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FROM NIRBHAYA TO APARAJITA: TRACING INDIA'S CRIMINAL LAW PUNISHMENT REFORMS FOR CRIMES AGAINST WOMEN

~Aysha Shanza

ABSTRACT

Crimes against women in India have consistently influenced the evolution of criminal law, particularly in relation to punishment frameworks. Over time, rising crime rates and the increasing brutality of offenses have compelled the Indian legal system to introduce stricter classifications of crimes and enhanced punishments. The trajectory from 2012 to the contemporary times paints a harsh reality that is vital to ponder upon. Through this paper, an attempt has been made to examine the evolution of punishments for crimes against women in Indian criminal law jurisprudence from 2012-2024, a period marked by some of the most heinous acts of crimes committed against women. Incidents such as the 2012 gang rape and murder in New Delhi and the recent sexual violence against a doctor at a medical college in West Bengal have acted as catalysts for sweeping legislative reforms. These circumstances have left the Indian legal system with no option but to respond through harsher penal measures. This paper critically analyzes whether the evolution of punishments, from extended imprisonment to the imposition of the death penalty, has resulted in a tangible reduction in crimes against women or if there lies a different angle to it. It further explores the jurisprudential reasoning behind increased punishments, questioning whether deterrence-driven reforms are proportionate to their stated objectives of reducing crime, reforming offenders, and ensuring women's safety. By examining amendments, judicial reasoning, and crime trends, the paper investigates analyzing both sides of the coin and

unveils whether the assumption of harsher punishments necessarily translates into greater security for women or not. The paper eventually seeks to assess whether India's evolving punitive approach reflects substantive justice or whether it risks becoming a reactive, symbolic response to systemic failures in preventing crimes against women.

Keywords:

Crimes Against Women, Punishment, Deterrence, Criminal Law Reforms, Jurisprudence

1. INTRODUCTION

This paper studies the evolution of punishment reforms for crimes against women through distinct legal moments: the pre-2012 framework under the Indian Penal Code, the Criminal Law (Amendment) Act, 2013,¹ the Criminal Law (Amendment) Act, 2018,² the Bharatiya Nyaya Sanhita,³ and the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024.⁴ Each of these statutes is studied and dealt with separately in this paper, since each represents a new and harsher response for crimes against women. An attempt has been made to first study each statute and then look at these five legal moments through the same lens to understand and compare the changes that were brought about due to each changing set of institutional pressures. What is taken into account and has been noticed is the continuous increase in punishments that is visible across all five sections, but at the same time, there is also a noticeable increase in the severity of these punishments as well. The pre-2012 framework aims to look at the time before the first major amendment and the atmosphere then. The 2013 Act looks at the aftermath of the Nirbhaya case and the subsequent legal amendments along with the inseparable mention of the Justice Verma Committee report. The 2018 Act doesn't just look at increasing the severity of punishments but also the addition of new categories. The Bharatiya Nyaya Sanhita, 2023, aims to

¹ The Criminal Law (Amendment) Act, No. 13 of 2013, INDIA CODE (2013).

² The Criminal Law (Amendment) Act, No. 22 of 2018, INDIA CODE (2018).

³ The Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023).

⁴ The Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024, W. Ben. Legis. Assemb. (passed Sept. 3, 2024) (not yet in force).

represent an overhaul of criminal law and decolonisation, and the Aparajita Bill looks at the recent case in Kolkata.

2. LITERATURE REVIEW

The relationship between harsh punishments and crime reduction has been widely debated in criminology and legal studies. The deterrence theory, developed by thinkers such as Cesare Beccaria and Jeremy Bentham, argues that people make rational choices and consider the costs and benefits before committing the crimes.⁵ According to this theory, increasing the severity of punishments should discourage criminal behaviour in people by making the consequences of offending more serious. This theory has, however, been questioned by criminologists, as it has been found that the certainty of punishment, which includes capture, investigation, and prosecution, is much more effective than just the idea of the severity of punishments. If this finding holds true, then that would mean that a criminal justice system, regardless of how harsh the punishments are, cannot deter crime, since the probability of that punishment ever being applied remains low regardless of how severe it is on paper. Within Indian criminal law, a considerable amount of legislative response has been targeted with respect to crimes against women. These broadly fall into two categories. The first category consists of the legislative and doctrinal history that documents the changing amendments, from the criminal law amendment acts pre-2012 to the Bharatiya Nyaya Sanhita, 2023. The second category consists of reports and statistics that show conviction rates, investigation failures, and gaps in procedural reforms. But fewer contributions connect the two together. The Justice Verma Committee report itself occupies an unusual space in this paper. Although the committee recommended against the death penalty, holding that there was no evidence to state that the death penalty had any reliable ground for being considered as having an effective deterrent value over life imprisonment, this recommendation was not followed by the parliament.⁶ The more recent Bharatiya Nyaya Sanhita, 2023, has shown mere continuation of the

⁵ CESARE BECCARIA, *ON CRIMES AND PUNISHMENTS* (Henry Paolucci trans., Macmillan 1963) (orig. pub. 1764); JEREMY BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* (J.H. Burns & H.L.A. Hart eds., Methuen 1970) (orig. pub. 1789).

