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RETHINKING DETERRENCE IN INDIAN RAPE LAWS: BEYOND HARSHER PUNISHMENTS

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Abstract

Rape is associated with person's sense of safety and self-worth. Law making process in India has made more stricter punishments and stringent laws for rape, in order to create fear. The Deterrence theory is prevalent in Indian system. But the National Crime Records Bureau² data doesn't reflect any significant change in rape cases. So, is this the high time to learn from past mistakes and change the approach?

This paper flows from change in Indian rape laws. It also highlights two landmark cases, which shook the country the Mathura Rape Case and the Nirbhaya Case. These cases changed entire narrative and confronted hard truths about consent, justice, and the treatment of survivors. From the virtue of these cases, deeper social issue reflected about deep seated beliefs regarding gender, consent and power.

To understand all this, the study travels from the evolution of Indian rape laws, to major court decisions and Law Commission reports, and dives into crime data. By lining up India's reforms next to those in Sweden, the UK, and the US, the analysis spotlights what sets India apart—and what lessons, good or bad, come from overseas.

Keywords: Rape Laws, Deterrence Theory, Consent, Penal Reform, Sexual Violence.

Introduction

The word "Rape" finds its origin in the Latin term 'Rapere' which means, snatching, grabbing, and carrying away.³ Sir Matthew Hale, an eminent jurist defined Rape as being a "vaginal penetration by a man over a female above the age of 10 years and against her will."⁴ Following

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² National Crime Records Bureau, Crime in India 2022 (2023); National Crime Records Bureau, Crime in India 2023 (2024); National Crime Records Bureau, Crime in India 2024 (2025)

³ Shaunak Sharma & Apporva Singh, Shifting Paradigm: An Analysis of Evolution of Rape Laws in India, 6(3) Int'l J. L. Mgmt. & Human. 3690, 3693 (2023).

⁴ s Kumar & Tanaya Kamlakar, Deconstructing Anomalies: Rethinking Rape Laws Through Lens of Evolving Jurisprudence on Gender and Sexuality in India, ILI L. Rev. (Summer 2024)

the adoption of the common law system in India, Lord Macaulay formalized and clearly defined penal provisions relating to rape under the IPC to ensure uniform application, thereby laying the foundation for the legal framework governing sexual assault under the Indian criminal law.⁵

Today, in India, Section 63 of the Bharatiya Nyaya Sanhita provides the definition of rape,⁶

“A man is said to commit "rape" if he

- a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:
 - (i) against her will;
 - (ii) without her consent;
 - (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;
 - (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
 - (v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;
 - (vi) with or without her consent, when she is under eighteen years of age;
 - (vii) when she is unable to communicate consent.”⁷

⁵ Id.

⁶ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India).

⁷ Bharatiya Nyaya Sanhita, No. 45, Acts of Parliament, 2023, § 63 (India)

Societal Perspective towards rape:

Historically, the law was based on a system where men were, in charge and women were treated like they were owned by men. Although women enjoyed relatively greater status during the Vedic period, societal perceptions gradually shifted, and women increasingly came to be viewed as frameworks of male ownership and control. Consequently, sexual violence came to be treated less as a denial of women's bodily agency and more as an offence against family honour and male authority. Such perceptions reinforced gender inequality and shaped legal and social responses to rape, prioritising patriarchal values over women's rights and agency.⁸

Literature Review

Following literature has been reviewed:

1. Rape Laws in India by Dr. Dipa Dube⁹

'Rape Laws in India' analyses core issues in rape laws in force in India. The subject has been dealt with comprehensively, while unearthing the historical influences in the laws, revealing patriarchal overtones, and criticizing the conventional and conformist traditions of judicial decision making. The entire development of the law has been traced with emphasis on shifting concerns and focus. Emerging issues in rape laws in India and practicable suggestions find a place in the book. Overall, it attempts an informative and critical study of the subject from diverse perspectives.

