the potency of punishments alone to bring an end upon the rape culture, however the absence of which would worsen an already worse situation. This can be done by overthrowing the very foundational structure of society embodied deep within its mental framework, as strengthened by paternalistic view of masculine authority.

LEGAL AND SOCIETAL RECONSTRUCTION

*Society is a means for the protection of men against the consequences of their own untrammelled natures*¹⁸. The various means that can be coupled with penalties are-

a) Implementing sexual education in the curriculum

According to the 2022 reports of the National Crime Records Bureau, 1130¹⁹ occurrences of juvenile apprehension in offence of rape were documented. The high number of juvenile offenders in rape cases underscores the need for implementing urgent educational reforms. Sex education is a comprehensive knowledge that imbibes the young mind with the ability to take informed decisions, makes them aware of their sexuality, educates upon reproductive health and wellbeing, and most importantly on how to build a strong and healthy relationship with their

¹⁴ Bachan Singh v State of Punjab (1982) 3 S.C.C 24.

¹⁵ National Crime Records Bureau, Incidence & Rate of Crime Committed Against Women During 2014.

¹⁶ National Crime Records Bureau, Crime against Women (IPC+SLL) - 2020-2022 1(2022).

¹⁷ National Crime Records Bureau, Cases Registered under Rape-2022 4(2022).

¹⁸ William Ernest Hocking, *Human Nature and its Remarkings* 48 (1923).

¹⁹ National Crime Records Bureau, Juveniles Apprehended - IPC Crimes (Crime Head, Age Group & Gender-wise) – 2022 1(2022).

surroundings. The United Nations' Technical Guidance prescribes that sex education schemes must be aligned with the academic curriculum which includes diverse discussions on sexual health during one's formative years. It includes the concept and importance of consent, puberty, human relationships, social unit of family, emergence of pregnancies, HIV like sexual infections etc.²⁰

b) Negotiating low conviction rates

In the words of Cesare Beccaria, prevention of crime can be done effectively not by the stringency of penalties, but upon the precision of a punishment, and the assurance attached to being punished inevitably, notwithstanding the gravity of a punishment, attached with the relief of not being punished at all.²¹ In India, 6037²² persons were convicted of rape, as against 33750²³ charge sheets filed in the year 2022. It is therefore desirable for the nation that the judicial system of the country remains proficient and just. By ensuring an adequate evidence collection, one can effectively identify the wrongdoer, the presence or absence of free consent, differentiation of false allegations from real ones by means of sexual assault forensic examination.

The Hathras case: A clear example of evidence mishandling - Four men who brutally gang raped and murdered a 19 year old Dalit girl, fled free from the charges on March 2, 2023 where the main accused was awarded a punishment under Section 304 of the India Penal Code, 1860²⁴ (Now Section 105 of Bhartiya Nyaya Sanhita, 2023²⁵) and under the Schedule Caste and Schedule Tribes Act, while all charges against the other three accused were thrown out. There was a gross manhandling by the police which subsequently led to collection of semen, 14 days after the incident took place. Such collection must however optimally occur between 72-90 hours of actual crime, where the victim hasn't excreted or bathed.²⁶ Thus, it becomes crucial for the medical evidences to be collected without delay for administering justice and accurate results.

²⁰Comprehensive Sexuality Education, World Health Org., <https://www.who.int/news-room/questions-and-answers/item/comprehensive-sexuality-education> (last visited Feb. 21, 2026).

²¹Cesare Beccaria, *On Crimes and Punishments* 93 (David Young Trans., Hackett Publ'g Co. 1986) (1764).

²² National Crime Records Bureau, *Disposal of Persons Arrested for Crime against Women (Crime Head-wise) – 2022*.

²³ Ibid.

²⁴ Indian Penal Code, Sec-304 (1860).

²⁵ Bhartiya Nyaya Sanhita, Sec-105 (2023).

²⁶ Hathras Rape-Muder Case: A Doomed Investigation to Begin With, *Frontline* (Feb. 28, 2023), <https://frontline.thehindu.com/news/hathras-rape-murder-case-a-doomed-investigation-to-begin-with/article66576304.ece>.

c) A swift legal system

Delay in delivering justice ultimately leads to reduction in deterrence. The punishment must be certain, and the trials must ensure that there is no prolonged delay in such crucial matters. The government must run fast tract courts for speedy trial of rape cases, so as to build up an efficient judicial system.

d) Discouraging sexist jokes and disregarding the objectification of women's body

Any kinds of sarcastic comments that demean the honour of a female, must be abolished in practice by the youth and the adults. No female should entertain such remarks, as they are disguised disrespect. All forms of relationships which simply objectify a women's body must be criticised and thereby avoided.

Survivor centric reforms - Justice isn't delivered solely by punishments. The government should assist the victim to rebuild their strength from scratch. They should provide them a required counselling, financial support, legal aid, medical care and treatment. The government should discourage the societal practise of victim blaming by promoting global movements such as he or she²⁷, which currently holds together more than 2 million men and all genders, advocating for gender equality.

CONCLUSION

The controversy on the efficacy of death penalty continues to thrive on moral grounds. Some argue that it is morally maintainable on the grounds of providing justice to the aggrieved, while some argue that it is morally condemnable. Justice in rape cases cannot be served by retribution alone. It can only be achieved when there is prevention, accountability and deterrence among the people. Without entirely resting upon penalties, the legislative and judicial authorities must impart means for the prevention of such inhuman acts. It is vital to weigh the options available, to foster a dignified and secure space for women. They must ponder upon why sexual violence against women continues to rise despite stringent penalties. The policymakers must emphasize upon the significance of educational and vocational reforms, raising awareness among the youth at the initial level. Thus, the future generations must be imbibed with the values of dignity, gender equality and accountability, to foster a just and dignified society for all.

²⁷ HeForShe Marks Ten Years with a Movement of 2 Million Gender Equality Activists, U.N. Women (Sept. 24, 2024), <https://www.unwomen.org/en/news-stories/press-release/2024/09/heforshe-marks-ten-years-with-a-movement-of-2-million-gender-equality-activists-welcomes-new-champions>.