⁶ PRS Legislative Research, *Justice Verma Committee Report Summary* (2013)

statutory provisions rather than a major overhaul.⁷ This literature, however, has not had an opportunity to engage the recently enacted Aparajita Bill, 2024 in light of the R.G. Kar Medical College case, and so this paper situates itself in the intersection of both these timelines and the laws that changed in between to better understand the reasoning behind the punitive instinct of legislative reform and the actual implementation of courts behind it as well as the reduction of crimes against women.

3. THE PRE-2012 FRAMEWORK

The cases studied in this paper, although several years apart, have given us a scope to understand the evolution of the very reforms that were introduced to protect the women in this country. To understand these evolutions, however, it becomes important to understand the inception of these laws. The framework of the Indian Penal Code and how the gaps in that very framework were exposed way before 2012 or 2024. The Criminal Law (Amendment) Act, 2013, the Criminal Law (Amendment) Act 2018, and the Bharatiya Nyaya Sanhita 2023. Unlike policy reforms that go through extensive research and deliberation, the reforms related to crimes against women are mostly formed in bursts of events. An event of extraordinary brutality occurs, the public outrage generates a demand for harsher punishments, very often a death penalty, and then the legislature meets these demands irrespective of what its own expert bodies have concluded about their efficacy. The pattern of case-triggered response goes beyond 2012, with the custodial rape case of 1978, where a tribal girl was raped inside a police station, and the judgement subsequently given in *Tukaram v. State of Maharashtra*⁸ in which police officers were subsequently acquitted by the court with the reasoning of consent through non-resistance,⁹ created nationwide outrage which in turn led to the Criminal Law Amendment Act of 1983,⁹ the pattern earlier described. The same pattern later repeated in cases post-2012, in the Nirbhaya case and the rape and murder of a trainee doctor at R.G. Kar Medical College Hospital, Kolkata, in 2024. This recurring pattern shows what

⁷ P39A Criminal Law Blog, Nat'l Law Univ., Delhi, *Criminal Law Bills 2023 Decoded #2: Concerns with the Proposed Landscape of Sexual Offences in BNS 2023* (Sept. 2023).

⁸ *Tukaram v. State of Maharashtra*, A.I.R. 1979 S.C. 185 (India) (decided Sept. 15, 1978).

⁹ The Criminal Law (Amendment) Act, No. 43 of 1983, INDIA CODE (1983).

such reforms typically concentrate on and, just as much, what it does not. Harsher punishments are rarely accompanied by equal investment in procedural efficiency, forensic examinations, court backlogs, and timely investigations. This was also directly written in the Justice Verma Committee report in the wake of the Nirbhaya case, which was not followed by the parliament.¹⁰ A brief look at some important amendments pre-2012 bears out the central claim of this paper, which is the continuity of a pattern that increases the severity of punishments but ultimately has demonstrated no reduction in crime.

4. THE NIRBHAYA MOMENT AND THE CRIMINAL LAW (AMENDMENT) ACT, 2013

The 2012 Nirbhaya case, earlier described, wasn't just a regular crime case usually seen. It led to many changes due to the nature of the crime committed. It reached the Supreme Court as *Mukesh v. State* (NCT of Delhi).¹¹ The trial court convicted four adults to death while applying the rarest of the rare doctrine; a fifth accused died by suicide in custody, and one of the convicts, a juvenile, was sent to the juvenile justice board,¹² as he was just months from turning eighteen. The most significant detail isn't just the trial process but what happened before the men were even convicted of the offence. The government appointed the Justice Verma Committee into place, accepting over 80,000 suggestions from jurists, scholars, and civil society organisations, and submitted a report within thirty days.¹³ And the most interesting finding from this report was that excessive punishment doesn't translate to a reduction in crime. But the gaps highlighted were in policy and governance structures. The committee, along with criminalizing a wide range of conduct, also recommended removing the marital rape exception, which, to date, hasn't been struck off by the parliament and stands as a substantial question of legal paradox.¹⁴ The parliament's response included a substantial part of the committee's recommendations but not the sentencing

¹⁰ PRS Legislative Research, *supra* note 6.

¹¹ *Mukesh v. State (NCT of Delhi)*, (2017) 6 S.C.C. 1 (India).

¹² Rhythm Sharma, *Case Comment: Mukesh & Anr. v. State (NCT of Delhi) & Ors.*, VIDHI PARIVARTAN 1, 1–2 (2021).

¹³ PRS Legislative Research, *supra* note 6.

