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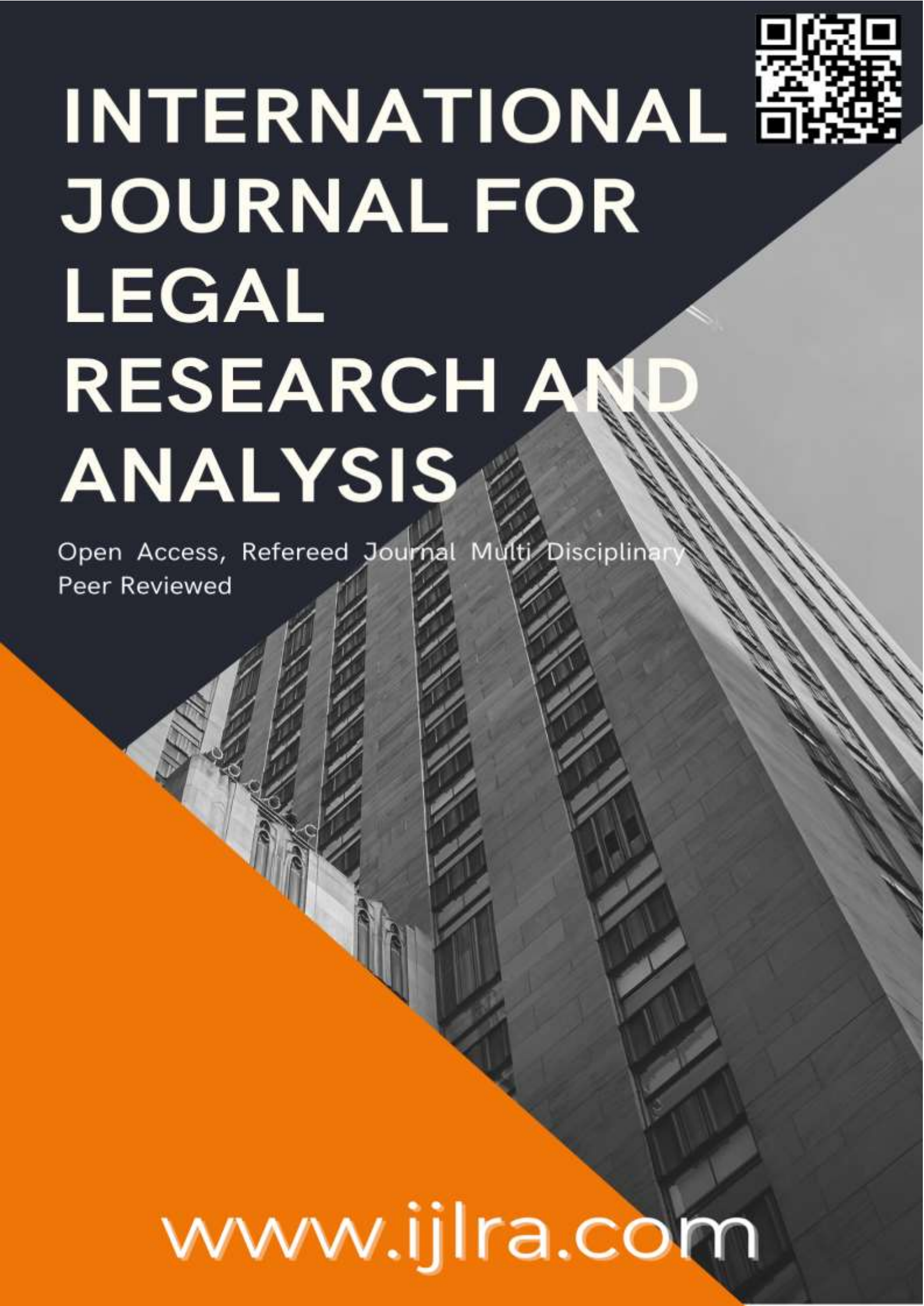

