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Impact of Enhanced Punishments on the Incidents of Rape in India

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Abstract

This paper analyzes whether the consistent stiffening of penalties for the crime of rape in India has a significant deterrent effect, and if the mere increase of sentencing can be regarded as an applicable indicator for the efficacy of the criminal law in India. The author seeks to correlate the development of laws and policies from Criminal Law (Amendment) Act of 2013 to Criminal Law (Amendment) Act of 2018 and the recent Bharatiya Nyaya Sanhita, 2023, along with associated procedural and evidentiary reforms under Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023. The author posits that Indian rape legislation, as of today, has some of the most extreme sentencing in the entire country, to include life imprisonment of a natural life and the death penalty, in certain specified circumstances. The author asserts that existing data does not suggest that there is a simplistic or an enduring decrease in reported cases of rape that can be attributed to the mere enhancement of penalties. The author concludes that deterrence is not the result of mere severity of the law, but the result of certainty, swift resolution, evidentiary quality, survivor sensitive procedural approach, and legitimacy in the social sense. The author analyzes relevant statutes, analyzes crime data, and reviews case law and concludes that while enhanced penalties for crimes may have some expressive and symbolic value, they also may not improve the effectiveness of the criminal law for rape cases when there are delays in investigations, extended trial processes, insufficient forensic support, and the legal framework remains deficient.

Keywords: punishment, rape, NCRB, criminal, enhanced, amendment.

Introduction

India's criminal laws and procedures pay attention to sexual violence and highlight the offence and core legal principles of bodily autonomy and the legal, social equality, and the legal, social dignity, and violence against women, in all forms and constitutional promise to eliminate the violence. In the Indian Public discourse with respect to legal reforms, the rape law reforms have been illustrated as reforms of law's merits. With respect to the rapes that get extensive media coverage and public outrage, the legislature's first response is about the imposition of a minimum sentence, establishment of a fast track court, and the removal of bail and protection clauses for the accused. There has been public outrage in the response to Delhi gang rape of 2012, the rapes of minors that led to the 2018 amendments, and the transition from Indian Penal Code to Bharatiya Nyaya Sanhita.[1] The question that this paper seeks to answer is whether

[1] Gaur, S., & Chauhan, V. (2024). Aftermath of Nirbhaya case: An analysis on rape laws. International Journal of Multidisciplinary Research and Growth Evaluation, 5(5), 1-11.

the tougher laws and punishments have any impact on the rate of rape in India and whether the criminal justice system has been given too much credit in regards to the presumed deterrent effect of the punishment. If we wish to be effective in the objectives of prevention, promotion of reporting, protection of survivor's dignity, just and timely conviction, and the enhancement of sentences, then, tougher sentences are just a small part of the solution.

Classic deterrence theory has three elements: severity, certainty and celerity. You are only deterred if the punishment meets all three criteria as a strong enough, certain enough, and swift enough. Indian rape laws have certainly increased the severity. What is certain is that there is little evidence to suggest that the certainty and celerity of punishment have increased enough to substantiate the severity of the law in practice as a deterrent. Also, rape is often not a crime of anonymous predation. It is often committed in the context of known relationships.

In such cases, the social and proof-related obstacles to crime reporting typically overshadow what result the law prescribes. This paper posits that within an extremely short period, the Indian legal system has gravitated towards the imposition of more stringent punishments; however, the empirical and legal records beg to differ, as records illustrate that an increase in the severity and/or length of a sentence has not noticeably decreased the occurrence of the crime of rape. While the structure of punishment has become more rigid, the structure of its implementation still remains quite incomplete.

Legislative Evolution: From Post-Nirbhaya Reform to the Present BNS Framework

Table 1. Escalation of the Punishment Framework

Phase	Key statutory moves	Significance for deterrence
2013 reform	Expanded definition of rape; introduced broader aggravated categories; strengthened survivor-sensitive framework.	Shifted rape law from narrow penetration model to a more rights-based and structurally serious offence.
2018 reform	Minimum punishment under IPC s.376(1) raised from 7 to 10 years; child rape, gang rape, and repeat-offender categories made much harsher; tighter investigation and appeal timelines.	Shows Parliament's turn toward severe sentencing plus limited procedural acceleration.
BNS-BNSS-BSA era	BNS ss.63-71 preserve and reorganise the punitive structure; BNSS s.193 keeps a 2-month investigation expectation for specified rape cases; BSA preserves consent-related protections.	Confirms continuity: India now treats rape with some of the harshest sentencing options in its penal law.

