



Death Penalty For Sexual Offences

This article is based on [“The wrong answer”](#) which was published in The Indian Express on 06/01/2021. It talks about the issues related to the award of the death penalty for sexual offences.

Sexual offences against women and children are one of the most heinous crimes against humanity. Given this, the public has a real and legitimate interest in addressing such concerns, leading to the death penalty’s demand to deter sexual offences purportedly.

In this context, on [Human Rights Day 2020](#), the Maharashtra cabinet approved the Shakti Bill, enlarging the scope of harsher and mandatory sentences — including the death penalty — for non-homicidal rape (excluding [Marital Rape](#)).

The Shakti Bill comes amid the recent legislative trend to invoke the death penalty for sexual offences. For instance, the Andhra Pradesh government passed the [Disha Bill in 2020](#) (pending presidential assent), that provides the death penalty for the rape of adult women.

However, introducing the death penalty diverts attention from deep-rooted issues & long-term solutions. It suggests that the reason for such crimes is that the punishment is not severe enough.

Associated Issues With Death Penalty Against Sexual Offences

- **May Do More Harm To Victim:** Women’s right groups have argued that the death penalty is a knee-jerk and populist solution to counter sexual offences.
 - Also, Child-right activists insist that introducing capital punishment for non-homicidal rape may lead rapists to kill their victims to erase testimonial evidence.
- **Death Penalty Won’t Remove Prejudice:** Introducing harsher penalties does not remove systemic prejudices from the minds of judges and the police.
 - Generally, police might refuse to register complaints or acquit offenders in cases they do not consider “serious” enough to warrant a mandatory minimum.
- **Lower Rate of Conviction:** According to crime data from the [National Crime Records Bureau](#), in 93.6% of sexual offences, the perpetrators were known to the victims.
 - Therefore, introducing capital punishment would deter complainants from registering complaints.
- **Delay in Closure of Justice:** The execution of a death sentence comes at the end of multiple stages of appeals and avenues of seeking clemency.
 - This time extended to the defendant to exhaust all legal remedies will delay the judicial process’s finality and closure—militating against the competing interest of ensuring speedy justice.
 - It might also see an increase in instances of instant retribution, such as the extrajudicial killing of gang-rape and murder suspects in Hyderabad late in 2019.

- **Regressive Step:** The [Justice Verma Committee Report](#) that made several recommendations on the laws on sexual offences (after Nirbhya rape case 2012), held that the death penalty's deterrent effect is "a myth".
 - The report stated that it would be a regressive step to introduce the death sentence in non-homicidal cases.

Other Issues Related to Shakti Bill

- The other anti-women assertion in the bill moves away from the standard of affirmative consent in cases involving adult victims and offenders.
 - Significant advocacy from the women's movement led to introducing an affirmative standard of consent, rooted in unequivocal voluntary agreement by women through words, gestures or any form of verbal or non-verbal communication.
- In a sharp departure, the bill stipulates that valid consent can be presumed from the "conduct of the parties" and the "circumstances surrounding it".
- Rape trials continue to be guided by misogynistic notions, expecting survivors to necessarily resist the act, suffer injuries and appear visibly distressed.
- Therefore, the bill's vaguely worded explanation holds dangerous possibilities of expecting survivors to respond only in a particular manner, thus creating the stereotype of an "ideal" victim.

Way Forward

- **Plugging Gaps in Justice Delivery:** The most severe gaps in the justice delivery system are reporting a police complaint. Therefore, the focus of the criminal justice system needs to shift from sentencing and punishment to the stages of reporting, investigation, and victim-support mechanisms. In this context, the following measures must be ensured:
 - The victim reports a case without any fear.
 - Police to conduct a sound investigation.
 - Victim protection throughout the trial.
 - Making testification as easy and as quick as possible.
 - Allocation of resources and more robust implementation of the law than is currently evident.
- **Sensitisation At a Broader Level:** Despite the ever-increasing ambit of the death sentence, there has been little effort to address prejudices in society.
 - Addressing the prejudices in the society against sexual offences requires sensitisation of functionaries of the justice system & more importantly society.

Conclusion

Instead of merely enhancing punishment, tackling crimes against women and children requires broader social reforms, sustained governance efforts and strengthening investigative and reporting mechanisms.

Drishti Mains Question

Punitive responses to sexual violence need serious rethinking, given the multitude of perverse consequences and their minor role in addressing the actual needs of rape survivors. Discuss.

This editorial is based on ["Where India and US diverge"](#) which was published in The Hindustan Times on January 7th, 2020. Now watch this on our Youtube channel.

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