



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

## ABOUT WHITE BLACK LEGAL

*White Black Legal – The Law Journal* is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

## AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

# **CAPITAL PUNISHMENT AND SEXUAL VIOLENCE IN INDIA: EXAMINING THE DETERRENT VALUE OF THE DEATH PENALTY.**

AUTHORED BY - KRITIKA YADV

## **Abstract**

The question of whether the death penalty acts as an effective deterrent against rape remains one of the most debated issues in Indian criminal law and policy. While public outrage after brutal cases such as the 2012 Delhi gang rape (Nirbhaya) led to legislative reforms introducing capital punishment for aggravated rape<sup>1</sup>. The deterrent value of this measure is highly contested. This paper critically examines the effectiveness of the death penalty in preventing rape by engaging with deterrence theory, criminological studies, Indian jurisprudence, and empirical data. Deterrence theory emphasizes certainty, swiftness, and severity of punishment,<sup>2</sup> but evidence shows that certainty is the most decisive factor.<sup>3</sup> In India, however, conviction rates remain low, trials are delayed, and executions are exceedingly rare,<sup>4</sup> only seven since independence despite frequent trial court death sentences.<sup>5</sup> The “rarest of rare” doctrine laid down in *Bachan Singh* (1980) further limits the scope of executions, while appellate courts frequently commute death sentences, creating inconsistency and unpredictability.<sup>6</sup> Comparative analysis reveals that countries with frequent executions, like Saudi Arabia and Iran, continue to witness high levels of sexual violence, while European nations without the death penalty achieve deterrence through efficient policing and swift justice.<sup>7</sup> The study concludes that the death penalty in India functions more as a symbolic response to public pressure than as a genuine preventive mechanism. Lasting deterrence against sexual violence requires structural reforms: improving investigative processes, ensuring certainty and speed of punishment, strengthening victim protection, and addressing deep-rooted patriarchal norms

---

<sup>1</sup> Criminal Law (Amendment) Act 2013.

<sup>2</sup> See discussion of the Kathua and Hyderabad rape cases in national criminal law reform debates.

<sup>3</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789).

<sup>4</sup> Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* (Cambridge University Press 2016).

<sup>5</sup> Project 39A, *Death Penalty IBachan Singh v State of Punjab* (1980) 2 SCC 684 (SC); *Machhi Singh v*

*State of Punjab* (1983) 3 SCC 470 (SC); *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1 (SC); *Channulal v State of Chhattisgarh* (2020) 10 SCC 733 (SC).

<sup>7</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs); Project 39A, *Death Penalty in India Annual Statistics Report 2022*.

rather than relying on capital punishment.

**Keywords:** Death Penalty, Deterrence Theory, Rape Law, Criminal Justice Reform, Feminist Jurisprudence, Indian Penal Code, Supreme Court of India, Sexual Violence.

### Issues

1. Whether the death penalty serves as an effective deterrent for rape in India.
2. Whether judicial pronouncements and empirical data support or contradict the deterrence rationale.
3. Whether the infrequency of executions and commutations of death sentences undermine deterrence.
4. Whether alternative measures such as certainty of conviction, stricter bail policies, and systemic reforms are more effective in addressing rape crimes.

### Introduction

The debate over whether the death penalty serves as an effective deterrent for rape is as old as the penalty itself. In India, the 2012 Delhi gang rape (Nirbhaya case) reignited the public demand for harsher punishments, culminating in amendments to the Indian Penal Code (IPC) under the Criminal Law (Amendment) Act, 2013<sup>8</sup>, which introduced the death penalty for aggravated forms of rape. Subsequent cases, including the 2018 Kathua rape case and the 2019 Hyderabad veterinarian rape-murder, reinforced societal calls for capital punishment.<sup>9</sup>

This raises the pressing question: does the death penalty deter rape? Classical deterrence theory suggests that offenders calculate risks before committing crimes, and harsher punishments increase compliance with the law.<sup>10</sup> Yet, rape is often driven by power, anger, or deviance, and not necessarily rational cost-benefit calculations.<sup>11</sup> Further, empirical data reveals that while death sentences for rape have risen, actual executions remain extremely rare.<sup>12</sup> This paradox questions whether the death penalty has symbolic rather than practical deterrent effects.

---

<sup>8</sup>Cesare Beccaria, *On Crimes and Punishments* (1764).

<sup>9</sup>Jeremy Bentham (n 3).

<sup>10</sup> John Donohue and Justin Wolfers, 'Uses and Abuses of Empirical Evidence in the Death Penalty Debate' (2006) 58 *Stanford Law Review* 791.

<sup>11</sup>Mrinal Satish (n 4).

<sup>12</sup> Debate' (2006) 58 *Stanford Law Review* 791.

This paper proceeds in six parts: (1) theoretical framework of deterrence, (2) literature review of empirical studies, (3) Indian experience with capital punishment for rape, (4) doctrinal analysis of key case law, (5) comparative and policy perspectives, and (6) a concluding assessment.