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"REVISITING BECCARIA'S PRINCIPLE OF PROPORTIONALITY: A CRITICAL ANALYSIS OF THE DEATH PENALTY IN RAPE CASES UNDER INDIAN CRIMINAL LAW"

AUTHORED BY - ARYAN SINGH & DR. CH. VENKATESWARLU

➢ Abstract

This paper re-examines Cesare Beccaria's doctrine of proportionality in the framework of the death sentence in rape cases in Indian criminal jurisprudence. Beccaria, a founder of classical criminology, believed in punishments being proportionate to the offense in order to uphold justice and effective deterrence. Relying on his theoretical underpinnings, this research investigates whether the application of capital punishment for rape—especially post-Criminal Law (Amendment) Act, 2013, and Criminal Law (Amendment) Act, 2018—complies with the principles of proportional justice. The article scrutinizes seminal decisions and legislative amendments that have extended the reach of the death penalty in rape convictions, such as in cases concerning minors, and considers the constitutional and ethical fallout of such legislations.[1] The article also tests empirical research about the deterrent effects of the death penalty and reviews its possibility for abuse, including the likelihood of wrongful convictions as well as consequences on reporting sex crimes. The study argues that the enhancement of penalty in extreme situations like heinous cases can be rationalized but the blanket expansion of the death penalty undermines the very essence of Beccaria's proportionality principle and undermines the efficacy as well as morality of such measures of punishment.

Keywords: Beccaria, proportionality, death, penalty, rape, Indian, criminal, law, sexual violence, justice, human, rights, deterrence, legal, reform.

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➢ Introduction

Cesare Beccaria, a pioneering theorist of classical criminology and Enlightenment ideology, developed one of the most influential and earlier arguments against capital punishment in terms of his doctrine of proportionality in punishment.[2] His treatise, On Crimes and Punishments (1764), provided a basis for criminal jurisprudence in the contemporary era by establishing that punishment be utilitarian, primarily to deter crime and establish social order instead of to pursue vengeance.[3] The core message of Beccaria's philosophy is that punishments should be proportionate to the gravity of the offense committed. In his opinion, unnecessarily harsh punishments are unfair and counterproductive in that they do not achieve the rational and social function of criminal law. Proportionality, he argues, guarantees that the punishment neither too much nor too little deters a crime from being repeated. This precept is grounded in his theory that laws are to be fashioned so as to maximize the greatest good for the greatest number, and that the system of justice has to run within a sphere of rationality, equity, and foreseeability.

Beccaria's critique of the death penalty is a logical outgrowth of his devotion to proportionality. He argued that capital punishment is not merely inhumane and irreversible but also ineffective as a deterrent when contrasted with long-term imprisonment. He said that the apprehension of extensive suffering inherent in life imprisonment would be more psychologically persuasive and socially useful than the transient fear of execution. Additionally, he stressed that the death penalty contravenes the social contract, since it allows the state an authority over life that no person has and cannot therefore transfer. In Beccaria's conception of the ideal society, the right to life is unalienable, and any punishment which erodes this right is inherently illegitimate. He also had practical complaints about the misuse of the death penalty, advising against the chance of judicial misjudgement and the irretrievable harm in putting to death an innocent human being. His approach to criminal law as being humane opposed brutality and insisted upon the moral and legal imperative for conforming punishing procedures to sound principles.

Beccaria further cautioned that extreme punishments would inure the community and destroy a respect for law.[4] When the law is seen as unjust or too severe, it loses its moral authority, and people could be more likely to rebel than to obey.[5] This is one of the reasons he condemned

[2] *Mukesh & Anr. v. State (NCT of Delhi)*, (2020) 10 SCC 120.
[3] *Pawan Gupta v. State (NCT of Delhi)*, (2020) 11 SCC 344.
[4] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.
[5] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470

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capital punishment; in general, as part of his wider critique of arbitrary and authoritarian systems of justice. He promoted a clear, codified, and even legal system under which punishments were not merely proportional but also predictable and administered without discrimination. His vision had inspired major changes throughout Europe and subsequently had an impact on liberal democratic constitutions, such as the Eighth Amendment to the United States Constitution, which forbids cruel and unusual punishments.

