
ANALYSING THE CONSEQUENCES OF CAPITAL PUNISHMENT IN CASES OF RAPE, RESULTING IN COMMITTING OF SUBSEQUENT CRIMES

Yashas Mohan, BA LLB, School of Law, Christ (Deemed to be) University

ABSTRACT

Capital punishment or death penalty, is a subject of global controversy. Advocates argue that it serves as a powerful deterrent against grave crimes, while opponents question its efficacy and ethical implications. This research specifically examines the effectiveness of capital punishment in deterring rape cases in India and considers the potential unintended consequences, such as inciting further criminal behaviour. In India, the legal framework governing rape is outlined in Sections 375 and 376A of the Indian Penal Code, 1860, which prescribe penalties, including the death penalty, for cases where rape leads to the victim's death or leaves them in a persistent vegetative state. This provision was introduced in 2013, primarily for cases involving the rape of girls under the age of 12. However, concerns have arisen regarding whether such severe punishment acts as an effective deterrent or potentially motivates criminals to commit additional offenses, given that capital punishment does not prioritize rehabilitation. The central question revolves around the effectiveness of capital punishment in preventing rape. Advocates argue that the fear of facing the death penalty can dissuade potential offenders and reduce the occurrence of such heinous crimes. However, assessing its effectiveness is complex, as rape cases often involve impulsive and irrational behaviour. Offenders may not be in a rational state of mind to fully comprehend the consequences, making the assumption of deterrence less convincing. Empirical evidence on the death penalty's effectiveness in deterring rape remains inconclusive. This research also explores whether capital punishment might inadvertently stimulate subsequent criminal behaviour, particularly in cases where the impulsive nature of rape does not align with rational decision-making. The study investigates whether the death penalty could, in some instances, act as a stimulus for individuals to commit further crimes, raising questions about unintended consequences. Overall, this research aims to provide insights into the complex issue of capital punishment's role in addressing sexual violence in India.

Keywords: Capital Punishment, Deterrence, Rape, Effectiveness, Heinous

Introduction

Capital punishment, or the death penalty, remains a contentious issue worldwide, with proponents arguing that it acts as a strong deterrent against heinous crimes, while opponents raise questions about its efficacy and ethical implications. This research seeks to analyse the effectiveness of capital punishment in deterring rape cases in India and explore whether it might have the unintended consequence of stimulating subsequent criminal behaviour.

The Indian Penal Code, 1860 defines Rape u/s **375**¹ and **376 A**² which provides for the punishment of inflicting death or resulting in a chronic vegetative condition with Rigorous Imprisonment for 20 years to *Imprisonment for Natural-Life* or **Death**. The above provision was added by *The Criminal Law (Amendment) Act, 2013*,³ which introduced *death penalty* as a punishment for the rape of a girl less than 12 years of age. By eliminating the victim, such punishment may merely stimulates the criminal to commit another crime. The procedure of capital punishment is not reformatory in nature. The ultimate objective of lawful punishment should be to keep perpetrators from perpetrating crimes in the future. In accordance with the Law Commission Report of 2015, there is *inconclusive evidence* regarding the effectiveness of capital punishment as means of deterring potential criminals.

The core inquiry revolves around the efficacy of capital punishment as a deterrent in cases of rape. Proponents argue that the fear of facing the ultimate penalty can dissuade potential offenders and reduce the incidence of such heinous crimes. They contend that the prospect of death would weigh heavily on the minds of individuals contemplating rape and lead them to reconsider their actions.

However, assessing the effectiveness of the death penalty as a deterrent is a complex task. Rape, as a crime, often involves impulsive and irrational behaviour. Offenders may not be in a rational state of mind to fully contemplate the consequences of their actions, rendering the assumption that they would be deterred by the death penalty less convincing. Additionally, empirical evidence on the effectiveness of the death penalty as a deterrent is inconclusive, further complicating the assessment of its practical impact in deterring rape.

¹ Indian Penal Code, 1860, §375, No. 45, Acts of Parliament, 1860, (India).