¹⁴ PRS Legislative Research, *supra* note 6.

recommendation. Two additions to the amendment were section 376A and section 376E,¹⁵ which included the death penalty in case of rape that left the victim in a persistent vegetative state and death penalty or imprisonment for the remainder of one's life for repeat offenders, respectively. The difference between the committee's recommendations and the parliament's changes for the final legislation is important because, although the scope of crime was increased, it was not taken into account that the committee had recommended against the escalating punishment to the death penalty, and ironically this was the suggestion that the committee considered most important for preventing crimes against women. To further support this, the Law Commission of India, in its 2015 report, had noted that India has seen a declining rate of murders despite a decline in execution rates.¹⁶ This weakens the argument that harsher punishments are related to the reduction in crime. Thus, the response to the 2012 Delhi case was an expansion in the forms of punishment, but failed to implement institutional reforms. These legislative reforms continued after 2012, 2018, and 2023, focusing mainly on severity rather than systemic change.

5. ESCALATION AND THE CRIMINAL LAW (AMENDMENT) ACT, 2018

If the 2013 amendment represented the legislature's first major reform, then the Criminal Law Amendment Act, 2018, represented its second most major reform and also a rather aggressive one. This is because the 2018 amendment wasn't in the wake of just one major incident like Nirbhaya but rather due to a chain of criminal acts, especially the Unnao case in Uttar Pradesh and the Kathua case in Jammu and Kashmir, both involving the rape of minors.¹⁷ The first step after this was the Criminal Law (Amendment) Ordinance, 2018, which was subsequently replaced by the act itself.¹⁸ What makes the 2018 amendment significant is not just the imposition of stricter and harsher punishments but also a new section for crimes against women and, especially, minors. It was added that the rape of a minor below the age of twelve would result in twenty years of imprisonment, extended to the remainder of the offender's natural life or death, gang rape of a girl under twelve,

¹⁵ The Criminal Law (Amendment) Act, No. 13 of 2013, *supra* note 1, §§ 376A, 376E.

¹⁶ Law Comm'n of India, Rep. No. 262, *The Death Penalty* (Aug. 2015).

¹⁷ PRS Legislative Research, *Legislative Brief: The Criminal Law (Amendment) Ordinance, 2018* (2018).

¹⁸ PRS Legislative Research, *supra* note 17; The Criminal Law (Amendment) Act, No. 22 of 2018, *supra* note 2.

with the punishment being death penalty or life imprisonment; and the gang rape of a girl under sixteen would result in imprisonment until the offender's natural life or death.¹⁹ On the procedural side, this act introduced a lot that the Justice Verma committee had recommended to introduce, one being trials to be completed within two months of framing the charges.²⁰ But the changes on paper differed from the changes in implementation. Because along with these new changes, it didn't come with real changes such as more investigative officers, fast-track courts, or expansion in forensic laboratories. Such procedural changes, without matching the institutional capacity risks, are just remaining a gesture. These changes, however, were followed by widespread criticism since the major change was introducing the death penalty for child rape; an overwhelming majority of the perpetrators in such cases are the closest relatives of the child,²¹ which subsequently makes the child and even the parents less willing to report such crimes, as the outcome would be the execution of the relative. This becomes a striking point because the 2018 amendment might be working against, rather than for, its stated purpose. Read alongside the 2013 Act, the 2018 Act, therefore, confirms the pattern that this paper traces and the subsequent legislative reforms discussed in this paper, would repeat this same structure again.

6. THE BHARATIYA NYAYA SANHITA, 2023 AND THE APARAJITA BILL

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaced the Indian Penal Code, received presidential assent and came into force on July 1, 2024.²² The replacement was part of a broader reform that also replaced the code of civil procedure and the Indian Evidence Act. Sexual offences, which were earlier spread across different sections, are now consolidated under chapter V, offenses against women and children, under sections 63 to 99.²³ Despite being presented as a major decolonization of criminal law, the provisions related to sexual offenses changed very little in substance. Section 63 largely reproduces the post-2013 definition of rape, including lack of consent

¹⁹ The Criminal Law (Amendment) Act, No. 22 of 2018, *supra* note 2, §§ 376AB, 376DA, 376DB.

²⁰ PRS Legislative Research, *supra* note 17.

²¹ Child Rape Cases Surge, More 'Known Persons' Involved, India Today, Oct. 1, 2025.

²² The Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023).