## Methodology

This paper adopts a doctrinal and empirical research methodology. The doctrinal component involves a critical analysis of constitutional provisions, statutory amendments to the Indian Penal Code and related laws, and leading judicial pronouncements such as *Bachan Singh v. State of Punjab* (1980), *Machhi Singh v. State of Punjab* (1983), *Mukesh v. State (Nirbhaya case)* (2017), and *Channulal v. State of Chhattisgarh* (2019). The empirical dimension draws upon data from the National Crime Records Bureau (NCRB), Project 39A reports (NLU Delhi), and comparative insights from other jurisdictions, including the United States, United Kingdom, European Union, and Middle Eastern countries.<sup>13</sup> A review of existing criminological and socio-legal scholarship, both supporting and opposing the deterrent effect of the death penalty, supplements this framework. The methodology is primarily qualitative, aiming to synthesize legal doctrine, empirical trends, and criminological theory in order to evaluate whether the death penalty serves as an effective deterrent against rape in India.

## Theoretical Framework: Deterrence and Punishment

The deterrence question at the heart of the death penalty debate cannot be examined without understanding its theoretical foundations. Deterrence theory is one of the oldest and most influential schools of thought in criminal law and criminology, rooted in the writings of Cesare Beccaria and Jeremy Bentham, who argued during the Enlightenment that punishment must serve a utilitarian function to prevent future crime. Beccaria, in *On Crimes and Punishments* (1764), stressed that punishment should be certain, proportionate, and swift, for only under such conditions could it effectively dissuade potential offenders.<sup>14</sup> Bentham similarly advanced a cost–benefit framework, positing that individuals act rationally and will refrain from crime if the expected cost of punishment outweighs the perceived benefit of offending.<sup>15</sup>

Deterrence theory is usually divided into three interrelated pillars: certainty, severity, and

---

<sup>13</sup> *Bachan Singh v State of Punjab* (1980) 2 SCC 684 (SC)

<sup>14</sup> *India Report* (National Law University Delhi 2016)

<sup>15</sup> William Bailey, 'Imprisonment vs Execution as a Deterrent to Murder' (1977) *Journal of Behavioral Economics*.

celerity (swiftness) of punishment. Of these, modern criminological studies consistently identify certainty as the most important predictor of deterrence.<sup>16</sup> If offenders believe there is a high likelihood of detection, arrest, and conviction, they are far less likely to commit crimes, regardless of the punishment's severity. Conversely, when conviction rates are low or enforcement is weak, even the harshest penalties, including death, lose their deterrent effect.

Two distinct dimensions of deterrence are relevant to the debate on capital punishment:

1. General Deterrence – This refers to the effect of punishment on society at large. The idea is that by executing or severely punishing one offender, others will be discouraged from committing similar crimes due to fear of suffering the same fate. In the context of rape, the state hopes that publicizing the imposition of death sentences will create a psychological barrier for potential offenders.
2. Specific Deterrence – This concerns the prevention of recidivism by the punished individual. Execution, in this sense, ensures that the offender can never reoffend. However, life imprisonment without parole is often argued to achieve the same outcome without resorting to capital punishment.

Deterrence theory, however, rests on the assumption that offenders are rational actors who weigh costs and benefits before acting. Critics argue that this assumption does not hold true in the context of sexual crimes. Rape, particularly in India, is often motivated not by rational calculation but by impulses of power, domination, anger, or social conditioning rooted in patriarchy.<sup>17</sup> Many offenders do not pause to consider the possible consequences of their actions in the heat of the moment, undermining the deterrence hypothesis.

Furthermore, scholars of sociological jurisprudence point out that deterrence cannot be studied in isolation from the socio-legal context. A punishment may be severe, but if victims are hesitant to report, police investigations are flawed, or trials drag on for years, the practical message to society is that crimes go largely unpunished. Thus, deterrence is shaped not only by statutory penalties but also by the overall credibility and efficiency of the criminal justice system.

The Indian constitutional framework also influences deterrence analysis. In *Bachan Singh v.*

---

<sup>16</sup> William Bailey and Ruth Peterson, 'Murder, Capital Punishment and Deterrence' (1990) *Albany Law Review*.

<sup>17</sup> H Naci Mocan and R Kaj Gittings, 'Getting Off Death Row: Commuted Sentences and the Deterrent Effect of Capital Punishment' (2003) 46 *Journal of Law and Economics* 453.

*State of Punjab* (1980), the Supreme Court held that the death penalty is constitutionally valid but must be reserved for the “rarest of rare” cases.<sup>18</sup> This balancing act reflects a tension between retributive justice and utilitarian deterrence, where the Court acknowledges societal demand for harsh punishment but simultaneously restricts its use to avoid arbitrary deprivation of life. By narrowing the circumstances in which death may be imposed, the Court indirectly weakens the certainty of the penalty, which in turn diminishes its deterrent capacity.

Lastly, deterrence theory must be contrasted with retributive and reformatory theories of punishment. Retribution emphasizes moral blameworthiness and proportionality — “an eye for an eye.” Reformatory theory emphasizes rehabilitating the offender so they may reintegrate into society. Deterrence, in contrast, is forward-looking, focusing on preventing future crimes rather than addressing past wrongs. In rape cases, this utilitarian orientation raises questions about whether the death penalty is truly necessary to achieve deterrence, or whether certainty of conviction, coupled with long-term incapacitation, can produce the same or better results without the moral and constitutional concerns associated with executions.