² Indian Penal Code, 1860, §376 A, No. 45, Acts of Parliament, 1860, (India).

³ The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013, (India).

This research also seeks to explore an equally important facet of the issue – whether capital punishment might inadvertently stimulate subsequent criminal behaviour. Concerns exist regarding the potential psychological impact of the death penalty on offenders, especially in a context where the impulsive nature of rape may not align with rational decision-making processes. The research will examine the possibility that the death penalty could, in some instances, act as a stimulus for individuals to commit subsequent crimes, thereby raising critical questions about the unintended consequences of this punitive measure.

To gain a comprehensive understanding of the subject, this analysis will consider the legal framework in India, empirical data on deterrence, and the ethical dimensions surrounding capital punishment in rape cases. It aims to contribute to the ongoing discourse on this critical issue and inform policy decisions aimed at addressing sexual violence in India.

Research Question

1. Analysing if Capital Punishment is an effective crime deterrent in case of rape in India?
2. Whether capital punishment acts as a stimulus for the offender to commit a subsequent crime, with special reference to Indian Penal Code, 1870?

Research Objective

1. The paper aims to analyse the impact of Indian rape law provisions and their relation to the increasing number of offenses.
2. The paper draws a parallel between the punishment for rape in other common law countries and the applicability of death penalty and further analyse its effectiveness as a deterrent in India.
3. Further, the paper looks into how the scope of rape laws have been widened over a period of time.
4. to examine the socio-economic factors and cultural beliefs that contribute to the prevalence of rape in India,
5. explore alternative solutions to the problem, such as education
6. to provide recommendations for policymakers and law enforcement agencies to effectively address the issue of sexual violence in India.

Research Methodology

The research methodology for this is a doctrinal study which involves a comprehensive review of existing literature, legal documents, and statistical data related to capital punishment for rape in India. This review will serve as the foundation for understanding the legal framework and societal dynamics surrounding marital rape. Additionally, qualitative research methods, such as interviews and surveys, will be employed to gather first-hand perspectives and experiences of individuals affected by rape, legal experts, and activists. These combined methods will provide a holistic view of the issue, facilitating a comprehensive analysis and critical evaluation. Ethical considerations, including informed consent and participant confidentiality, will be rigorously adhered to throughout the research process.

Chapter I - Philosophical Understanding of Capital Punishment

1.1 Theories Applicable

a. Proportional theory

This perspective asserts that punishment should be proportionate to the severity of the crime committed. In the case of capital punishment, proponents argue that it is appropriate for the most heinous crimes, where the harm caused justifies the ultimate punishment⁴. While some crimes may be severe, the proportionality of capital punishment is questioned when considering the potential for irreversible errors and the inhumanity of state-sanctioned killing, especially in countries where execution methods can be cruel and inhumane⁵.

b. Retributive theory

This theory emphasizes the concept of just deserts, asserting that offenders should receive punishment as a deserved consequence for their actions. Often prominently appeals to the principle of *lex talionis*, or “*the law of retaliation*”, of capital punishment that it satisfies the

⁴ Sitze, Adam. “Capital Punishment as a Problem for the Philosophy of Law.” CR: The New Centennial Review, vol. 9, no. 2, 2009, pp. 221–70. JSTOR, <http://www.jstor.org/stable/41949650>. Last Accessed on 3rd November 2023.

⁵ Kant and Capital Punishment Today Nelson T. Potter University of Nebraska, 2002, Last Accessed on 6th November 2023.

need for retribution in the face of heinous crimes⁶. Critics contend that retribution can be achieved through alternative means, such as long-term incarceration, restorative justice, or rehabilitation programs. They argue that seeking retribution through death undermines society's commitment to non-violent solutions and the potential for offender reform⁷.

c. Utilitarian theory

This perspective evaluates the consequences of punishment in terms of overall societal welfare. Proponents of capital punishment argue that executing dangerous offenders might prevent future harm and increase the overall happiness and safety of society. From a utilitarian perspective, capital punishment may not be justifiable as it can generate more negative consequences than positive ones⁸. Concerns about wrongful convictions, the cost of prolonged legal battles, and the psychological impact on those involved can outweigh any potential benefits of deterrence.

d. Preventive theory & Deterrence theory

The aim of this theory is to discourage potential offenders by making them fear the consequences of their actions. Proponents of capital punishment argue that the fear of execution can deter individuals from committing capital crimes, potentially leading to a safer society⁹. Capital punishment is viewed as a means to prevent convicted offenders from committing further crimes, especially in cases where there is no possibility of rehabilitation or societal reintegration¹⁰.