An essential part of understanding modern laws relating to rape in India is the Criminal Law (Amendment) Act, 2013. This amendment broadened the definition of rape for the first time and included laws relating to non-consensual penetration that isn't by the penis, as well as defining aggravated forms of non-consensual penetrating acts of rape when the victim is in a position of custody, authority, a disability, pregnancy, recurring assaults, etc. The amendment also introduced a new Section 376A of the Indian Penal Code for rape and death or persistent vegetative state, and also survivor's focus, and much more. The 2013

amendment changed the definition in a normative sense. Beyond just punishment, the amendment changed the definition and the punishment, the amendment changed the definition and the structure of law.[2]

The Justice J.S. Verma Committee Report, which has been a huge part of the 2012 post incident debates, has made a recommendation of the law's jurisdiction by increasing punishment by way of a ten-year minimum sentence, and for the aggravated cases, natural life imprisonment of the convicted rapist. The Committee also placed focus on the laws, as well as the seat of power and authority, the law on the police and the law on the judiciary, as well as the law on adjudication, and the law on the judiciary being gender sensitive.[3]

The Criminal Law (Amendment) Act, 2018 was another increase in punishment on the same lines as the earlier amendment. This amendment also increased the minimum punishment in Section 376(1) of the Indian Penal Code from 7 to 10 years. It also made provisions such as sections 376(3), 376AB, 376DA, 376DB, and 376E stronger, as well as made provisions stronger relating to the crime of child rape. After 2018, raping a girl under the age of sixteen years was punishable by a minimum of 20 years and a maximum of life imprisonment, while raping a girl under the age of twelve years was punishable by death; gang raping a girl under the age of twelve years was punishable by death; and repeat offenders were punishable by the remainder of natural life or death imprisonment. The same amendment also made tightening regulations in relation to the rapes of minors: the rape of minors' cases listed for investigation were to be completed in 2 months; there were to be disposals of certain appeals within 6 months; and anticipatory bail was made applicable for the most serious crimes of child rapes. This shows that Parliament itself understood the significance of procedural quickness in addition to the severity of punishments in deterring these crimes.

The present law of the Bharatiya Nyaya Sanhita, 2023, in a significant way continues this model of punitive approach. Section 63 retains the predominant element of free and unequivocal consent and defines rape in broad terms. Section 64 provides and prescribes a minimum punishment of 10 years for the crime of rape, while the aggravated cases falling under Section 64(2) are punishable by life imprisonment, and the remainder of natural life. Section 65 provides that if a woman under the age of sixteen years is raped, the punishment is twenty years, while if under the age of twelve years, the perpetrator could face a sentence of twenty years to life, even the death penalty. If the rape victim dies or is in a permanent vegetative state because of the rape, the perpetrator can be sentenced to death or life imprisonment as per Section 66. Section 70 punishes gang rapers the most severely. For example, if a victim is under the age of eighteen years, the punishment could be life imprisonment or even the death penalty. Section 71 provides that a repeat offender may be sentenced to life imprisonment for the remainder of their natural life or be subject to the death penalty.[4]

The associated procedural and evidentiary codes are also important. There is an expectation that that investigations of certain specified rape cases must be completed within a period of two months as per Section 193 of the Bhartiya Nagarik Suraksha Sanhita, 2023. In Bhartiya Sakshya Adhiniyam, 2023, the evidence of a survivor's prior immoral acts or sexual history is still irrelevant to the question of consent,

[2] Gupta, A. (2018). Decoding 'Deterrence': A Critique of the Criminal Law (Amendment) Act, 2018. ILI Law Review (Summer Issue).
[3] Choate, P., & Sharan, R. (2021). The need to act: Incest as a crime given low priority—A view with India as an example. Social sciences, 10(4), 142.
[4] Sreekumar, A. (2025). An Exclusive chapter on 'offences relating to women and children'in BNS-A critical analysis. Edulogic International Journal for Multi Disciplinary Research P-ISSN: 3051-2395 E-ISSN: 3051-2409, 1(01), 107-116.

and the statutory absence of consent is postulated in certain specified rape cases. When a criminal justice system wants deterrence, it is not enough to rely solely on the severity of sentencing, while also being indifferent to evidentiary humiliation and procedural delays.[5]