In sum, the deterrence framework illustrates both the promise and limitations of the death penalty. While in theory the prospect of execution should prevent crime, in practice the rarity of executions, the irrational nature of sexual offending, and systemic flaws in India’s criminal justice system undermine its deterrent potential. The effectiveness of deterrence in rape cases depends less on the existence of the death penalty itself and more on the broader environment of legal certainty, speed, and societal attitudes toward gender-based violence.

## **Literature Review: Empirical Studies on Deterrence**

### **Pro-Deterrence Studies**

Several empirical studies have argued that capital punishment may produce a deterrent effect under certain conditions. Early research conducted by William Bailey examined the relationship between executions and violent crime, suggesting that the threat of capital punishment might influence criminal behaviour. Bailey’s analysis comparing imprisonment with executions for violent offenders indicated the possibility of a marginal deterrent effect, although the findings were not universally accepted.<sup>19</sup>

---

<sup>18</sup>Paul Zimmerman, ‘State Executions and the Deterrence of Murders’ (2004) *American Law and Economics Review*.

<sup>19</sup> Hashem Dezhbakhsh, Paul Rubin and Joanna Shepherd, ‘Does Capital Punishment Have a Deterrent Donohue

Subsequent work by Bailey and Peterson further explored the broader implications of capital punishment statutes. Their research suggested that the presence of capital punishment laws could suppress not only capital offences but also certain non-capital felonies, thereby creating a spillover deterrent effect within the criminal justice system.<sup>20</sup>

Later quantitative studies also attempted to identify statistical relationships between executions and crime rates. Mocan and Gittings argued that executions might contribute to reductions in homicide rates, although their findings were based on complex econometric models and have been subject to debate.<sup>21</sup> Similarly, Zimmerman reported statistical correlations between executions and lower murder rates in the United States.<sup>22</sup> Dezhbakhsh, Rubin, and Shepherd also suggested that each execution might prevent multiple homicides, reinforcing the argument that capital punishment could have a measurable deterrent effect.<sup>23</sup>

### **Anti-Deterrence Studies**

Despite these findings, a substantial body of scholarship challenges the deterrence hypothesis. Critics argue that many pro-deterrence studies suffer from methodological weaknesses, including problems of data selection, statistical modelling, and causal inference. Hugo Bedau was among the early scholars to highlight these limitations, arguing that empirical claims about deterrence were often overstated.<sup>24</sup>

Donohue and Wolfers later conducted a comprehensive review of existing deterrence studies and concluded that there was no reliable evidence establishing a causal relationship between executions and reductions in crime<sup>25</sup>. Their analysis emphasized that many statistical studies relied on unstable models that produced inconsistent results.

Similarly, Radelet and Akers conducted a survey of leading criminologists and found that the overwhelming majority of experts believed that the death penalty does not significantly deter

---

and Wolfers (n 7); Radelet and Akers (n 8).

<sup>20</sup> Hugo Bedau, 'The Death Penalty in America' (1982) *Journal of Criminal Law and Criminology*.

<sup>21</sup> John Donohue and Justin Wolfers, 'Uses and Abuses of Empirical Evidence in the Death Penalty Debate' (2006) 58 *Stanford Law Review* 791.

<sup>22</sup> Michael Radelet and Ronald Akers, 'Deterrence and the Death Penalty: The Views of Criminologists' (1996) *Journal of Criminal Law and Criminology*.

<sup>23</sup> United Nations Human Rights Council, 'Question of the Death Penalty' UN Doc A/HRC/RES/42/24 (2019).

<sup>24</sup> Donohue and Wolfers (n 7); Radelet and Akers (n 8).

<sup>25</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, Government of India).

violent crime.<sup>26</sup> This scholarly consensus has also been reflected in international human rights reports. The United Nations Human Rights Council has repeatedly stated that there is no conclusive evidence demonstrating that capital punishment reduces serious crime, including sexual violence.<sup>27</sup>

### **Synthesis of Literature**

The global scholarship on deterrence reflects a deep divide between statistical claims of marginal deterrent effects and critiques highlighting methodological flaws. While American studies such as those by Mocan & Gittings and Dezhbakhsh et al. argue that executions may prevent homicides, critics like Donohue & Wolfers and Radelet & Akers find no consistent evidence of deterrence.<sup>28</sup> This divergence underscores that correlation does not necessarily equal causation, particularly in crimes driven by non-rational impulses. In the Indian context, the limitations of deterrence theory are even more pronounced. NCRB data consistently show rising reports of sexual violence, despite legislative expansions of the death penalty after the Nirbhaya case.<sup>29</sup> Project 39A's findings reveal that although trial courts often award capital sentences in rape-murder cases, higher courts routinely commute them, and actual executions remain negligible.<sup>30</sup> This gap between sentencing severity and execution reality mirrors the global critique that deterrence cannot be sustained without certainty and consistency. Thus, Indian empirical trends align with the broader international consensus that the death penalty functions more symbolically than practically, offering retributive satisfaction but failing to reduce the incidence of rape.