1.2 Rational to the object sought to be achieved

These theories collectively underscore the ethical concerns surrounding capital punishment, supporting the view that alternative approaches to criminal justice, such as life imprisonment, restorative justice, and rehabilitation, maybe more just, humane, and in line with

⁶ Capital Punishment; The Internet Encyclopedia of Philosophy (IEP) (ISSN 2161-0002), Last Accessed on 3rd November 2023.

⁷ Kant, Immanuel. *The Metaphysical Elements of Justice, Part I of The Metaphysics of Morals*. (1797) Translated by John Ladd. Indianapolis: Bobbs-Merrill, 1965, Last Accessed on 3rd November 2023.

⁸ Bentham, Jeremy. *An Introduction to Principles of Morals and Legislation* (1789, 1823). Last Accessed on 5th November 2023.

⁹ *Supra* Note 3.

¹⁰ Beccaria, Cesare. *On Crimes and Punishments*. (1764) Trans. David Young. Indianapolis: Hackett Publishing Company, 1986.

contemporary values¹¹. By examining the different theories, the paper establishes a theoretical framework to understand the motivations behind capital punishment and its intended outcomes, such as deterrence, retribution, or prevention.

The paper can critically assess the effectiveness of capital punishment as a deterrent to subsequent crimes based on deterrence theory. It can analyse empirical evidence and studies to determine whether the fear of execution actually prevents offenders from committing future crimes. By exploring the retributive theory and proportional theory, the paper can delve into the ethical implications of capital punishment. This can include discussions on the morality of taking a life as punishment and whether it aligns with societal values and human rights principles¹².

The utilitarian theory can be applied to weigh the overall societal welfare in terms of the impact of capital punishment on subsequent crime rates, the cost of maintaining death penalty systems, and the potential risks of wrongful executions. The exploration of theories that oppose capital punishment can inform the paper's discussion of alternative approaches to reducing subsequent crimes by offenders. This could involve exploring the potential benefits of restorative justice, rehabilitation programs, or other forms of long-term incarceration. The examination of different theories allows the paper to consider international perspectives on capital punishment, comparing how different countries approach the issue and its impact on crime rates.

By drawing on these theories and their implications, the paper can develop a more comprehensive understanding of how offenders might commit subsequent crimes in the context of capital punishment. It allows for a nuanced analysis of the multifaceted aspects of the death penalty and its potential impact on criminal behaviour, shedding light on whether it truly serves as a deterrent or contributes to a cycle of violence. Additionally, it enables the exploration of alternative strategies that may be more effective in reducing subsequent crimes and promoting a just and safe society¹³.

¹¹ Theories Of Punishment With Special Reference To Capital Punishment, 2020 JETIR October 2020, Volume 7, Issue 10 www.jetir.org (ISSN-2349-5162), Last Accessed on 3rd November 2023.

¹² Rousseau, Jean Jacques. *On the Social Contract*. (1762) Trans. Donald A. Cress. Indianapolis: Hackett, 1987, Last Accessed on 3rd November 2023.

¹³ The Philosophy of Death Penalty, Deogaonkar, R Anant, *International Journal of Criminal Justice Science; Thirunelveli* Vol. 15, Last Accessed on 3rd November 2023.

Chapter II - The Current Standpoint of Law

2.1 Enactment of Section 376-A

Section 376A of the Indian Penal Code, dating back to its enactment on October 6, 1860, addresses offenses leading to the death or a persistent vegetative state of the victim. This legal provision pertains to individuals who commit a crime punishable under Section 376, either under sub-section (1) or sub-section (2), and during the commission of such offense, cause injuries that result in the woman's death or leave her in a persistent vegetative state.

