

## DOES CAPITAL PUNISHMENT ACT AS A DETERRENT FOR RAPE?

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*A murderer kills the body but a rapist kills the soul*”

*-Justice Krishna Iyer*

### ***Abstract***

*In the present era, crime like rape are rampant. With an increasing case, capital punishment for rape is introduced which has become a hot debated issue in not only India but also worldwide. This issue has attracted various eminent lawyers, social workers, judges and general public. The main theme of this article is whether execution for rape is deterrent or is it constitutionally valid? Along with India, it also talks about the international scenario regarding the capital punishment and stand of various countries related to it. Thus this article is pen down to analyse the evolution in definition of rape along with various issues that have arisen in the way of capital punishment for rapist.*

**Keywords:** Rape, capital punishment, Criminal amendment act, Indian Penal Code, 1860 (IPC), Article 14 and 21 of Indian constitution.

### **Introduction:**

As we all know India is developing country where girls are treated as goddess and holds a high status but still crime such as rape are quite common in India despite various strict Laws. Rape is

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among the fourth most common crimes in India against women. As per NCRB's Report, one girl in raped in even 16 minutes. On an average about 88 cases were registered daily.

Rape is malum in se meaning it is not a crime against victim only but a crime against all. Rape is defined under section 375 of IPC which concludes that Sexual intercourse with a woman against her will, without her consent, by coercion, misinterpretation or fraud or at a time when she was intoxicated or duped, or is of unsound psychological state and in case if she is under 18.

Evolution of definition of rape

- Prior to 2013, Penetration alone is sufficient to constitute the sexual intercourse which amounts to rape. But now after 2013 definition of rape as well as punishment is revised.
- After Nirbhaya Delhi Gang Rape case, through The criminal law amendment act 2013 definition of rape now includes penetration to any extent or insertion of any object into body of women or touching any part of body by either means will constitute rape. Section 376E was also introduced which provides for **Death penalty** to repeat offenders under section 376, 376A and 376D. section 376A talks about death penalty in cases where rape causes death or leaves victim in persistent vegetative state.
- The criminal law ordinance 2018 imposes Death penalty for rape of girls below the age of 12 years.

**Issues:**

- a) Does capital punishment is against article 21 of Indian constitution?
- b) Is the death penalty provided under section 376 A and 376 E is not justified?

- c) Is it justified to provide capital punishment for rape victims only under the age of 12years?

**Analysis:**

Now a day's crime against women are increasing and rape is one among them. Due to this reason, lawmakers and judiciary is in great chaos. So some of the eminent jurists along with the parliament, considering the grave nature of the problem and for safety of women make the amendment in punishment of rape and included capital punishment with a view to make this crime less active in the country.

So now the question arises in our mind what is capital punishment?

Capital punishment also known as death penalty is a state sanctioned process whereby person is hanged to death. It is only given in rarest of rare case where crime is so grave that it can't be vitiated without penalty of death. This punishment is much important and has become the reason of debate because of its irreversible nature meaning who was once hanged to death can never be brought back. It is a type of retributive justice which is based on concept of 'An eye for an eye treatment'

There are so many debates raging about issue of capital punishment worldwide and India is no exception to it. Many of us may be satisfied with the law and for many others It may not be serving the purpose. Voices are raised against capital punishment that it is inhuman, a type of mental torture, adversely affects the family of accused and one of the most important one is that

it is against article 21<sup>2</sup> of the Indian Constitution. But surprisingly all these voices go silent when it comes to victim of the rape. Does the girl right to live and also with dignity [ Article 21] is not affected? Isn't the act of rape inhuman, and is not a mental torture to girls and her family? Yes, it does affect her. She and her family have to face humiliations for whole of life. Too many rape survivors suicide are also reported and those who left lives with little hope to get justice and under heavy burden of social stigma and it just kills them from inside. As justice Krishna Iyer rightly pointed in **Rafiq v. State of U.P**<sup>3</sup> that “ Murderer kills the body but rapist kills the soul.”

There is also so many controversies regarding constitutional validity of 376A and 376E of Indian penal code. But recently in **Mohd. Salim Mohd. Kudus Ansari v. State of Maharashtra & Anr.**<sup>4</sup> also known as Shakti Mill rang rape case upheld the validity.