➢ Research objectives.

1. To know Beccaria's Theory of Proportionality and Opposition to the Death Penalty
2. To understand Current Legal Framework in India on Rape and Capital Punishment
3. To analyse Judicial Trends and Landmark Cases (e.g., Mukesh v. State (Nirbhaya), Pawan Gupta v. State)
4. To know Socio-political Factors Influencing Harsh Sentences
5. To identify Does Death Penalty in Rape Cases Serve Deterrence? A Classical vs. Empirical Approach
6. To Compare the Perspective: UAE or Other Countries with Strict Punishments

➢ Research questions

A. How is Cesare Beccaria's proportionality principle applied to the use of the death penalty for rape in current Indian criminal law?
B. To what extent is the imposition of the death penalty upon rapists, especially in instances of rape on children, compliant with the Indian constitution's standards of justice and equality?
C. In how far does the death penalty affect reporting, prosecuting, and deciding rape cases in India?
D. How do the judicial interpretations and legislative updates since the 2012 Nirbhaya case adhere to or diverge from Beccaria's positions regarding punishment and proportionality?
E. What are the ethical, legal, and social implications of maintaining the death penalty for rape in a legal system that strives to ensure human rights and rehabilitative justice?

➢ Research methodology

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The research approach to this study rests on the use of secondary data to facilitate the complete and critical analysis of rape-related death penalties under the canopy of Cesare Beccaria's principle of proportionality. The secondary approach has been selected mainly because of the theoretical and doctrinal nature of the study, which requires a close examination and interpretation of literature, legal statutes, judicial pronouncements, and academic commentary as opposed to empirical data gathering.[6] This method is especially suitable for issues based on legal philosophy and normative critique since it enables the researcher to discuss historical views, theoretical models, and contemporary legal developments. A broad array of authoritative sources has been researched, including scholarly journals, law review articles, legal treatises, official reports, government notices, and commentaries written by respected scholars in criminal law, constitutional law, and human rights.[7] Specifically, academic writing on Beccaria's theory, the history of criminal jurisprudence, and the philosophy of punishment was instrumental in the understanding of the basic principles upon which modern-day legal practice may be measured.[8]

The study also derives heavily from Indian legislative texts, such as the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and seminal legal amendments like the Criminal Law (Amendment) Acts of 2013 and 2018.[9] These legislative measures are examined in order to interpret the legal provisions under which the death penalty is granted in cases of rape, particularly of children. Also, the research includes landmark judgments of the Supreme Court and different High Courts of India interpreting and applying the death penalty in rape cases. These court judgments are key data points to analyze the judiciary's handling of proportionality in punishment and how public opinion and policy currents impact judicial thought. The doctrinal analysis approach provides a nuanced examination of the interpretive methods employed by courts and how these rulings support or oppose Beccaria's ideals.

In addition, the research critically analyzes reports and recommendations of expert committees and commissions, including the Justice Verma Committee Report (2013), which contributed to the framing of post-Nirbhaya legal reforms.[10] These reports provide an insight into the socio-legal reasons for introducing or extending the death penalty and assist in contextualizing the

[6] Criminal Law (Amendment) Act, No. 13 of 2013, § 6, Acts of Parliament, 2013 (India).
[7] Criminal Law (Amendment) Act, No. 22 of 2018, § 9, Acts of Parliament, 2018 (India).
[8] Indian Penal Code, No. 45 of 1860, §§ 375, 376AB, 376DB.
[9] Code of Criminal Procedure, No. 2 of 1974, § 235(2) (India).
[10] Law Comm'n of India, Report No. 262, *The Death Penalty* (2015).