The punishment prescribed for this particular offence is rigour and it will not be less than 20 years, which can also be extended up to the courts holding it to be life imprisonment, which is holding the guilty person imprisoned up to his remaining life,

Section 376A is categorized as a cognizable offense, meaning it can be investigated and documented by law enforcement without requiring a warrant. It is also a non-bailable offense, implying that the accused cannot secure release on bail as a matter of right. Cases under this section are tried in the Court of Session, a higher criminal court. Moreover, Section 376A is considered non-compoundable, meaning that the victim cannot withdraw the charges against the accused, as it involves crimes of a serious nature. This legal provision falls under the jurisdiction of the Ministry of Home Affairs, specifically within the Department of Internal Security.

2.2 With reference to the contemporary stand of Law

Section 376A was incorporated into Indian law through the Criminal Law (Amendment) Act of 2013 in response to the widespread public outrage and protests that erupted following the heinous gang rape in Delhi in December 2012, often referred to as the Nirbhaya case. This incident ignited a national dialogue about the insufficiency of existing legal measures in deterring potential rapists and the urgent need for a more stringent legal framework to address sexual offenses and safeguard the rights of victims.

The amendment was specifically designed to deal with cases where the rape resulted in the victim's death or left them in a persistent vegetative state. It was a recognition that such cases involved a level of harm and brutality that surpassed typical sexual offenses, necessitating

more severe consequences for the perpetrators. Before the introduction of Section 376A, there was a noticeable gap in the legal provisions that could adequately address situations where rape led to death or a vegetative state. This gap highlighted the importance of establishing specific legal provisions that take into account the unique circumstances of such cases and provide justice to the victims and their families.

By introducing stricter penalties, including the possibility of life imprisonment and even the death penalty in certain circumstances, the amendment aimed to enhance the legal protection of victims and send a clear message about the gravity of consequences awaiting those who committed such horrific crimes.

The introduction of Section 376A not only signified a commitment to addressing sexual violence but also conveyed a strong message to society that the government was taking proactive steps to protect the rights and safety of its citizens.

This amendment was part of a broader effort to combat gender-based violence and create a legal framework that acknowledged the specific vulnerabilities faced by women and girls in Indian society. It reflected changing social norms and the growing recognition of the importance of safeguarding the rights of women and protecting them from violence and harm¹⁴.

The public demand for action against sexual offenders exerted considerable pressure on policymakers to respond with tangible legislative changes that demonstrated a commitment to addressing sexual violence and ensuring justice for the victims.

However, the introduction of the death penalty option under Section 376A raised complex ethical questions about striking a balance between justice for victims and concerns related to human rights, wrongful convictions, and the appropriateness of capital punishment for any crime¹⁵. It sparked debates and discussions on the ethical dimensions of punitive measures in cases of such severity.

¹⁴ Stein, Richard S. "Important Cases of 1997." *Judicial Review*, 1998, <https://doi.org/10.1080/10854681.1998.11426992>. Last Accessed on 2nd November 2023.

¹⁵ The Pan-American Post: Rouseff Blasts NSA Spying at UN General Assembly. <http://www.thepanamericanpost.com/2013/09/rousseff-blasts-nsa-spying-at-un.html>. Last Accessed on 3rd November 2023.

2.3 General Perspectives on Capital Punishment

Critics raise valid concerns about the efficacy of the death penalty as a deterrent for potential rapists. They argue that rape is often driven by impulsive and psychologically complex factors, rendering the assumption that potential offenders would be dissuaded by the threat of capital punishment less convincing. The idea that potential rapists weigh the consequences of their actions rationally is disputed, given the emotional and impulsive nature of such crimes.

Another critical issue is the inherent risk of executing innocent individuals, particularly in cases of rape. Rape cases often involve circumstantial evidence or witness testimonies, and the legal system is not immune to errors. Wrongful convictions have occurred in the past, and executing someone later found to be innocent represents a grave and irreversible injustice.