2. An Extensive Study Of Rape Laws In India - Tejaswini Mallick¹⁰

This paper gives a theoretical understanding of anti-rape laws and its evolution, from being a property crime to crime against the bodily integrity of a woman. This paper traces its origin from the English common law and goes on to analyze the landmark cases from Mathura rape case to the recent Kathua rape case which brought about the progressive amendments in anti-rape laws under the Indian Penal Code. It concludes with the suggestion for change from not just the legislative level but also from the social and cultural level.

3. Consent Matters: A Comparative Study of Rape Laws in India, UK and Canada - Soyonika Gogoi¹¹

In Rape, the private and personal space of a women is violated. It's said to be an

⁸ Dube, supra note, at 18-22

⁹ Dipa Dube, Rape Laws in India (LexisNexis Butterworths 2008).

¹⁰ Tejaswini Mallick, *An Extensive Study of Rape Laws in India*, Manupatra (2021).

¹¹ Soyonika Gogoi, *Consent Matters: A Comparative Study of Rape Laws in India, UK and Canada*, 5 (1) IJLMH Page 1395 - 1405 (2022), DOI: <https://doi.org/10.1000/IJLMH.112670>.

invasion of a woman's body. Over the years, the Indian rape laws have evolved leading to legislative transformation and received various judicial interpretations. An attempt is made in this paper to do a comparative analysis of the statutory rape laws in the United Kingdom, Canada and India. International conventions drafted for protection of any kind of violence against women and girl child is also included in the paper. The conclusion comprises the overview of the study and the drawbacks in the legislations of each country and their way out.

4. Why do men rape? Understanding the determinants of rapes in India - Sharanya Basu Roy and Sayantan Ghosh Dastidar¹²

The study examines that there is no impact of education and economic growth, pointing towards a larger role of social and cultural factors in this context. The effect of deterrence variables (such as the number of police stations) is non-existent, possibly pointing towards the incompetency of the police force. Social attitude towards women emerged as the most robust predictor of the extent of rapes in India. The paper argues that the fundamental problem lies in the misogyny deeply rooted in the Indian society.

Objectives

1. To examine the effectiveness of deterrence-based punishments in Indian rape laws.
2. To evaluate the role of consent-based and societal reforms in addressing sexual violence.

Hypothesis

Despite the strengthening of punishment sanctions in Indian rape laws, there has not been any considerable decrease in the cases of rape; thus, deterrence based solely on punishment has failed to produce effective results and has to be supported by changes in society and institutions as well.

Research Methodology

For this study, a doctrinal approach is applied in order to explore the effectiveness of deterrence-based punishment in the rape laws in India using both comparative and analytical methods. In terms of the sources of information used in this study, both primary and secondary

¹² Basu Roy, S., & Ghosh Dastidar, S. (2018). Why do men rape? Understanding the determinants of rapes in India. *Third World Quarterly*, 39(8), 1435–1457. <https://doi.org/10.1080/01436597.2018.1460200>

sources will be employed, the former comprising statutory sources like Bharatiya Nyaya Sanhita, judgments from different courts, Law Commission Reports, statistics provided by the National Crime Records Bureau, while the latter will consist of monographs, research papers, journals, reports, and literature. Furthermore, a comparative analysis of the legal strategies pursued in Sweden, the United Kingdom, and the United States will be carried out in this paper.

Dual Foundational Cases and Subsequent Changes in Legislation Judicial Approach

Prior to the Mathura Rape Case:

For Rape cases, 1950s to 1970s era can be highlighted for the court's narrower and rigid viewpoint on consent. Judges used to show lack of trust in the cases of rape of adult or married women. They had a viewpoint that if a woman has not retaliated then she consented for rape. Take **Gopi Shanker v. State of Rajasthan**¹³ as an example. The Medical evidence was supporting the victim's story, facts were also in the victim's favour. But the Judges twisted her actions and suggested that she agreed for Rape. Just because, she didn't show resilience and it was interpreted as silent approval rather than exhaustion. This case is a classic example of, how system failed to support its victim.

The Mathura Rape case:

In **Tukaram & Ors. v. State of Maharashtra, 1972**¹⁴, The Mathura was young Adivasi woman, who alleged that, she was raped under police custody. The trial court dismissed the matter by showing Mathura's consent and labelling her as "Habituated to sexual intercourse". Whereas, High court overturned the lower courts decision. But at the end, Supreme Court said, absence of injuries or force are "proof of consent". Public outrage was erupted. The point of debate came forward that, resistance is not similar to agreement. The submission can be out of fear.