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legislative intention. International human rights instruments, including those published by the United Nations and other international legal institutions, are also consulted to determine whether India is meeting international legal expectations in terms of the application of capital punishment. Scholarly reflections on other jurisdictions' comparative practice, in particular jurisdictions where the death penalty is not employed against sexual crimes, are offered in order to expand upon justice's alternate paradigm models.[11]

➢ Analysis of the study

The existing law regime over rape and capital punishment in India is based on a complicated web of statutory provisions, judicial pronouncements, and legislative changes that have witnessed considerable development in the last decade, as the issue of sexual violence has increasingly become a matter of public concern. Under the Indian Penal Code, 1860 (IPC), the main provisions dealing with the offence of rape are enshrined in Sections 375 and 376. Section 375 gives a detailed definition of rape, broadening the ambit of what constitutes non-consensual sexual intercourse, especially after the Criminal Law (Amendment) Act, 2013, passed in the wake of the 2012 Delhi gang rape case, popularly known as the Nirbhaya case. This amendment widened the definition of rape, added a broader spectrum of sexual offences, and increased punishments for offenders. Section 376 makes provision for the punishment of rape, with a minimum sentence of seven years, extendable to life imprisonment. In cases of aggravation, for example, custodial rape, gang rape, or rape involving grievous bodily harm, the sentence can be harsher, up to stringent imprisonment for a period of not less than ten years or life.[12]

In another change, the law was amended further by the Criminal Law (Amendment) Act, 2018, which added capital punishment for specific types of rape. In particular, the amendment introduced Section 376AB, which provides for the death penalty or life imprisonment for the rape of a girl less than twelve years of age. Likewise, Sections 376DA and 376DB provide for life imprisonment or death for gang rape and habitual rape of girls less than sixteen and twelve years of age, respectively.[13] These amendments were brought in the wake of national outrage over a few cases involving child sexual abuse and were defined with a view to discouraging such odious offenses. Though the legislative intent behind these provisions was to indicate the

[11] · Justice Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013).
[12] Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* (Cambridge Univ. Press 2017).
[13] Anup Surendranath, *Death Penalty in India: A Critical Appraisal*, 6 NUJS L. Rev. 1 (2013).

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gravity of the offence and the collective clamour for justice, they have also attracted intense legal and moral controversy, notably regarding the principle of proportionality and the deterrent effect of the death penalty.[14]

India's criminal procedure, regulated by the Code of Criminal Procedure, 1973 (CrPC), prescribes the procedure by which capital punishment is imposed and confirmed. Section 235(2) of the CrPC provides for a hearing by the accused on the quantum of sentence, and Section 366 makes it obligatory that a death sentence awarded by a Sessions Court is to be confirmed by the High Court. On its part, in Bachan Singh v. State of Punjab (1980), the Supreme Court of India held that the condemned sentence was to be retained only for the "rarest of rare" cases, thus introducing judicially manageable standards that assured not to lead to arbitrary sentencing. In spite of this provision, there have been cases where courts, influenced by public opinion and the heinousness of the crime, have handed out death sentences even when life imprisonment could have done under the principle of proportionality.

Further, the Protection of Children from Sexual Offences (POCSO) Act, 2012, also fills gaps in the IPC in minor cases. In light of the 2019 amendment, POCSO too contains provisions for the death penalty for aggravated penetrative sexual assault of children under the age of twelve. Such overlapping legal regimes represent an emerging legislative trend of more severe punishments for sexual offences on the basis of populist pressure, rather than evidence-based studies of effectiveness.