Many experts and human rights advocates argue that a more effective approach to preventing sexual violence lies in addressing its root causes and focusing on rehabilitation. They contend that factors like socio-economic conditions, limited access to education, cultural attitudes, and psychological issues contribute to criminal behaviour. A comprehensive strategy encompassing education, awareness, mental health support, and counselling could address the underlying issues that lead to rape more effectively.

The potential misuse of the death penalty is also a significant concern if not executed fairly and transparently. In some cases, it might be manipulated to settle personal scores, target specific groups, or serve political interests. Such misuse not only erodes the credibility of the legal system but also perpetuates injustice and inequality.

Moreover, the death penalty presupposes a high level of certainty in criminal convictions, which may not always be achievable. In rape cases, establishing guilt beyond a reasonable doubt can be challenging due to factors like a lack of conclusive evidence, conflicting testimonies, and the private nature of the crime. The irrevocable nature of the death penalty means that any doubts about guilt could result in a tragic miscarriage of justice.

In many societies, rape victims already encounter significant stigma and social isolation. The introduction of the death penalty might further discourage reporting of rape due to the fear of causing someone's death, even when the victim's testimony is truthful. This could perpetuate

a culture of silence and impunity.

Rapists can have various motivations, including seeking power and control or suffering from psychological disorders. Addressing these underlying motivations through rehabilitation and therapy may have a more lasting impact on preventing future offenses than relying solely on the death penalty as a punitive measure.

Focusing exclusively on imposing the death penalty may divert attention from systemic issues that contribute to sexual violence, such as gender inequality, lack of comprehensive sex education, and limited resources for victims. An exclusive focus on punishment may neglect the broader societal changes needed to prevent rape.

Additionally, implementing the death penalty involves significant financial and administrative resources, including legal proceedings, appeals, and maintaining death row facilities. Allocating these resources to prevention programs, victim support services, and improving the overall criminal justice system may yield more positive outcomes in the long run.

Rape cases are often complex, involving factors like consent, mental capacity, age, and the relationship between the victim and the perpetrator. The death penalty oversimplifies these complexities by reducing a multifaceted crime to a binary choice between life and death, potentially leading to injustices.

Chapter III - Outreach Statistical point of View

3.1 Overview of the Understandings

Opposing to common belief, recent research conducted in the United States of America suggests that one execution may deter as many as Eighteen murders¹⁶. However, it is important to note that isolated instances of the death penalty do not necessarily lead to deterrence¹⁷. Rather, it is when the number of executions reaches a certain threshold that a deterrent effect

¹⁶ Paul H. Rubin & Ors., Does Capital Punishment have a deterrent effect? <http://ssrn.com/abstract=259538>. Last Accessed on 3rd November 2023.

¹⁷ Joanna M. Shepherd, Deterrence versus Brutalization: Capital Punishment's differing impacts among states, Emory Legal Scholarship Working Paper No. 1, 2004. Last Accessed on 3rd November 2023.

becomes evident. This perspective argues that it is the duty of the state to save the maximum number of lives.

In contemporary criminology, the focus of the criminal justice system and punishment has shifted from physical harm and retribution to a more rehabilitative and human rights-oriented approach¹⁸. Instead of physical torture and mutilation, modern criminal justice recognizes the rights of offenders and emphasizes their reformation. Institutions like juvenile homes are designed to treat young offenders differently from adults, and prisoners are offered education and programs aimed at encouraging good behaviour.

These initiatives reflect the evolving philosophy of punishment in today's world, focusing on rehabilitating criminals in a way that enables them to lead meaningful and productive lives upon their release. Despite various protests and awareness programs in India, the rate of rape incidents in the country continues to rise. According to the National Crime Records Bureau, the number of reported rapes in India increased from 24,923 in 2012 to 33,707 in 2013¹⁹.

Some argue that the conviction rate in rape cases is not sufficiently discouraging to potential offenders. This paper primarily focuses on the concept of general deterrence, which comprises two key components. The first one pertains to the deterrence effect of the likelihood of getting convicted and how this probability can dissuade individuals from committing a crime. A higher likelihood of conviction results in a more significant deterrence factor. The second aspect involves the deterrence of the severity of punishment, where potential offenders weigh the potential consequences, they might face upon conviction against their actions.