### **Indian Scholarly Perspectives on Death Penalty and Sexual Violence**

Indian legal scholarship has increasingly questioned the deterrent value of the death penalty in the context of sexual violence. Scholars such as *Upendra Baxi* argue that capital punishment often functions more as a symbolic assertion of state authority rather than a practical mechanism for preventing crime.<sup>31</sup> Baxi critiques the tendency of the state to respond to public outrage through harsher punishments while failing to address deeper structural deficiencies within the criminal justice system, including poor investigative standards and delays in trial

---

<sup>26</sup>Project 39A, *Death Penalty India Report* (National Law University Delhi 2016).

<sup>27</sup>Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing 1982).

<sup>28</sup>Anup Surendranath and others, *Death Penalty India Report* (NLU Delhi 2016).

<sup>29</sup>Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* (Cambridge University Press 2016).

<sup>30</sup>R Banerjee, writings on constitutional morality and criminal punishment in India.

<sup>31</sup>Catharine MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

processes.

Similarly, research conducted by *Anup Surendranath* through Project 39A at National Law University Delhi highlights the systemic inconsistencies surrounding the administration of the death penalty in India. Surendranath's work demonstrates that although trial courts frequently impose death sentences in cases involving rape and murder, appellate courts often commute these sentences to life imprisonment.<sup>32</sup> This pattern underscores the limited certainty of capital punishment and raises doubts about its effectiveness as a deterrent.

Scholars such as **Mrinal Satish** further challenge the deterrence argument by examining the sociological dimensions of sexual violence. Satish's empirical work on rape sentencing in India suggests that judicial decision-making often reflects broader social attitudes about gender and victimhood rather than a consistent application of deterrence principles.<sup>33</sup> This raises concerns about whether harsher punishments alone can meaningfully reduce sexual violence without addressing underlying societal norms.

Additionally, critical legal scholars including **R. Banerjee** emphasizes that the death penalty debate must be situated within broader discussions of constitutional morality and human rights.<sup>34</sup> From this perspective, the focus should shift from retributive responses to systemic reforms that improve the certainty and fairness of punishment. Strengthening investigative procedures, ensuring victim protection, and reducing trial delays are seen as far more effective measures in combating sexual violence than expanding the scope of capital punishment.

Taken together, Indian scholarship largely converges on the view that while the death penalty may serve expressive or symbolic purposes in response to public outrage, it does not address the structural conditions that allow sexual violence to persist. Instead, scholars emphasize the importance of strengthening institutional accountability, improving criminal justice administration, and promoting social change to achieve meaningful deterrence.

### **Feminist Jurisprudence and Structural Critiques**

A feminist perspective complicates the deterrence debate by shifting focus from punishment

---

<sup>32</sup> Mrinal Satish (n 15).

<sup>33</sup> National Crime Records Bureau (n 11).

<sup>34</sup> *Bachan Singh v State of Punjab* (1980) 2 SCC 684 (SC).

severity to the structural conditions that enable sexual violence. Feminist scholars argue that the fixation on the death penalty in rape cases often serves as a populist response to public outrage while diverting attention from deeper reforms necessary to empower women and ensure justice.<sup>35</sup> By projecting capital punishment as the ultimate solution, the state absolves itself from addressing systemic failures such as underreporting of rape, hostile police attitudes, victim-blaming during trials, and the absence of survivor-centric support mechanisms.

The deterrence framework assumes rational offenders, yet feminist criminology highlights that rape is fundamentally a crime of power, domination, and gender hierarchy, not rational calculation.<sup>36</sup> Patriarchal norms condition both perpetrators and institutions, making the certainty of reporting and conviction far more relevant than the specter of execution. This is borne out in practice: despite harsher laws post-*Nirbhaya*, conviction rates remain low, and victims continue to face stigma and intimidation.<sup>37</sup> The symbolic use of the death penalty thus masks systemic gender inequalities, while doing little to create safer environments for women.

Engaging with feminist jurisprudence therefore reframes the issue: the goal should not be harsher retribution but dismantling patriarchal structures within law enforcement, judiciary, and society. Measures such as gender-sensitive policing, survivor protection, legal literacy for women, and community-level education about gender equality are far more likely to achieve long-term deterrence than sporadic executions.

## **Indian Experience: Capital Punishment and Rape**

### **Historical Use of Death Penalty in Rape Cases**

The trajectory of the death penalty in rape cases in India reflects both legislative evolution and judicial ambivalence. Since Independence, executions for rape or rape with murder have been exceptionally rare, underscoring the judiciary's narrow application of the 'rarest of rare' doctrine, a remarkably low figure given the magnitude of public outcry surrounding sexual violence.<sup>38</sup> This historical reluctance demonstrates the judiciary's narrow interpretation of the "rarest of rare" doctrine, which requires that death penalty be imposed only when life imprisonment is deemed wholly inadequate.

---

<sup>35</sup> *ibid.*

<sup>36</sup> *Machhi Singh v State of Punjab* (1983) 3 SCC 470 (SC).

<sup>37</sup> *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1 (SC).

<sup>38</sup> Project 39A, *Death Penalty India Report* (National Law University Delhi 2016).