➢ Significance

Indian judicial trends regarding the death penalty for rape have taken a dramatic shift, especially post-socially and politically charged instances like the Nirbhaya gang rape case. [15]The Indian Supreme Court has taken a pivotal position in defining legal discourse regarding capital punishment, and more so for sexual violence cases of utmost cruelty. One of the most powerful judgments here is Mukesh & Anr v. State (NCT of Delhi) (2017), popularly referred to as the Nirbhaya case. This case was a result of the brutal gang rape and murder of a 23-year-old physiotherapy intern in December 2012, an act that inspired protests across the country and

[14] Aparna Chandra et al., *The Supreme Court of India and the Implementation of the 'Rarest of Rare' Doctrine*, 11 Asian J. Comp. L. 53 (2016).
[15] U.N. Hum. Rts. Comm., *General Comment No. 36, Article 6 (Right to Life)*, U.N. Doc. CCPR/C/GC/36 (2018).

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prompted radical legal reforms. Here, the Supreme Court confirmed the death penalty for four of the accused on the rationale that the offense was of such an atrocious, cruel, and inhuman nature that it clearly fell within the "rarest of rare" category laid down in Bachan Singh v. State of Punjab (1980). The court highlighted the baseness of the act and the shared social conscience that required the most severe penalty, thus supporting the state's position on retributive justice for acts of exceptional brutality.

Another significant case from the same lineup is Pawan Gupta v. State (NCT of Delhi) (2020), in which the Supreme Court rejected one of the convicts' eleventh-hour contention questioning his age and requesting a commutation of the death sentence. The judgment reiterated the previous decision in Mukesh and reaffirmed the principle that procedural delays or raising belated technical pleas cannot overrule the seriousness of the offence committed.[16] These judgments are a clear judicial trend of upholding capital punishment in rape-murder cases where the crime is considered especially heinous and where public outcry and media coverage dictate the pace of judicial and legislative proceedings. [17]The focus on the "collective conscience of society" has come to be used as a catch-all theme for such decisions, tending in many cases to be a rubric for divergence from rehabilitative justice to most harshly punitive response.[18]

Judicial trends notwithstanding, these rulings have not remained uncriticized. [19]Academics and human rights activists contend that the use of public opinion and appeal to collective conscience can produce a populist brand of justice that erodes the rule of proportionality as well as the rights of the accused. Though the judiciary has attempted to provide procedural justice and compliance with constitutional protections, there remain concerns over the uniformity and predictability of capital sentencing. For instance, in Santosh Kumar Singh v. State (2010), where Priyadarshini Mattoo was raped and murdered, the court gave life imprisonment rather than the death penalty, even though the offense was brutal. The inconsistency in enforcing the "rarest of rare" doctrine is worrisome on grounds of arbitrariness and undermining judicial discretion on grounds of principle of law and not on grounds of emotional or political demands.

[16] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
[17] India Const. art. 21.
[18] International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.
[19] A. G. Noorani, *Rape and the Death Penalty*, 49 Econ. & Pol. Wkly. 10 (2014).

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Furthermore, the Indian courts have also displayed sensitivity towards the risk of miscarriages of justice. In Shatrughan Chauhan v. Union of India (2014), the Supreme Court commuted numerous death sentences to life imprisonment based on procedural delay and mental illness, reaffirming that the death penalty should not be used lightly. This two-tiered strategy—stringent punishment in sensational rape cases and circumspection in other death penalty cases—shows the judiciary torn between balancing deterrence, justice, and constitutional morality.

Briefly, landmark judgments such as Mukesh v. State and Pawan Gupta v. State reflect a strong judiciary's support for capital punishment for sexual violence that offends the collective conscience of society.[20] But judicial trends also reflect underlying tensions within the legal system about proportionality, deterrence, and moral legitimacy of the death penalty, especially in a pluralistic and rights-oriented constitutional democracy such as India.[21]