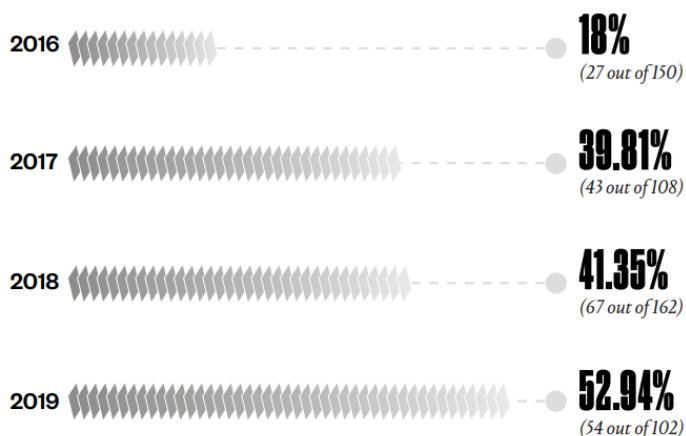
Several studies indicate that deterrence through conviction is more effective than deterrence through the severity of punishment. However, it's crucial to acknowledge that the deterrence theory assumes that all individuals act rationally and assess the risks before engaging in criminal behaviour. This underlying assumption forms the basis of the deterrence concept, but it may not fully encompass the intricacies of human behaviour and decision-making²⁰.

¹⁸ MICHEL FOUCAULT, *DISCIPLINE AND PUNISH*, Vintage Books (1977).

¹⁹ 93 women are being raped in India every day, NCRB data show, NCRB Data, <https://timesofindia.indiatimes.com/india/93-women-are-being-raped-in-india-every-day-ncrb-data-show/articleshow/37566815.cms>. Last Accessed on 3rd November 2023.

²⁰ Cesare Beccaria, *On Crimes And Punishment*, Hackett Publishing, (1986).

3.2 A Statistical Point of View

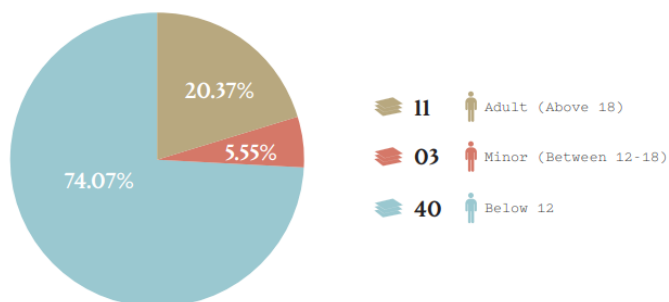


As per the latest report from Project 39A at the National Law University, Delhi, titled "Death Penalty in India: Annual Statistics 2020,"²¹ there were 77 death sentences imposed by trial courts in 2020, involving 76 prisoners. This marked a notable decrease when compared to 2019, during which 103 death sentences were handed down. Despite the decrease in the total

number of death sentences, the report highlighted a concerning trend – an increasing proportion of these sentences were related to cases of sexual violence.

In 2020, nearly 65% of the total death sentences delivered were linked to cases involving

Age of Victim in Sexual Offences Cases involving Death Sentence in 2019



In 2019, 39.21% of the total death sentences (40 out of 102) are cases of murder involving sexual offences with victims below 12 years of age.

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sexual violence. Within this category, it was observed that in 48% of the cases, the victims were minors below the age of 12. This data underscores a disturbing shift towards a higher incidence of capital punishment in cases related to sexual violence, particularly those involving children.

“This indicates that sexual violence, particularly child rape, is increasingly influencing the implementation of death penalty in India,” the report observed.

An overview of the same clearly indicates that at least 24 death sentences for the offence of murder and 2 cases in which offences was of kidnapping and murder.

Both Maharashtra and Andhra Pradesh have proposed to introduce the death penalty²² for

²¹ Project 39A — Annual Statistics 2020.