The landmark decision in *Bachan Singh v. State of Punjab (1980)* constitutionally upheld the death penalty but emphasized its exceptional use. Later, in *Machhi Singh v. State of Punjab (1983)*, the Court clarified that aggravating circumstances, such as extreme brutality or impact on the collective conscience may justify death.<sup>39</sup> Yet in practice, courts have more often erred on the side of commutation. The *Nirbhaya case (Mukesh v. State (NCT of Delhi), 2017)* remains an exception rather than the rule, culminating in the execution of four convicts in 2020.<sup>40</sup> Outside this, executions for rape remain negligible, despite legislative expansions.

According to Project 39A, National Law University, Delhi, death sentences for rape-murder cases surged in the aftermath of the Nirbhaya incident due to heightened public demand for justice and legislative amendments in 2013 and 2018. Yet, while trial courts often hand down death sentences in high-profile rape cases, higher judicial scrutiny at the appellate level drastically reduces the number that culminate in execution. Between 2000 and 2023, over 700 death sentences were pronounced across India, but fewer than 5 percent actually resulted in executions, with the remainder either commuted to life imprisonment or annulled by higher courts.<sup>41</sup>

This significant gap between sentencing and execution underscores the symbolic rather than practical role of capital punishment in India's fight against sexual violence. It reveals a structural contradiction: while the death penalty exists as a tool of legislative populism and judicial symbolism, its material execution is rare, reducing its purported deterrent value.

### **Statistical Reality: Rape, Convictions, and Sentencing**

The National Crime Records Bureau (NCRB) 2022 report highlights the persistent scale of sexual violence in India. A staggering 31,516 rape cases were registered in 2022, averaging more than 86 cases per day.<sup>42</sup> The conviction rate, however, remained at approximately 27 percent, reflecting deep inefficiencies in investigation, prosecution, and judicial handling. Low conviction rates fundamentally weaken the deterrent capacity of even the harshest punishments, as potential offenders may perceive the risk of actual penal consequences as minimal.

---

<sup>39</sup>Project 39A, *Death Penalty in India Annual Statistics Report 2022*.

<sup>40</sup>National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs).

<sup>41</sup>*ibid.*

<sup>42</sup>Project 39A (n 6).

In the same year, 52 individuals were sentenced to death by trial courts, the majority involving cases of rape coupled with murder.<sup>43</sup> Yet this number must be interpreted with caution. First, trial court judgments are frequently overturned or commuted upon appeal, with High Courts and the Supreme Court adopting a more restrained view on capital punishment. Second, the number of actual executions for rape-related offences since Independence stands at only seven, including the widely publicized Nirbhaya case.<sup>44</sup> The rarity of executions compared to the severity of trial-level sentencing further fuels the argument that the death penalty, in practice, remains more symbolic than functional.

This statistical disjunction between harsh sentencing at the lower judiciary and reluctance at the appellate level reveals systemic inconsistencies.<sup>45</sup> It creates uncertainty in sentencing patterns, leaving both victims' families and society at large with conflicting impressions of justice delivery. For offenders, this inconsistency dilutes the deterrent effect of capital punishment, as the perceived risk of ultimate punishment appears remote.

### **Systemic Loopholes and Dilution of Deterrence**

The statistical picture must also be situated within broader systemic challenges. First, offenders frequently secure bail due to overburdened courts and procedural delays, often reoffending while awaiting trial. Second, trial delays with some rape cases dragging on for years or even decades weaken the immediacy of punishment, which is central to deterrence theory. Third, social stigma against victims, including hostile treatment during investigation and trial, leads to underreporting of rape, meaning that the actual incidence of sexual violence is likely much higher than official statistics reflect.

Moreover, the interplay between public outrage and judicial discretion creates additional unpredictability. High-profile cases tend to attract severe sentences, sometimes including the death penalty, while similar cases outside the media spotlight may result in far more lenient outcomes. This inconsistency undermines the principle of equality before the law and further erodes deterrence, as punishment appears contingent not on the nature of the crime but on its public visibility.

---

<sup>43</sup> Cesare Beccaria, *On Crimes and Punishments* (1764).

<sup>44</sup> *Bachan Singh* (n 1).

<sup>45</sup> *Machhi Singh* (n 3).

### **III. Case Law Analysis**

#### ***Bachan Singh v. State of Punjab (1980)***

This landmark judgment upheld the constitutionality of the death penalty but limited its application to the “rarest of rare” cases.<sup>46</sup> The Court reasoned that life imprisonment is the rule, and death should only be imposed when life imprisonment is inadequate. In rape-related cases, this standard created ambiguity. While heinous rape-murders could fall into this category, the Court emphasized individualized sentencing, requiring judges to balance aggravating and mitigating circumstances. Thus, the decision established the principle but also made executions infrequent, weakening deterrence.

#### ***Machhi Singh v. State of Punjab (1983)***

This case elaborated the categories under which death may be justified, including crimes displaying extreme depravity or shocking collective conscience.<sup>47</sup> In the context of rape, this expanded the judicial scope for imposing capital punishment. However, it also tethered sentencing to societal outrage. The reliance on the community’s conscience meant that highly publicized rape cases could result in death sentences (as in *Nirbhaya*), while less publicized but equally brutal cases might not. The inconsistency makes it difficult for potential offenders to perceive the death penalty as a predictable outcome.