Facts of the case are A 22-year-old photojournalist girls was gang raped by 5 boys. The petitioner challenged the article on bases of Article 14<sup>5</sup> and 21 of Indian constitution arguing that its takes the life and liberty of the person without any due procedure established by law. It is also stated the that section 376 A should be used in case of more serious offence such as murder not rape and also it does not follow ‘offence Paradigm’ as envisaged under IPC. The bench of Bombay high court holding the validity of sections states that the offence of rape is considered as graver than murder. There is no violation of article 21 as there is procedure for execution of death punishment under section 376-E. It is also concluded that effect of rape is not only physical but psychological too. Her right to live with dignity is also affected guaranteed to her

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<sup>2</sup> No Person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>3</sup> AIR 559, 1981 SCR (1) 402

<sup>4</sup> CR. WRIT PETITION NO. 1181 OF 2014  
wp.1181.1182.14 & 527.18. (J).doc

<sup>5</sup> The state shall not deny to any person equality before the law or equal protection of the laws within territory of India.

under article 21. By upholding this Bombay high court ensured that this would act as a strong deterrent against the rapist.

Just open a newspaper you will cases of rape against minor girls everywhere. This has become a matter of great problem; no one is understanding where people of your country are heading towards. As per human right watch project, about 7200 minor i.e. 1.6 in 100000 are raped each year in India. Once retired Justice P.D. Kode of Bombay high court said that such an offence is dastardly act and is committed on minors who are also incapable of protecting themselves. Committing rape with a girl whose body is not even matured in an evil act and should be punished with death penalty. Recently an 8-year-old girl was gang raped and killed in kathua and similar incident in Surat. On this union cabinet of India become active and introduced criminal amendment act, 2018 extending punishment to death penalty. Honorable Prime minister Narendra Modi also ensured the country that no criminal would be spared and daughter would get justice.

In a recent case in Jhunjhunu, Rajasthan a five-year-old girl was raped by 20-year-old boy in an isolated place. Case went to court. Entire process was completed within 26 days and accused was awarded death penalty. This case also laid the example that how justice should be done in speedy way as justice delayed is like justice denied.

### **Punishment for rape across the world**

1. China: Rape is considered as brutal. China criminal law provides for death penalty to those who rapes or has sexual intercourse with a girl below 14 if victim dies or if the perpetrator commits multiple rapes.

2. Pakistan: As per Pakistan penal code offenders of gang rape may be sentenced to life imprisonment or death penalty.
3. Greece: Offender is punished with incarceration.
4. Afghanistan: Rapist is hanged to death or shot dead by bullet. Justice is done within 4 days.
5. North Korea: Rapist is either shot dead in his dead or vital organs by a firing squad.
6. Saudi Arab: Range of penalties such as flogging and execution.
7. Egypt: Rapist is hanged till death.
8. United Arab Emirates: Coerced sex with a woman below 14 years is punishable by death.

### **My opinion**

In my opinion, capital punishment would act as deterrent against rape crimes. The mental torture rape convicts would suffer before hanging will make them realize what they have did and it will also make people think 100 times before doing such crime. In India capital punishment is provided for those below 12, or girls who suffer death and to repeat rape offenders. What about the girls above 12, rape is rape? They also have to suffer a lot and its also spoils their whole life. So why this difference in law according to me capital punishment should be provided to convicts for rape of girls above 12 years. But one another comes to story sometimes girls also make false allegations against the boys which make him suffer. So there should be proper trial along with evidences then only death penalty should be granted. Innocent should not suffer.

In **G.S Mani and another v. Union of India and others, 2019**<sup>6</sup> also known as Priyanka reddy case where a girl was riding on her scooter and suddenly tire got flat. Four boys came to her help but instead they raped her and burnt her alive. When victim was not found for 2 days' investigation begins in which four accused were arrested. All this four accused were killed in an alleged encounter but police claim that ceased the arms of police officer and fired upon so in self defence they were killed.

Such a type of incidents should not be encouraged because who knows are they really accused? Only after trial and after being proved they should be hanged to death but yes there is strong need for speedy trial, unlike in Nirbhaya case which continued for 8years, so that the rape victim will not lose her confidence that justice might not be served.

**Conclusion:**

According to me just like soldiers are told to kill an enemy at the boarder because it is in best interest of country so why not sentence someone to death penalty if he had really committed such a heinous crime in our country. Undoubtedly, death penalty is effective but only when people at ground floor are working effectively without corruption and timely action is taken. If years later justice is delivered, then it is not better than injustice as it will never create fear in minds of rapists and even the most stringent and effective law would fail

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<sup>6</sup> Writ Petition(s) (criminal) No(s). 348/2019