²² <https://thewire.in/women/maharashtra-bill-proposes-death-penalty-for-heinous-crimes-against-women-children>.

non-homicidal rape of adult women and acid attacks.

Chapter IV - Judicial Aspect

4.1 Development of deterrence in the judicial Scene

Analysing the Development of Capital Punishment in India Through the Lens of the Hon'ble Supreme Court Since the 1980s

In the wake of the Bacchan Singh case, the stance of the Hon'ble Supreme Court of India on capital punishment has undergone a significant transformation, offering a unique perspective on the subject since the 1980s. The Law Commission's 35th report²³, addressing the type of Execution of capital punishment, played a crucial role in shaping the legal landscape surrounding capital punishment. This report endorsed the legality of capital punishment, arguing that in cases of grave crimes, society registers a profound sense of disapproval. By reserving the death penalty for the crime of murder, the legal system skilfully interweaves the principles of retribution and deterrence.

The Law Commission's position signifies the law's recognition of the collective moral sentiment of society when confronted with heinous crimes. By designating the death penalty for the most extreme offense of murder, the legal framework underscores the significance of retribution and deterrence as essential elements in addressing such acts. In essence, the law acknowledges that certain crimes are of such magnitude that they demand the most severe form of punishment, both as a retributive response and as a preventive measure to discourage potential offenders.

Nonetheless, while it is imperative to address the concerns voiced by activists and opponents of the death penalty, the Supreme Court's warning in the *Mahesh v. State of MP*²⁴ case cannot be ignored. The Court cautioned that imposing a lesser punishment than death in appropriate cases would cast aspersions on the credibility of the country's criminal justice system.

This admonition serves as a reminder of the intricate balance that the judiciary must

²³ 35th Report, Law Commission of India (1982).

²⁴ Mahesh v. State of MP, AIR 1987 SC 1346.

maintain when dealing with capital punishment cases. It acknowledges the need to address concerns and arguments against the death penalty, while underscoring the equal importance of upholding the integrity and effectiveness of the criminal justice system. The Court's stance emphasizes that the ultimate objective is to maintain a robust and reliable criminal justice system, even in the midst of ongoing debates surrounding capital punishment.

4.2 Interpretive Aspect of the Judiciary

The Supreme Court of India has consistently emphasized the fundamental objective of punishment, which is to deter crime from occurring. The imposition of punishments aims to lend credibility to the threat of legal consequences²⁵. It also cited Professor Earnest Van Den Haag²⁶, who highlighted that through punishment, a murderer learns that society deems them unworthy of living and that they have expelled themselves from the community of the living. This self-inflicted degradation is the essence of the punitive nature of execution.

In subsequent years, the Supreme Court reaffirmed the deterrent effect of the death penalty and its social utility, asserting that the time was not ripe for its abolition²⁷. In the recent case of *Bantu v. State of UP*²⁸, the Court strengthened the argument put forth in the above case of *Mahesh*²⁹, and reminded the courts of their duty not to show undue mercy to criminals by imposing inadequate sentences. The Court emphasized that showing undue sympathy in the form of inadequate sentences could undermine public confidence in the legal system's effectiveness and the stability of society under such grave threats. Therefore, it is the duty of every court to impose appropriate sentences in consideration of the nature of the offense and the manner in which it was committed³⁰.

The Court underlined that individuals planning to commit "honour killings" should be aware that the gallows await them. This shift in the approach towards the death penalty signifies a heightened emphasis on its deterrence value in addressing particularly abhorrent and socially detrimental acts.

²⁵ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.

²⁶ Ernest van den Haag, *The Ultimate Punishment*, 1986 HLR Vol. 99 p. 1699.

²⁷ *Smt. Shahi Nayar v. Union of India*, AIR 1992 SC 395.

²⁸ *Bantu v. State of Uttar Pradesh*, (2008) 11 SCC 113.

²⁹ *Supra* note 4.