Deterrence Theory and the Limits of Penal Severity

Classical deterrence theory posits that rational actors assess the risks associated with offending before committing a crime. In other words, if the risks associated with punishment become greater, the potential offending behaviour should decrease. However, as modern criminal law practice demonstrates, the severity of a potential punishment does not most often does not lower crime rates. Other factors such as likelihood of apprehension, the effectiveness of the police in apprehending, and the speed with which the court processes the case as well as the perceived fairness of the process may matter just as much and often much more. When it comes to rape, the likelihood of these concerns affecting law enforcement increases because, as most of the crime occurs in very private, and often, deeply stigmatized, and fear or dependent situations, even the existence of evidence may be perceived as weak or unsupported. Therefore, the likelihood of reporting the crime may also become an additional source of evidence that is very often suppressed.[6]

In its 262nd Report on the Death Penalty, the Indian Law Commission concluded from its examination of the available literature, both international and Indian, leading to the conclusion that there is no empirical evidence to support the theory that capital punishment is uniquely deterring. The Report noted that available empirical evidence is replete with ambiguity, as to whether the death penalty does, does not, or even increases, serious crime. Even though the Law Commission's argument is very general, and not specific to rape, it is very pertinent to the Indian debate on rape. It also applies to the 2018 legislation that extended capital punishment to child rape offenders as well as to child rape offenders who reoffend as it also tackles the topic of death penalty as a sentencing option and child rape offenders who reoffend. If the most extreme punishment does not have a clear deterrent effect, then there are no grounds from a prevention perspective to justify a primarily legislative approach focusing on increasing maximum penalties.[7]

The difference between the two types of punishment in question, known as expressive and preventive punishment, is important. Although increased penalties may have the effect of expressing the State's moral condemnation of the wrongdoing and the public outrage, and may also have the effect of incapa-citating those who are convicted, neither expressive punishment nor incapacitation is the same as deterrence. For punishment to have a deterrent effect those who commit the offence must believe that they will be apprehended, prosecuted, and sentenced in the not too distant future and certainly not too late after the offence was committed. In situations where there is a lack of investigation, the legal and medical systems are outdated, and where there are delays in the trial, the possibility of a very severe sentence is likely to have far less influence on offenders than those who draft such legislation believe.

[5] Ibid.
[6] Gautam, S. (2022). Death Penalty for Rape-Does It Actually Deter?. Part 1 Indian J. Integrated Rsch. L., 2, 1.
[7] Jain, H. (2024). Questionably foreclosing life imprisonment: The death penalty framework in Indian trial courts. Jindal Global Law Review, 15(1), 61-88.

Incidence Data and Criminal-Law Effectiveness After Sentence Enhancement

According to Parliamentary Data Based on NCRB Publications, total registered rape cases at all-India level were 33,356 in 2018, 32,032 in 2019, 28,046 in 2020, 31,677 in 2021, and 31,516 in 2022[8]. In all these years, the same official annexure noted the number of cases that were charge-sheeted and cases that were completed, which shows a considerable load of unfinished work within the system. Based on this, one cannot comfortably conclude that system improvements have been instituted post-2018 as a result of punishment reviews. The 2020 drop in registered cases of rape should be evaluated with caution as it was a result of pandemic related restrictions, and it should be differentiated from other cases. Ordinary conditions in all-India found that the figures were broadly aligned to the previous years.

Table 2. All-India rape cases in official parliamentary annexures based on NCRB data

Year	Cases registered	Cases charge-sheeted	Trials completed
2018	33,356	28,469	17,313
2019	32,032	24,938	16,911
2020	28,046	23,693	9,713
2021	31,677	26,164	11,783
2022	31,516	26,508	18,517

There is a difference between crimes reported and crimes committed. The government has stated in Parliament that due to increased knowledge of women's rights, easier access to police stations, better reporting procedures (including Zero FIR), and Improved Law Enforcement, more and more crimes occurring from Domestic Violence against Women are being reported. This means that increased reported instances of rape could mean that there are more cases being reported that would have gone unreported in the past. This is not to say that there are not more cases of rape occurring. This also applies the other side of the issue. If reporting crimes is not a good indicator of the crime being committed, then there is a lack of evidence to support the argument that increased punitive measures due to the legislation will deter those crimes from being committed. The evidence to support the claim that a strict law will deter crime is also non-existent.