The Criminal Law (Second Amendment) Act, 1983:

The protest led to introduction of Criminal Law (Second Amendment) Act, 1983. The real safeguards were created. New sections like custodial rape, and importantly, Section 114A of the Indian Evidence Act shifted the burden of proof from victim to on accused. These reforms put positive impact on society from blaming victims to holding perpetrators accountable. Hence

¹³ Gopi Shanker v. State of Rajasthan, 1966 S.C.R. 152 (Raj. H.C.)

¹⁴ Tukaram & Anr. v. State of Maharashtra, (1979) 2 S.C.C. 143

making it clear that, Submission or lack of resistance is not similar to consent.¹⁵

For deeper understanding, after few years, **84th Report on Rape and Allied Offences (1980)**¹⁶ was presented. The main focus was on the topic of consent, Burden of proof and Conducting trials. The Commission declared rape as “suppression of liberty”. The Commission also focused on creating more victim centred system. They clarified that, consent obtained from coercion cannot be a free consent. Also widened the scope of coercion by including emotional intimidation, threats to reputation and property apart from physical threats.

The Nirbhaya case:

The 2012 Delhi gang rape **Mukesh & Anr. Vs. State (NCT of Delhi)**¹⁷ shook the system. The victim suffered brutal sexual assault. Entire country witnessed public protest in support of victim and deep rooted issues in law like, inefficiency of law to identify specific sexual assault and absence of strict provisions for gang rape were highlighted. Out of pressure, the government set up, Justice Verma Committee for recommending changes.

Justice J.S. Verma Committee:

The committee gave progressive suggestions like, giving right of Sexual autonomy, introducing gender neutral laws and legal protection for children against Sexual abuse. But only few suggestions could only turn into actual law.

The committee’s report gained significant attention in the aftermath of the Nirbhaya Case, as strong public opinion demanded legal reform. Consequently, amendments were introduced that, ‘expanded the definition of rape to include various forms of penetration’. The Criminal Law (Amendment) Act, 2013, incorporated many of the Committee’s suggestions, though some were excluded. Despite these changes, the incidence of sexual offences did not decline significantly, and several serious incidents, such as the Unnao and Kathua cases, continued to occur. Consequently, further legislative action followed through the enactment Criminal Law (Amendment) Act, 2018.

The Criminal (Amendment) Act, 2018:

The Criminal Law (Amendment) Act, 2018 introduced significant amendments to the Indian Penal Code, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973, and the

¹⁵ Mallick, supra note.

¹⁶ Sharma & Singh, supra note 12, at 3697.

¹⁷ Mukesh & Anr. v. State (NCT of Delhi), (2017) 6 SCC 1 (India).

Protection of Children from Sexual Offences Act, 2012. The Act amended provisions including Sections 166A, 228A, and 376 IPC, and inserted Sections 376AB, 376DA and 376DB to strengthen legal provisions relating to sexual offences against minors.¹⁸ The amendments were primarily introduced for “enhancing punishments by prescribing stricter minimum sentences, including rigorous imprisonment for offences involving children and, in certain aggravated cases, life imprisonment or the death penalty.” These changes reflected an increased reliance on deterrent approach through harsher penal measures.

Conceptual Framework: Punishment and Deterrence Theory

Modern criminal jurisprudence recognizes crime as a public wrong. According to Tappan, “Crime is an intentional act or omission violating criminal law and punishable by the State.”¹⁹ To address criminal conduct, various theories of punishment have been developed. **Deterrence** is a key concept in classical criminology. The theory of deterrence is perceived as a psychological process, for deterring potential offenders from the commission of a criminal act²⁰. Deterrence theory, rooted in the ideas of **Thomas Hobbes, Jeremy Bentham, and Cesare Beccaria**, views punishment as a mechanism for preventing crime through fear of consequences. Bentham argued that “punishment should discourage both offenders and potential offenders by creating a deterrent effect.”²¹ The theory assumes that individuals refrain from crime when punishment is certain, swift, and severe.