#### ***Mukesh v. State (Nirbhaya case, 2017)***

Perhaps the most significant rape-related death penalty case in Indian jurisprudence, the Supreme Court upheld the death penalty for the four convicts of the Delhi gang rape. The Court relied on both the brutality of the crime and the societal cry for justice. This decision reinforced the symbolic power of the death penalty, reflecting both deterrence and retribution. However, critics argue that the Court prioritized retributive justice over consistency. While *Nirbhaya* established a precedent for awarding death in egregious rape cases, its uniqueness also highlighted that only crimes attracting massive public outrage tend to result in executions.

#### ***Channulal v. State of Chhattisgarh (2019)***

In contrast, this case saw the Court commute a death sentence for rape-murder to life imprisonment, reasoning that public opinion and outrage cannot be sole grounds for imposing

---

<sup>46</sup> *Mukesh* (n 4).

<sup>47</sup> *Channulal v State of Chhattisgarh* (2020) 10 SCC 733 (SC).

death.<sup>48</sup> This demonstrates judicial restraint, but it also underscores inconsistency in the application of the death penalty. The same type of crime (rape-murder) led to death in *Nirbhaya* but life imprisonment in *Channulal*. Such unpredictability diminishes deterrent effect, as potential offenders cannot reliably foresee capital punishment as a consequence.

### ***Rajendra Prasad v. State of Uttar Pradesh (1979)***

Though not rape-specific, this case is important for setting the tone prior to *Bachan Singh*.<sup>49</sup> The Court emphasized that the death penalty should be reserved only for crimes threatening social order. By extension, applying this logic to rape highlights the struggle to define rape as a crime against the individual or as a destabilizer of social order. The ambiguity complicates deterrence arguments, as the jurisprudential basis for death remains contested. *Bachan Singh v. State of Punjab (1980)* upheld the constitutionality of the death penalty but restricted it to the 'rarest of rare' cases. The Court stressed consideration of mitigating factors, which diluted uniform application and therefore weakened deterrence.

## **Counter-Arguments Supporting the Death Penalty for Rape**

Although many scholars question the deterrent value of capital punishment, several arguments continue to support the use of the death penalty in cases of extreme sexual violence. These arguments are generally based on theories of deterrence, retribution, and incapacitation. Supporters believe that the gravity of crimes such as rape and rape combined with murder justifies the harshest form of punishment available under criminal law.

### **1. Severity of Punishment as a Deterrent**

One of the most frequently cited arguments in favor of the death penalty is that the severity of punishment can discourage individuals from committing serious crimes. The possibility of execution represents the most extreme penalty that the state can impose. Supporters argue that this fear may act as a psychological deterrent for potential offenders.<sup>50</sup>

In India, this argument gained significant attention after the 2012 Delhi gang rape case. The brutality of the crime led to nationwide protests and widespread demands for stronger laws against sexual violence. As a result, the Criminal Law (Amendment) Act, 2013 introduced the

---

<sup>48</sup>*Rajendra Prasad v State of Uttar Pradesh (1979) 3 SCC 646 (SC).*

<sup>49</sup>Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789).

<sup>50</sup>Criminal Law (Amendment) Act 2013.

death penalty for certain aggravated forms of rape.<sup>51</sup> The underlying assumption behind these reforms was that harsher punishment would help prevent similar crimes in the future.

## **2. Expressive Function of Criminal Law**

Another argument supporting the death penalty relates to the expressive function of criminal law. Criminal punishment does not only penalize offenders but also reflects society's moral condemnation of particular acts.<sup>52</sup> In cases of extreme sexual violence, imposing the death penalty is often viewed as a way for the state to communicate the seriousness of the crime and the value placed on human dignity.

Supporters argue that when the legal system imposes the highest punishment for the most brutal offences, it reinforces public faith in the justice system. It also signals that certain crimes are so grave that society will not tolerate them under any circumstances.

## **3. Incapacitation of Dangerous Offenders**

A further justification for capital punishment is based on the theory of incapacitation. This theory focuses on protecting society by removing dangerous offenders who may pose a continuing threat. In cases involving particularly violent sexual offenders, supporters argue that execution permanently prevents the offender from committing further crimes.

According to this view, capital punishment guarantees absolute protection for society. While life imprisonment may also restrict an offender's freedom, some argue that possibilities such as parole, commutation, or escape could still allow the offender to pose a risk in the future.<sup>53</sup>

## **4. Public Confidence in the Justice System**

Another argument often raised in support of the death penalty is that it helps maintain public confidence in the criminal justice system. In high-profile cases involving extreme brutality, the public often expects a strong response from the legal system.<sup>54</sup> Many people believe that the death penalty represents a proportionate response to crimes that shock the collective conscience of society.

The execution of the convicts in the Nirbhaya case was widely viewed by many members of the public as an example of the justice system responding to the seriousness of the offence.

---

<sup>51</sup> Joel Feinberg, 'The Expressive Function of Punishment' (1965) 49 *Monist* 397.

<sup>52</sup> Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (1976).

<sup>53</sup> *Mukesh v State (NCT of Delhi)* (2017) 6 SCC 1 (SC).

<sup>54</sup> John Donohue and Justin Wolfers, 'Uses and Abuses of Empirical Evidence in the Death Penalty

Supporters therefore argue that capital punishment reassures society that the law is capable of delivering justice in the most serious cases.