➢ Data Analysis

The infliction of severe punishment, especially the death penalty in rape cases under Indian criminal law, cannot be appreciated in its entirety unless one looks at the socio-political considerations that powerfully drive judicial and legislative decision-making. In India, public outcry and journalistic activism frequently drive the state's response to sexual violence, converting individual criminal cases into national crises.[22] One of the most vivid examples of this trend is the 2012 Nirbhaya gang rape case, which triggered nationwide protests and intense media coverage that kept the topic in the national limelight for months. After the collective outcry for justice, the Indian government appointed the Justice Verma Committee as a response to this demand for justice, ultimately resulting in the Criminal Law (Amendment) Act, 2013, which changed quite a number of sexual offence provisions. Even though the committee themselves did not make a suggestion that the death penalty be applied in cases of rape, increasing civil society, party, and media pressure spurred legislatures into legislative demand for sterner punitive sentencing. The outcome was finally the institution of capital punishment for some types of rape, particularly those involving children, by the Criminal Law (Amendment) Act, 2018. This is an example of how public opinion and political pressure tend

[20] G. Subramanian, *Capital Punishment and Legal Ethics in India*, 13 Indian Bar Rev. 87 (1986)
[21] Faizan Mustafa, *Criminal Justice and Populism in India: A Legal Critique*, 58 JILI 65 (2016).
[22] Abhinav Sekhri, *Unprincipled Sentencing: Capital Punishment and India's Legal Imagination*, 5 Indian L. Rev. 219 (2021).

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to lead to legislative change even if such a change would not necessarily be optimally supported by empirical research about deterrence or criminal justice effectiveness.

Political officials, trying to identify themselves with the emotional current of the public, have constantly called for harsh legislation and the death penalty as a display of zero-tolerance policy towards rape. Such declarations are not just intended to satisfy the people but also to add political capital, especially at the time of elections or following celebrated crimes. The representation of the state as a strong defender of women's rights and security serves to enhance political legitimacy, although such gestures tend to be reactive in nature and not part of an ongoing or integrated policy agenda. Under such an environment, penal populism becomes a powerful driver, where legislating is driven by public opinion more than jurisprudential consistency or sustained social consequences.[23] The result is a type of legislative activism that is more concerned with symbolic justice by way of tough sentencing than with substantive reform, like enhancing police responsiveness, fortifying witness protection mechanisms, or streamlining trial procedures.[24]

Additionally, the role of mass media in dramatizing rape cases generates an environment of intense emotionality and urgency, which also pushes lawmakers and judges to hand down exemplary punishments to show the potency of the law. Such are the contexts in which the judiciary in its judgments sometimes invokes the "collective conscience of society" to vindicate capital sentences, as was the case with the Supreme Court's judgments in Mukesh v. State (NCT of Delhi) and Pawan Gupta v. State, where public anger was such a determining context of the judgments. While the judiciary should be independent and based in legal principles, its occasional acquiescence to societal sentiment shows the inherent socio-political forces constituting the determinants of justice.

More so, social forces like deeply ingrained patriarchal values and honor associated with women's bodies attribute to the public push for retributive justice. Sexual assault is typically viewed not only as an individual offense but also as a violation of the honor of the family and the community, so the demand for the most severe punishments is increased. This moral

[23] Bharti Ali, *Understanding Public Opinion and the Politics of Sexual Violence in India*, 8 South Asia J. Hum. Rts. 49 (2020).
[24] · Usha Ramanathan, *Death Penalty and the Law*, 43 Econ. & Pol. Wkly. 71 (2008).

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construction of rape supports an approach that might fulfill short-term emotional needs but could simplify overly complex social and legal difficulties.