In the context of rape laws, India has largely adopted a deterrence-based approach in which major incidents have often been followed by legislative amendments introducing stricter punishments to enhance deterrence. However, **NCRB data** indicates no significant reduction in rape cases despite increased severity of punishments and legislative reforms. Relying only on harsh punishments to tackle sexual violence really doesn’t hold up when look closer. The theory of deterrence states that people do not commit crimes because they are afraid of being arrested and punished. While this rationale may have considerable explanatory value for offences such as theft or fraud, rape cannot be reduced to a matter of opportunity or temptation alone but is rooted in issues of power and control, gender inequality and prevailing social

¹⁸ Dube, supra note 1

¹⁹ Swati Kaushal & Harish Kumar Tiwari, Exploring the Relevance of Deterrence Punishment and Its Implications to Social Stability and Legal Sanction, 11 Russian L.J. 2023.

²⁰ Ayush Tazi, Rape, Capital Punishment and Deterrence: An Analysis of India’s Penal Approach, 5 Burnished L.J. 1 (2024)

²¹ Swati Kaushal & Harish Kumar Tiwari, Exploring the Relevance of Deterrence Punishment and Its Implications to Social Stability and Legal Sanction

conditioning.²² Hence, an over-reliance on strict legislation as a deterrent mechanism does not address the underlying drivers of the offence.

Punishment has to be certain and it has to be severe to deter.²³ However, NCRB data shows alarmingly low rates of convictions for rape in India – 27.4% in 2022, dropping to 24.2% in 2023, and staying largely stagnant at 24.4% in 2024.²⁴ When the statutory punishment is severe in name, public confidence in the efficacy of the legal system is correspondingly eroded where the great majority of cases fail to result in conviction. Although the legislature has gradually increased the severity of sentencing provisions, the lack of comparable certainty of enforcement significantly reduces the deterrent effect of such measures. Punishment alone is not enough; real change requires more fundamental shifts in social attitudes and structures.

In this regard, feminist jurisprudence seems to be of great importance in showing the structural link between sexual violence and the subordinate social position of women and the persistence of gender norms. Rape prevention needs changing wider social conditions rather than just passing stricter laws.²⁵ It can be done by, educating children and adults about consent, gender equality and mutual respect from an early age. Also, conducting public awareness campaigns in order to invalidate current rape myths and removing the practice of victim-blaming. In addition to it, Sense of collective community responsibility should be evolved and development of comprehensive support systems for survivors, including counselling, legal assistance and advocacy services should be adopted. These steps help the survivors heal, make it easier for them to speak up, reduce the power of stigma and misconception, and increase the chances of bringing the culprits to justice.²⁶

Necessity of punishments:

Punishment in modern criminal jurisprudence serves purposes beyond inflicting suffering; it maintains public order, ensures accountability, and reinforces legal norms. Therefore, despite limitations of deterrence and the need for social reform, punishment in rape offences cannot be disregarded. Reformatory approaches often require long-term societal and behavioural change,

²² Prabal Kumar Sinha, Rape: An Assertion of Male Power, Authority and Dominant Over the Opposite Sex, IJRAR, June 2017, at 205–10

²³ Ayush Tazi, Rape, Capital Punishment and Deterrence: An Analysis of India's Penal Approach, 5 Burnished L.J. 1 (2024)

²⁴ National Crime Records Bureau, Crime in India 2022 (2023); National Crime Records Bureau, Crime in India 2023 (2024); National Crime Records Bureau, Crime in India 2024 (2025).

²⁵ Ayush Tazi, Rape, Capital Punishment and Deterrence: An Analysis of India's Penal Approach, 5 Burnished L.J. 1 (2024)

²⁶ Sudip Bhattacharya & Amarjeet Singh, Guardians of Consent: Enhancing Rape Prevention Through Social Control Mechanisms, 13 Dec. 2024, 10.3389/fsoc.2024.1487451, Frontiers in Sociology.

and no reliable mechanism exists to determine complete rehabilitation or eliminate the possibility of reoffending.