Another area that has not been studied is the functionality of the criminal law system itself and not just in terms of how many crimes have been reported. Between 2018 and 2022, how many of those recorded cases ended in a charge sheet and how many of those went to trial? This information should not be viewed as direct conviction rates in the same year. There is a reason that laws are only serving to stipulate the bureaucratic pathway. There are also many factors that counterbalance the legal system which serve to delay, increase the number of cases, adjournments are the result of witness fatigue, and the forensics backlog are also part of the legal system to counterbalance legal certainty.

The criminal justice system becomes a battleground of sorts. This explains why the state has also started taking institutional steps, such as the establishment of Fast Track Special Courts (FTSCs). Based on the

[8] India Lodged Average 86 Rapes Daily, 49 Offences Against Women per Hour in 2021: Government Data, The Hindu (Aug. 31, 2022), https://www.thehindu.com/news/national/india-lodged-average-86-rapes-daily-49-offences-against-women-per-hour-in-2021-government-data/article65833488.ece

official response to the query concerning the Nirbhaya Fund, the FTSC initiative launched post the 2018 Amendment, as well as the Supreme Court's suo motu proceedings on child rape, has resulted in 750 operational FTSCs, including 408 exclusive POCSO courts, across 30 States and UTs, and a total of 2,87,000 cases disposed.[9] These statistics are important for two reasons. 1) The State acknowledges the issue of time and pendency; and 2) enhanced punishment was never envisioned to be the sole solution.

The Supreme Court's ongoing involvement in In Re: Alarming Rise in Number of Reported Child Rape Incidents[10], proves the point beyond reasonable doubt. The Court has consistently called for the establishment of adequate special courts, the timely provision of forensics, the establishment of child-friendly facilities and trained staff, and the compliance with deadlines prescribed by law. These instructions are very telling. If harshness of the law was enough, then the system of justice would be complete with regular oversight by the courts to ensure that the system runs on the bare minimum.

What the Courts Reveal About Punishment, Proof, and Justice

Indian case law shows both the necessity and the limits of punitive escalation. In Mukesh v. State (NCT of Delhi)[11], the Supreme Court affirmed the death sentence in the Nirbhaya case, treating the combined rape and murder as falling within the "rarest of rare" doctrine. The decision became the iconic judicial symbol of the demand for maximum punishment. Yet even that case does not establish a general principle that death is the preferred response to rape. It is exceptional because of its brutality, multiplicity of offenders, and resulting death.

The controlling constitutional principles remain those set out in Bachan Singh v. State of Punjab[12] and Machhi Singh v. State of Punjab[13]: capital punishment is constitutionally confined to the rarest of rare cases after a structured balancing of aggravating and mitigating factors. This framework matters because it prevents sentencing policy from collapsing into popular anger. In the rape context, it also makes clear that death is an exceptional judicial outcome, not an automatic deterrent instrument.

A recent illustration appears in Jai Prakash v. State of Uttarakhand[14], where SC commuted a death sentence imposed in a child rape-murder case. The Court held that brutality by itself cannot substitute for a proper rarest-of-rare analysis and emphasised the need to evaluate mitigating circumstances as well as aggravating features.

In Lillu @ Rajesh v. State of Haryana[15], the SC condemned the so-called two-finger test as violative of privacy, dignity, and physical integrity. In State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai[16], the Court again directed that the test must not be conducted. These rulings matter because a humiliating medico-legal process can discourage reporting and contaminate adjudication.

The same logic appears in Aparna Bhat v. State of MP[17], where the SC cautioned courts against imposing sexist or stereotypical bail conditions and insisted on gender-sensitive judging. In Nipun Saxena v. Union

[9] Supra note 8.
[10] Suo Motu Writ Petition (Crl.) No(s).1/2019.
[11] (2017) 6 SCC 1.
[12] (1980) 2 SCC 684.
[13] (1983) 3 SCC 470.
[14] 2025 INSC 861.
[15] (2013) 14 SCC 643.
[16] 2022 SCC Online SC 1494.
[17] 2021 SCC OnLine SC 230.

of India[18], the Court protected the anonymity of rape survivors. In Shimbhu v. State of Haryana[19] and State of Madhya Pradesh v. Madanlal[20], the Court rejected compromise or marriage-based settlement as a response to rape, stating that the offence is not merely a private dispute but an assault on dignity and social order.

Finally, Independent Thought v. UOI[21] is doctrinally crucial because it exposed the inconsistency of Indian rape law. By reading down the marital rape exception in relation to wives between fifteen and eighteen years, the Court acknowledged that marriage cannot justify non-consensual sexual intercourse with a child bride. The result is a legal system that threatens death or natural-life imprisonment in some rape categories while continuing to immunise non-consensual sex within many adult marriages. This contradiction undermines both deterrence theory and equality-based criminal-law legitimacy.