³⁰ *State of Madhya Pradesh v/s Surendra Singh*

In conclusion, the Supreme Court of India has consistently reiterated the deterrence aspect of punishment and its pivotal role in the criminal justice system. The Court's stance, as exemplified in various cases, underscores the importance of the death penalty as a deterrent and its continued relevance in certain extreme circumstances to maintain the integrity of the legal system and societal order³¹.

The overwhelming trend of criminals convicted of capital crimes advocating for life sentences over the death penalty serves as a compelling indicator of the profound fear associated with the prospect of execution. Criminals go to great lengths to avoid the possibility of losing their lives, evident in the numerous appeals to the President for clemency. This underscores the gravity of the fear of losing one's life and the extent to which a convict will explore all available options to escape this fate. The courts, in upholding the death penalty, acknowledge that justice requires fitting punishment for the crime, reflecting the public's abhorrence of the heinous acts committed³².

However, the court has also at times rejected the death penalty in cases of rape and murder, citing the criteria of not meeting the threshold of the "rarest of rare" circumstances: Determining a middle ground or a set threshold for assessing whether a case qualifies for capital punishment is essential. This threshold, often associated with the "rarest of rare" category, is crucial in evaluating whether the death penalty is warranted. This amendment emphasizes the urgency in addressing cases related to sexual violence, reflecting the growing societal concern about the timely dispensation of justice in such cases.

The Supreme Court has witnessed a variety of cases where the accused have been acquitted, often relying on the argument that the victim was habituated to sexual intercourse. Notably, the case of Tuka Ram³³ stands as one of the most infamous instances of such an acquittal. The same reasoning has been applied in several cases, including *Devinder Singh and Ors. v. State of Himachal Pradesh*³⁴, *Prem Prakash v. State of Haryana*³⁵, and *State of Punjab v. Ramdev Singh*³⁶. However, a significant shift in perspective occurred in 2014 when the

³¹ Bhagwan Das v. State (NCT of Delhi), (2011) 6 SCC 396.

³² Dhananjay Chatterjee v. State of West Bengal, (1994) 2 SCC 220.

³³ Tukaram v/s State of Maharashtra, AIR 1979 SC 185.

³⁴ Devinder Singh and Ors. v. State of Himachal Pradesh, AIR 2003 SC 3365.

³⁵ Prem Prakash v. State of Haryana, (2011) 11 SCC 687.

³⁶ State of Punjab v. Ramdev Singh, (2004) 1 SCC 421.

Supreme Court, in *Roshan Khan*³⁷ ruled that the mere fact that the girl was habituated to sexual intercourse was insufficient grounds to disprove the occurrence of rape.

This strongly suggests that in such cases, the sexual intercourse was likely non-consensual or forced, as it is difficult to assume that such severe injuries would arise from consensual sexual activity.

The assurance of conviction is of paramount importance. The mere presence of the death penalty as a potential punishment within the legal framework serves as a deterrent to potential offenders. Thus, it is clear from this discussion that India requires the presence of capital punishment as a response to cases involving fatality or persistent vegetative states, ensuring that justice is served and potential offenders are deterred.

Conclusion

In conclusion, the question of whether capital punishment effectively deters rape in India remains a topic of ongoing debate and scrutiny. While the introduction of Section 376A in response to the *Nirbhaya* case reflected a strong societal commitment to addressing sexual violence, the effectiveness of capital punishment as a deterrent in rape cases is a complex issue.

Moreover, concerns about the ethical implications of capital punishment, the potential for wrongful convictions, and the focus on punitive measures rather than addressing underlying social issues make it necessary to evaluate alternative approaches to combatting sexual violence comprehensively.

A more holistic strategy that addresses the root causes of rape, including socio-economic conditions, education, cultural attitudes, and psychological factors, may prove more effective in preventing such crimes. This approach could include education, awareness programs, mental health support, and rehabilitation to address the complex motivations behind sexual offenses.

In conclusion, the effectiveness of capital punishment as a crime deterrent in rape cases in India is a multifaceted issue that warrants ongoing examination and consideration of alternative approaches to create a safer and more just society for all.

³⁷ *State of Rajasthan vs Roshan Khan & Ors*, (2014) 2 SCC 476.