A four-year-old girl was sexually assaulted and killed at Nasrapur village in Pune district of Maharashtra by a 65-year-old man. The police stated that the girl was sexually assaulted inside the shed, before being killed.²⁷ The accused had previously been prosecuted for sexual offences but was later acquitted, again raising concerns regarding public safety and institutional accountability.²⁸ Such cases reflect societal need for punishment. It gives an immediate function by ensuring accountability and preserving social order. Deterrence has some capacity to deter certain sorts of criminal behavior. Hence, the society cannot totally give up the Punishments. But, Punishment should work along with wider social reforms. This will help to go into roots of sexual violence. Punishment definitely plays an important role in sexual violence, but it is just surface level remedy. When only Punitive measures are made important then the larger structural context hides behind it. Sexual violence is mixed with power imbalances, gender inequality and social norms which shapes patterns of thought and behaviour.

Therefore, alongside punishment, greater emphasis on broader social reforms and preventive measures is necessary.

Comparative Analysis - The United States Model:

The adoption of Bharatiya Nyaya Sanhita (BNS) and 2013 amendments brought significant legislative changes in addressing sexual violence; still, the approach continues to stay different from certain international practices.

Under the BNS, rape cases must have “clear and unequivocal consent” which is given without coercion. Indian law indicates stringent punishments, ranging from life imprisonment to the death penalty in aggravated cases. In the past few years, India is adopting more victim – centric approach in trials, hence, victim’s past sexual history is an inadmissible evidence.

In comparison, America follows a state-based model for defining and prosecuting rape. Though sexual assault laws vary across states, most jurisdictions adopt a broader definition of rape and penalties generally ranging from fixed term imprisonment to life sentences. A key feature of U.S. anti-rape laws is the presence of “rape shield laws,” which restrict the use of evidence

²⁷ Chinmay Gaikwad, Four-Year-Old Girl Raped and Killed in Pune Village; Accused Held, The Hindu (May 2, 2026). Source: The Hindu <https://share.google/iNynrDMe3ZNYd8KPT>

²⁸ Alim Shaikh, Pune Rape-Murder Case: Accused Acquitted Twice in Past for Similar Assaults, The Times of India (May 4, 2026). Pune rape-murder case: Accused acquitted twice in past for similar assaults | Pune News - The Times of India <https://share.google/Os7h6LuuDVbJvDtT>

concerning a victim's prior sexual conduct.²⁹ Additionally, the United States has developed institutional mechanisms to support survivors, including crisis intervention facilities, protective measures, and legal assistance services that help victims navigate judicial proceedings and recovery.³⁰

The U.K. Model:

In the U.K., **The Sexual Offences Act 2003**, lays out the legal definitions of sexual offenses, spells out what consent means, and sets the penalties. The United Kingdom and India are examples of countries that give harsh punishments including life in prison for rape. These laws look good on paper. They are only a small part of a much bigger and more complicated issue.³¹ The U.K. system adopts more **victim-centred approach and preventive approach** whereas, Indian framework focuses more on legal definitions and punishments. It ensures strong protection for minors and vulnerable adults and allows measures such as giving evidence via video link to reduce the trauma of courtroom proceedings. Additionally, the important part of U.K. system is **consent education** as part of its preventive strategy. It recognises the societal attitudes towards consent and play a crucial role in the prevalence of sexual violence.³² This approach highlights a shift from a solely punitive model towards addressing underlying social factors. In this regard, while India has strengthened its legal framework through reforms, the comparative model suggests that effective responses to sexual violence may require combining legal sanctions with preventive and survivor- oriented mechanisms.

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), “has in the past five years urged several European states to bring their legislation on rape in line with international standards, including **the Istanbul Convention**, and to define rape based on the absence of consent.”³³

The Act extends its jurisdiction beyond national borders by providing that UK citizens who commit acts abroad that would constitute sexual offences under the Sexual Offences Act, 2003 can still be prosecuted as though the offence had occurred within the UK.

²⁹ Daniyal Zameer, Mohd Saifullah Khan & Zubair, A Critical Analysis of Indian Anti-Rape Laws in Brief Nexus to the Global Perspective, 4 Indian J. Legal Rev. 304, 306 (2024).