Have Enhanced Punishments Worked?

Enhanced sentences have succeeded, but only in an expressive sense. They indicate that the State views the severity of the offence of rape, child rape, gang rape, and repeat sexual violence as very serious. They also give judges stronger mentally incapacitating sentences for the most serious cases. For some offenders, particularly repeat or aggravated offenders, many years or natural-life imprisonment could be protective of the community.[22]

The record for enhanced penalties is certainly less convincing as a deterrence strategy, however. In the first instance, there is a lack of evidence of a clear downward trend for the years after the escalation of penalties introduced in 2018. In the second, the most severe changes like the specified categories of death remain anecdotally deterrent. Third, the assessment of rape law, is, in many cases, not about the sentence. The most important barrier is not whether the sentence is seven years, ten years, life, or death; it is whether the survivor can report the incident safely, whether police take the report seriously, whether the survivor is examined and evidence is collected prior to the report being lost in the system, whether the report is examined in a timely manner and whether there is a hearing in a timely manner, which could result in years of delays.[23]

There are also doctrinal and policy costs to the over-reliance on maximum penalties. When laws consistently favor death sentences, the public may focus on sensationalized examples of the law in practice while ignoring the everyday workings of justice systems. Severe penalties such as the death sentence could even provide a perverse sense of the law having a “hard edge,” while not addressing the general policies and efforts at investigation and prosecution. For murder of a close relation, the existence of a death sentence may discourage reporting. These issues, among others, do not imply that harsh punishments should not be considered, but rather that severity of punishment should not be the only indicator of whether progress has been made in the legislation.[24]

A more comprehensive approach to anti-rape legislation would prioritize conviction certainty and the survivor's confidence to report. Five reforms emerge from the analysis. First, public audits of statutory

[18] AIRONLINE 2018 SC 826.
[19] AIR 2014 SUPREME COURT 739.
[20] 2015 AIR SCW 4247.
[21] [2017] 10 SCC 800.
[22] Rai, S., & Sharma, R. (2022). An Analysis of Rape as an Offence and the Need for Change in Punishment with the Time. Issue 2 Indian JL & Legal Rsch., 4, 1.
[23] Ibid.
[24] Ibid.

timelines set by the BNSS and allied legislation should be made, with time (State-wise) recorded on the Registering of FIRs, the filing of charges, the completion of the forensic analysis, and the disposal of the trial. Second, the forensic capacity to process DNA and to use medico-legal kits in a manner that improves the quality of evidence consistent with conviction should be bolstered, as most crimes in the datasets are sexual assaults. Third, the judiciary, police and prosecution services ought to be trained on gender sensibilities and on trauma at the same time that they are trained on the issues of gender and trauma. Fourth, the survivor's support systems of compensation, other aid, counselling, shelter, legal assistance, witness protection, and anonymity, should be considered as essential and integral parts of the law's failure to create a welfare system. Fifth, the marital rape exception should be re-evaluated legally, as any legislation that ignores non-consensual sexual acts within the confines of marriage is lacking in its anti-rape legislation conceptual completeness. Therefore, the most defensible position is not that increased penalties are meaningless, but that when divorced from actual enforcement, they are drastically inadequate.

Conclusion

An unmistakable punitive transformation has occurred concerning India's rape law. From the 2013 reforms, to the 2018 amendment, to the now BNS framework; punishments have only gotten harsher, more categories have been added, and the law now allows for life sentences due to natural causes, and the death penalty in some cases. If you take a critical look at deterrence and the real concerns of the law's effectiveness, you will see that severity alone does not reflect the efficiency of a law. When looking at the government's own data, you do not see a consistent decrease in the amount of rapes that are recorded; this is especially true in regard to the increases that are seen in sentencing. The principle of certain sentencing, evidentiary dignity, the protection of the survivor, and a fair and balanced process remain at the forefront in recent Supreme Court practice. What truly can be learned, is that rape law is not effective when the statutes get "angrier"; it is effective when criminal justice, in a system that is more certain, more quick, more humane, and more coherent. Though the enhanced punishments may appropriately condemn rape and send the right message, it should be known that it does not guarantee prevention. A credible anti-rape legal order must, therefore, seek to go beyond the politics of harsher punishment and commit equally to implementation, institutional competence, survivor-centred justice, and substantive legal consistency.

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