Essentially, the severe sentencing of rape offenders in India is strongly driven by an interplay of socio-political forces—ranging from public outrage and media pressure to political calculations and societal norms. While these forces have undoubtedly focused attention on concerns of gender-based violence, they have also pressured the legal system towards a more punitive and at times disproportionate approach. This trend highlights the value of basing criminal justice policy on rational, evidence-based models, not on spur-of-the-moment, emotionally driven rhetoric, which can erode the long-term objectives of justice and rehabilitation.[25]

➢ Findings

Whether capital punishment is a deterrent in cases of rape challenges a complex review that pits time-tested theories on punishment against new empirical evidence. Cesare Beccaria was the foundational member of classical school criminology, and a leading critic of capital punishment for moral and pragmatist considerations.[26] In his work On Crimes and Punishments (1764), he countered those punishments needed to be equal to the offence, sure and immediate in their administration to avoid offending. To Beccaria, the severity of capital punishment was of less importance than the certainty of capture and punishment. He believed that capital punishment, as an irreversible act influenced more by vengeance than by reason, was of little deterrent effect. Beccaria held that a lengthy term of imprisonment, if made certain, would serve to intimidate would-be criminals more effectively than a remote and indefinite risk of death. This traditional approach emphasizes that deterrence relies less on the speed and certainty of justice than on the severity of punishment.

As opposed to the philosophical consistency of the classical school, contemporary empirical research provides a more evidence-based critique of the deterrent effect of the death penalty, especially for sexual crimes. A significant body of global criminological and legal scholarship has discovered little or no empirical proof that the death penalty actually works to reduce rape

[25] Pritam Baruah, *Judicial Discretion and Sentencing in India: A Constitutional Perspective*, 10 Indian J. Const. L. 87 (2017).
[26] Surabhi Singh, *The Influence of Media on Death Penalty Jurisprudence in India*, 20 J. Nat'l L. Sch. India Rev. 22 (2018).

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occurrences significantly. Many empirical research studies, ranging from the United States to similar socio-legal systems of other countries, conclude that there exists no appreciable difference in crime rates between states with and states without capital punishment. In the Indian scenario, statistics from the National Crime Records Bureau (NCRB) indicate that even after the imposition of stricter punishments, such as the death penalty in some rape cases, there has been no significant decrease in the number of such offences. This gap between legislative intention and on-ground realities calls into question the very effectiveness of the death penalty as a deterrent and indicates that underreporting, poor policing, delayed trails, and social stigma are far greater determinants of the perpetuation of sexual violence.[27]

Additionally, the specter of the death penalty can unintentionally deter rape reporting, particularly in instances where the perpetrator is familiar to the victim—a frequent situation in India.[28] Families might not report such crimes if they believe that a conviction might lead to the execution of a family member. Also, the probability of the offender killing the victim to silence him as a witness could be high when the rape offense alone earns the same or even heavier punishments as that given for murder. These are unintentional consequences counter to the logic of deterrence and show that severe punitive interventions could prove damaging. Conversely, enhancing the quality of investigation, ensuring speedy trials, and building a victim-friendly environment are repeatedly proven to be more effective in deterring criminality.

The philosophical basis of Beccaria's argument reacquires a renewed salience in this empiric context. His call for proportionality, certainty, and rationality in punishment resonates with today's critiques calling for systemic change over escalation of punishment. The death penalty, although symbolically powerful, also does not work in correcting the deeper societal issues that enable sexual violence, like gender inequality, poor law enforcement, and insufficient legal literacy, or even the absence of thorough sex education. All these issues demand longer-term interventions rather than more punitive legislation.

Lastly, the imposition of the death penalty for rape does not seem to be an effective deterrent when one examines it using either Beccaria's traditional perspective or modern empirical

[27] R. Krishnaswamy, *India's Shifting Penal Philosophy: From Rehabilitation to Retribution?*, 3 Socio-Legal Rev. 27 (2007).
[28] Gauri Pillai, *Sexual Violence and Capital Punishment: A Feminist Critique*, 9 Indian J. Hum. Rts. L. Rev. 134 (2020).