### **Rebuttal: Limitations of These Arguments**

Despite the strength of these arguments, several empirical and legal concerns challenge the idea that the death penalty is an effective response to sexual violence.

First, the assumption that harsher punishment deters crime is not strongly supported by criminological evidence. Many studies indicate that the certainty of punishment has a greater impact on deterrence than the severity of punishment.<sup>55</sup> In India, conviction rates for rape remain relatively low and criminal trials often take many years to conclude. When offenders believe that the chances of being caught and convicted are small, the severity of punishment alone is unlikely to prevent crime.

Second, relying on the expressive function of punishment can create the risk that criminal law becomes influenced by public anger rather than consistent legal principles. Courts have repeatedly emphasized that sentencing decisions should be based on constitutional values and judicial reasoning rather than public sentiment alone.<sup>56</sup>

Third, the incapacitation argument is less persuasive when the alternative of life imprisonment without parole is considered. Such sentences can ensure that offenders remain permanently removed from society while avoiding the moral and constitutional concerns associated with the irreversible nature of the death penalty.

Finally, an excessive focus on capital punishment may divert attention from deeper structural reforms that are necessary to address sexual violence. Problems such as underreporting of rape, inadequate police investigations, social stigma faced by victims, and delays in the justice system continue to weaken accountability.<sup>57</sup> Without addressing these systemic issues, harsher punishments alone are unlikely to produce meaningful deterrence.

For these reasons, many scholars conclude that while the death penalty may satisfy demands

---

<sup>55</sup>Debate' (2006) 58 *Stanford Law Review* 791.

<sup>56</sup>*Channulal v State of Chhattisgarh* (2020) 10 SCC 733 (SC).

<sup>57</sup>Mrinal Satish, *Discretion, Discrimination and the Rule of Law* (Cambridge University Press 2016).

for retribution in particularly shocking cases, it does not provide a reliable or long-term solution to the problem of sexual violence.

### **Discussion: The Deterrence Paradox in India**

The Indian experience with the death penalty in rape cases reveals a deep paradox that questions the very foundations of deterrence theory. In principle, harsher punishments should discourage potential offenders by instilling fear of severe consequences. Yet, in practice, India shows that severity of punishment, when not accompanied by certainty and consistency in enforcement, fails to prevent crime. This contradiction lies at the heart of the deterrence paradox.

Over the past decade, both the legislature and the judiciary have moved toward harsher sentencing in response to rising sexual violence. The Criminal Law (Amendment) Act, 2013, enacted after the Nirbhaya case, expanded the scope of capital punishment to certain aggravated forms of rape. The 2018 amendment further extended the death penalty to cases involving the rape of girls under 12 years, following the public outrage generated by the Kathua and Unnao cases<sup>58</sup>. These reforms were presented as strong steps designed to reassure the public that the state was taking the problem of sexual violence seriously, while also projecting deterrence as a central policy goal.

However, implementation paints a very different picture. According to data from Project 39A, National Law University Delhi, between 2000 and 2022 India carried out only seven executions, despite hundreds of prisoners being sentenced to death during the same period.<sup>59</sup> Trial courts may award capital sentences with increasing frequency, but higher courts often commute these sentences to life imprisonment. The result is a visible gap between the promise of severity in law and the reality of its enforcement, undermining the claimed deterrent value of capital punishment.

This inconsistency highlights the core of the deterrence paradox. On one hand, lawmakers project an image of toughness by prescribing death for rape. On the other hand, the judiciary, constrained by constitutional principles, restricts executions through doctrines such as the

---

<sup>58</sup> Criminal Law (Amendment) Act 2018.

<sup>59</sup>Project 39A, *Death Penalty India Report* (NLU Delhi 2016).

“rarest of rare” test in *Bachan Singh v. State of Punjab* (1980).<sup>60</sup> While this doctrine is crucial to prevent arbitrary deprivation of life, its application in rape cases has been uneven. In *Machhi Singh v. State of Punjab* (1983), the Court expanded the scope of “rarest of rare” to include crimes that shock the collective conscience. Yet in *Channulal v. State of Chhattisgarh* (2019), the Court commuted a death sentence despite the brutality of the crime, reasoning that public outrage alone cannot justify capital punishment. This unpredictability reduces the certainty of death as a consequence, thereby diminishing deterrent value.

The paradox is also rooted in systemic deficiencies. Criminological theory emphasizes that certainty of punishment is a more effective deterrent than severity. Yet in India, conviction rates for rape remain at only 30–35 percent, according to NCRB data.<sup>61</sup> Long delays, hostile witnesses, intimidation of victims, and prosecutorial weaknesses mean that many offenders escape justice. Even those who are convicted often obtain bail or commutation through appellate processes. In such circumstances, potential offenders may view the law as ineffective, calculating that the chances of facing the ultimate penalty are remote.

This also undermines victim confidence in the justice system. Survivors of rape often refrain from reporting crimes due to stigma, fear of retaliation, and skepticism about whether justice will ever be delivered. As a result, the death penalty’s symbolic severity has little practical meaning, because the likelihood of offenders actually being caught, convicted, and executed remains extremely low.