³⁰ Id

³¹ Gogoi, supra note (2022), DOI: <https://doi.org/10.10000/IJLMH.112670>

³² Zameer et al., supra note 1, at 306

³³ Gogoi, supra note, at 1395.

Sweden model:

Sweden has maintained a long-standing commitment to **sexuality education**, introducing compulsory instruction in schools as early as 1955 and progressively expanding it to include themes such as relationships, gender equality, consent, and social norms. Unlike India, Sweden adopts preventive strategy by integrating sexuality education in the educational levels through interdisciplinary approach.

In 2022, Sweden updated its curriculum to strengthen content on gender equality and introduce more comprehensive sexuality education. As part of this reformation, the subject area was redefined and renamed as “sexuality, consent, and relationships”. In this regard, the example of Sweden can be provided as well, indicating that preventing sexual violence is not limited by legal actions but should involve social education. As a part of the global movement towards long-term attitude change instead of reactive legislation.

In 2018, Sweden adopted a new legal provision, according to which rape has been legally defined in terms of lack of consent, rather than force.³⁴ After the implementation of the reform, it became clear that the rate of rape conviction has increased significantly, being 15% in 2017 and reaching 26% in 2023.³⁵ It means that, legal reforms can be effective in combination with better investigation methods, evidence-based mechanisms, and social awareness programs aimed at the promotion of preventive actions.

In other words, although the country has made efforts to improve rape laws, the main focus of the current framework is on punishment and legislation. It shows that the legal approach alone is insufficient without social measures. In light of the fact that Sweden is focused more on preventive and victim-centered actions, such as educating about consent and changing the attitude of people, the country serves as an excellent example for India.

Scope of the Study

The methodology adopted for this study includes statutory interpretation, judicial precedent, literature review, policy reports and NCRB data where available. The present study is doctrinal in nature and does not use empirical techniques such as field research, interviews or surveys of victims, offenders and law enforcement agencies.

³⁴ Daniyal Zameer, Mohd Saifullah Khan & Zubair, A Critical Analysis of Indian Anti-Rape Laws in Brief Nexus to the Global Perspective, 4 Indian J. Legal Rev. 304, 306 (2024).

³⁵ Stefano Bergman & Sophia Thunberg, Rethinking Rape Laws Emphasizes the Central Role of Consent in Shaping Both Legal Frameworks and Public Understanding, 7 Int'l J. L. & Pub. Policy 55 (2025).
<https://doi.org/10.36079/lamintang.ijlapp-0702.822>

Limitations of the Study

The methodology adopted for this study includes statutory interpretation, judicial precedent, literature review, policy reports and NCRB data where available. The present study is doctrinal in nature and does not use empirical techniques such as field research, interviews or surveys of victims, offenders and law enforcement agencies. Further, while comparative references to Sweden, the United Kingdom, and the United States have been included. The research primarily studies relationship between deterrence and rape offences and therefore does not comprehensively examine other theories of punishment or all socio-economic factors contributing to sexual violence.

Conclusion

The offence of 'Rape' has undergone significant legislative and societal change, not only in India but across the world. The legal understanding of rape evolved from having a narrower and simpler definition to a more broad and comprehensive understanding. Following **Mathura case**, the judiciary and society as a whole became more sensitive toward rape victims and a positive change could be observed. The **Nirbhaya case** marked as a turning point for the entire society as, The Justice J.S. Verma Committee recommended reforms that later influenced the expansion of the legal definition of rape. Most importantly, greater emphasis on clear consent was given. The age of consent was also increased from 16 to 18 years and different possible circumstances were recognized. The **Criminal (Amendment) act of 2018** introduced stricter punishments by increasing minimum sentences and penalties.