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studies. Although it might provide short-term political gain or popularity, its contribution to crime prevention in the long run is extremely doubtful. A better approach is in providing certainty of punishment, simplifying the criminal justice process, and targeting the social and cultural origins of sexual violence. The focus must shift from retribution to holistic justice that not only punishes but also prevents.[29]

➢ Comparative Perspective: UAE or Other Countries with Strict Punishments

Comparing the application of harsh punishments like the death penalty for rape to other legal approaches to sexual violence provides a richer understanding of legal systems worldwide treating sexual violence and whether punitive solutions have led to effective deterrence.[30] The United Arab Emirates (UAE) is frequently quoted as being a jurisdiction with a very conservative and punitive legal system, particularly for crimes against moral or religious codes. According to the UAE's penal laws based on Islamic Sharia principles, rape is considered a serious criminal offence which can attract capital punishment in the worst of cases. Its low tolerance for sexual offenses characterizes the legal system, and law enforcement tends to give severe punishments, such as life in prison or death, especially when the offense involves children, results in death, or contains aggravating circumstances. In theory, this rigorous legal code sends a zero-tolerance signal; however, it also lives side by side with problematic areas, for instance, evidentiary standards where the testimony of a victim cannot always be regarded as equal to that of a male witness and consensual sex outside marriage, sometimes, on occasion, is prosecuted criminally against the complainant. These concerns complicate the story and add the idea that while the law itself is severe in theory, its enforcement can be filled with gendered biases and due process hurdles.

➢ Conclusion

In assessing whether or not India is diverging away from or converging towards traditional criminological principles, specifically in the context of its treatment of rape and the application of the death penalty, it is clear that the Indian justice system is taking a complicated and

[29] Aashish Yadav, *Retributive Justice and Indian Criminal Law: Revisiting Beccaria's Concerns*, 14 J. Crim. Just. & Pol'y 102 (2022).
[30] Preeti Pratishruti Dash, *Punishing Rape with Death: Are We Any Safer?*, 58 Econ. & Pol. Wkly. 21 (2023).

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generally contradictory course.[31] Classical criminological theory, spearheaded by Cesare Beccaria and his contemporaries, was centered on reason, proportionality, deterrence by certainty as opposed to severity, and the utilitarian purposes of punishment. These were in support of a legal order that is predictable, equitable, and based on reason and not retribution. Recent legislative and judicial developments in India, particularly in reaction to notorious rape cases, indicate a trend away from such starting premises.[32] The growing use of capital punishment as a reaction to sexual violence, especially since the Nirbhaya case, indicates a shift towards a retributive approach that gives precedence to public anger and moral outrage over proportionate and measured justice. Legislation like the Criminal Law (Amendment) Act, 2018, instituting the death penalty for child rape is an example of populist and emotive legislative practice that goes against the classical proportionality principle as well as Beccaria's criticism of inescapable and extreme punishments.[33]

Further, the invoking by the judiciary of the "collective conscience of society" as a justification for death penalties repeatedly points to a refusal of the classical requirement of rational, impersonal judicial decision-making. This dependence upon public opinion, though understandable in a democracy that is responsive to popular sentiment, threatens to dilute the objectivity and consistency of judicial determination. The focus moves away from deterring crime through efficient legal means to restoring public confidence in the justice system through exemplary punishment. This move negates Beccaria's contention that certainty and swiftness of punishment are stronger deterrents than severity. Rather than tackling the systemic failures that facilitate sexual violence—poor investigative practice, sluggish judicial processes, weak victim support, and deep-seated gender prejudices—the emphasis usually falls on ratcheting up penalties as a quick fix. This is symptomatic of a shift away from the rationalist culture of traditional criminology towards an affective and retributive criminal justice ideology.

[31] Shraddha Chugh, *Rape, Retribution and the Death Penalty: A Gendered Critique of Indian Penal Policy*, 12 NUJS L. Rev. 142 (2019).
[32] Maya Khemlani David & Malini Ganapathy, *Sexual Crimes in India and the Question of Capital Punishment: A Comparative Study with Malaysia*, 17 Asian J. Women's Stud. 98 (2021).
[33] Vrinda Grover, *Death Penalty for Rape: In Whose Name?*, 48 Econ. & Pol. Wkly. 15 (2013).