Sociologically, the paradox is sharpened by public perception. The death penalty is often seen as a quick solution to widespread sexual violence, especially after high-profile cases. Public protests, such as those after the Nirbhaya incident, demanded capital punishment, and the legislature responded. However, the persistence of sexual violence despite these reforms suggests that harsher punishments provide only symbolic justice, without addressing root causes such as patriarchal norms, poor policing, and inadequate support systems for survivors.

International comparisons reinforce the paradox. Countries like Saudi Arabia and Iran, which impose capital punishment liberally for sexual crimes, continue to report significant levels of gender-based violence. Fear of execution has not eliminated offending behavior. By contrast,

---

<sup>60</sup> *Bachan Singh v State of Punjab* (1980) 2 SCC 684 (SC).

<sup>61</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs).

European countries, which have abolished the death penalty, rely instead on swift trials, effective law enforcement, and strong victim protection mechanisms. These systems often produce more consistent deterrence than reliance on capital punishment, illustrating that certainty and efficiency of justice, rather than severity of sentencing, drive real preventive outcomes.

In conclusion, the deterrence paradox in India arises from the widening gap between the appearance of severity and the reality of weak enforcement. The death penalty is frequently used as a political and symbolic tool to appease public outrage, but it fails to reduce sexual violence because convictions remain low, judicial commutations are common, and offenders often secure bail. Unless India strengthens certainty and efficiency in its criminal justice system, the death penalty will remain more a symbolic gesture than a functional deterrent.

## **VII. Conclusion**

The debate over whether the death penalty acts as an effective deterrent against rape is complex, multi-layered, and fraught with both moral and empirical uncertainties. While the theoretical premise of deterrence suggests that harsher punishments should instill fear and thereby reduce the incidence of crime, the real-world application of this principle in the Indian context reveals significant limitations. Data from Project 39A and the National Crime Records Bureau (NCRB) indicate that although the number of death sentences for rape has increased in recent years particularly after the Criminal Law (Amendment) Act, 2013, and the POCSO (Amendment) Act, 2019, the actual number of executions carried out remains negligible, with negligible executions in practice.<sup>62</sup> This discrepancy undermines the certainty and swiftness that deterrence theory requires for punishment to have a meaningful preventive effect.

Furthermore, the jurisprudence of the Supreme Court of India demonstrates a delicate balancing act between the constitutional mandate of fairness, human dignity, and proportionality on one hand, and societal demands for retribution on the other. The 'rarest of rare' doctrine from *Bachan Singh v. State of Punjab* and its later application in *Machhi Singh v. State of Punjab* illustrates how courts seek to limit the scope of capital punishment. However, cases like *Nirbhaya* reignited public debates, with the judiciary appearing responsive to mass outrage, leading to the execution of the convicts. Yet, in other cases such as *Channulal v. State*

---

<sup>62</sup>Project 39A (n 10).

of *Chhattisgarh*, the Court commuted death sentences, reinforcing the principle that capital punishment cannot be the default response, even to heinous crimes like rape. This judicial inconsistency contributes to the dilution of deterrence, as offenders may perceive the system as unpredictable or lenient.

Another major weakness in the deterrence argument lies in the systemic issues of the Indian criminal justice process. High rates of acquittal, procedural delays, the frequent granting of bail to rape offenders, and the trauma victims face during trial processes all reduce the certainty of punishment. Certainty, rather than severity, is widely recognized in criminological scholarship as the key driver of deterrence. The prevalence of under-reporting of rape due to social stigma and fear of retaliation further complicates the efficacy of capital punishment as a deterrent, since a vast number of offenders never even come within the purview of the law.

Comparative analysis also reveals that countries with stringent capital punishment regimes for sexual offences, such as certain Middle Eastern jurisdictions, do not necessarily report lower rates of such crimes. Conversely, nations that have abolished the death penalty, like those in the European Union, have often reported improvements in crime prevention through better policing, swift justice delivery, and comprehensive victim support systems. This suggests that deterrence is not achieved by punishment in isolation but by the holistic functioning of the justice system.

At a policy level, both the 262nd Law Commission Report of India and international human rights bodies such as the United Nations Human Rights Council have expressed skepticism about the deterrent effect of capital punishment. Instead, they advocate for systemic reforms such as strengthening investigative capacities, ensuring speedy trials, enhancing victim protection, and promoting societal education on gender equality as more effective measures for crime prevention. Feminist critiques further argue that an overemphasis on the death penalty often diverts attention from deeper patriarchal structures and systemic failures that enable sexual violence to persist.

In conclusion, while the death penalty may satisfy demands for retribution and provide a symbolic sense of justice in particularly heinous cases, there is little credible evidence to suggest it acts as a sustained or effective deterrent against rape in India. The rise in sentencing but the negligible number of executions, coupled with the prevalence of commutations and

bail, illustrate that severity without certainty cannot reduce crime. The way forward lies not in clinging to the death penalty as a panacea but in addressing the systemic shortcomings of India's justice machinery. Certainty, swiftness, and fairness of punishment, coupled with preventive and rehabilitative strategies, must form the bedrock of policy reform. True deterrence against sexual violence can only emerge from a justice system that commands both the fear of accountability among offenders and the trust of protection among survivors.