The statistics provided by NCRB show no visible reduction in the crime of rape³⁶, despite the efforts made by Government to increase the severity of punishments in all these years. It has been observed that India has consistently recorded more than 30,000 rape cases annually³⁷. This figure reflects both institutional and societal shortcomings. In the year 1980, the landmark judgement of **Bachan Singh v. State of Punjab** ('Bachan Singh')³⁸, **Justice P.N. Bhagwati**, in his minority opinion, argued that, "it is the certainty of punishment, not its severity, that acts as a deterrent". He further stated that, 'capital punishment lacks a meaningful connection to reformation, a principle emphasized in modern penology. By imposing the death penalty, the State eliminates any possibility of reforming the offender.'

³⁶ National Crime Records Bureau, Crime in India (2010–2020), tbls.13A.1 & 6A.1, Ministry of Home Affairs, Gov't of India, <https://ncrb.gov.in>

³⁷ National Crime Records Bureau, Crime in India (annual reports for 2013–2023), Government of India, available at <https://ncrb.gov.in>.

³⁸ Bachan Singh v. State of Punjab AIR 1982 SC 1325(India).

The findings of the present study indicate that deterrence has not achieved its intended objectives because the Indian legal response has increasingly emphasized the severity of punishment while the certainty of punishment remains comparatively weak. NCRB conviction data, institutional shortcomings such as delayed investigations, underreporting, evidentiary difficulties, and social stigma reduce the perceived certainty of legal consequences and thereby weaken deterrent impact.

Further, criminological and feminist perspectives suggest that sexual violence cannot be understood merely as a rational-choice offence. According to Feminist jurisprudence, rape is a reflection of broader structures of patriarchy, gender inequality, power imbalance, and social conditioning. Therefore, sexual violence goes beyond fear of legal punishment, hence limiting the effectiveness of deterrence as a standalone approach.

Another important factor which is reflected in NCRB data is that, a significant proportion of rape offences involve perpetrators known to the victim.³⁹ This has important implications for reporting behaviour. The Empirical research suggests that, victims delay reporting to law enforcement agencies, if the offender is known to the victim compared to cases involving strangers. In this context, it is also plausible to argue that the existence of severe punishments, such as the death penalty, may further discourage reporting in such cases. However, this aspect remains underexplored and requires further empirical validation.

Any reform would involve taking societal and legislative action in India. There has to be a shift from top-down interventions to bottom-up solutions and focus on addressing the root cause of sexual violence in society. One exemplary country would be Sweden in the way it handles sexuality education. Children in Sweden are taught about empowerment, integrity, identity and body integrity including the rights to privacy and respect. They are also provided education regarding issues of sexual and gender identity without any taboo along with the need for freedom from discrimination, harassment and violence. Furthermore, the 2018 Swedish law which emphasizes consent and not the lack of force has made a major paradigm shift in its legal position.⁴⁰ India could definitely learn from the way in which education about age-appropriate consent and gender-sensitization programs and public campaigns against rape myths and victim blaming could benefit the country.

In similar fashion, the UK has a thorough legal definition of consent and adopts a victim

³⁹ National Crime Records Bureau, Crime in India (2010), tbl.13A.2 & Crime in India (2023), tbl.6A.2, Ministry of Home Affairs, Gov't of India, <https://ncrb.gov.in>.

⁴⁰ Daniyal Zameer, Mohd Saifullah Khan & Zubair, A Critical Analysis of Indian Anti-Rape Laws in Brief Nexus to the Global Perspective, 4 Indian J. Legal Rev. 304, 306 (2024).

centered approach which ensures that there is sufficient provision to provide proper care to the victims of crime during legal process. India can certainly follow the lead of such examples where there is a combination of both societal reform along with the legal reform. There could be some additional actions like the setting up of victim-centered institutional structures like counseling, legal aid, survivor support systems and better coordination between investigation and judiciary.

It is clear that there has to be a holistic approach to the problem which involves legal, institutional as well as social reforms. While it is imperative that there is need of punishment to maintain accountability and protect society from harm, the meager evidence suggests that such punishments alone don't have the capacity to reduce rape offenses.⁴¹ Deterrence cannot be separated from social context. Hence, change will require legislative as well as educational programs and sensitization programs against the prevailing patriarchal attitudes of society.



⁴¹ Ayush Tazi, Rape, Capital Punishment and Deterrence: An Analysis of India's Penal Approach, 5 Burnished L.J. 1 (2024)