²³ *Id.* ch. V.

and retaining the marital rape exception. The only significant change is that the exception now applies to a wife above the age of eighteen instead of fifteen.²⁴ Similarly, section 64 still mirrors the punishment structure that existed under section 376 IPC,²⁵ including mandatory minimum sentences for aggravated forms of rape. One important addition is section 69, which creates a separate offence through deceitful means, including a false promise of marriage.²⁶ Therefore, most scholars conclude that changes in the laws related to sexual offences are not significant. Instead, it merely reorganises the existing provisions.²⁷ This finding becomes important because it suggests that the BNS represents continuity rather than transformation with respect to the approach to sexual offences. It is within this legal background that the R.G. Kar case must be understood. The body of a 31-year-old postgraduate doctor was found in the seminar room of the hospital; postmortem reports revealed multiple injuries and manual strangulation.²⁸ The accused, Sanjay Roy, was convicted and sentenced to life imprisonment until death.²⁹ Despite widespread outrage, the court refused to impose the death penalty, as the case did not satisfy the rarest of the rare doctrine laid down in *Bachan Singh v. State of Punjab*.³⁰ Soon after the incident gained public attention and even before the trial concluded, the West Bengal Legislative Assembly passed the Aparajita Women and Child (West Bengal Criminal Laws Amendment) Bill, 2024.³¹ The bill posed major changes, including making the death penalty mandatory in cases where rape results in death or a permanent vegetative state. It also proposed life imprisonment for the remainder of the offender's life as the standard punishment for rape. The proposals under this bill raise serious constitutional concerns. In *Bachan Singh v. State of Punjab*, the Supreme Court upheld the constitutionality of

²⁴ BNS, *supra* note 22, § 63.

²⁵ BNS, *supra* note 22, § 64.

²⁶ BNS, *supra* note 22, § 69.

²⁷ P39A Criminal Law Blog, *supra* note 7.

²⁸ *Timeline of Events Leading to Verdict in RG Kar Doctor's Rape-Murder Case*, DT NEXT (Nov. 25, 2025).

²⁹ *RG Kar Case Timeline: From Kolkata Doctor's Rape & Murder to Sanjay Roy's Life Imprisonment Verdict*, ASIANET NEWSABLE (Jan. 20, 2025).

³⁰ Asianet Newsable, *supra* note 29; *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684 (India).

³¹ *West Bengal Legislative Assembly Passes Aparajita Anti-Rape Bill*, DD NEWS.

the death penalty only because judges retained discretion to impose it in the “rarest of rare” cases.³² Later in *Mithu v. State of Punjab*, the Supreme Court struck down a mandatory death sentence, holding that removing the judicial discretion violated Articles 14 and 21 of the Constitution.³³ The *R.G. Kar* case thus occupies a very unique position in this paper. It generated perhaps the strongest and fastest legislative demand for harsher punishment, mainly a mandatory death sentence. Yet, at the same time, the court, while hearing the case, chose to not even impose the discretionary death penalty that already existed under the law. The contrast between the legislative response and the judicial one demonstrates the central argument of this paper, that is, public outrage leading to demands for harsher punishment, even when the justice system does not consider such punishment legally justified. It therefore suggests that the punishment-centered reforms have become increasingly disconnected from the actual functioning of the criminal justice system.

7. JURISPRUDENTIAL ANALYSIS: THE GAP BETWEEN PUNISHMENTS AND CRIME REDUCTION

In the preceding chapters, we have traced significant legal moments in India that responded to crime against women by increasing the severity of punishments. This chapter turns from the legislative history to understand the jurisprudential reasoning behind the same. Whether India's constitutional reasoning supports the assumption that harsher punishments produce a corresponding reduction in crime rates. The argument here is that Indian jurisprudence, in several instances, has not supported and, in some cases, warned against it.

7.1 The Doctrinal Analysis: Circumspection and Not Severity as the Constitutional Safeguard

The starting point here is *Bachan Singh v. State of Punjab*,³⁴ where the Supreme Court only reserved capital punishment as a discretionary alternative to life imprisonment, following the

³² *Bachan Singh v. State of Punjab*, *supra* note 30.

³³ *Mithu v. State of Punjab*, (1983) 2 S.C.C. 277 (India).

³⁴ *Bachan Singh v. State of Punjab*, *supra* note 30.

“rarest of rare” doctrine, and this conclusion is reached after weighing the aggravating and mitigating circumstances of the case. The court’s jurisprudence behind this reasoning was to avoid the disproportionate application of the most severe punishment available in law. And moreover, the court’s validation for the death penalty in this case was a narrow one, meant to be more individualised as opposed to the general public discourse around this punishment. This provision was further tested and reaffirmed in *Mithu v. State of Punjab*,³⁵ where the court struck down the provision mandating the death penalty without the discretion of the court. The court held that removing judicial discretion would render the provision violative of Article 14 and Article 21. Read together, *Bachan Singh* and *Mithu* establish that it is not the severity of the punishment itself that renders a provision constitutional, but rather it is dependent on the individual facts and every case. If and when a punishment framework removes this discretion, it goes outside the boundary of Indian jurisprudence and what it has established with respect to the permissible use of capital punishment. This principle is directly relevant to this paper’s argument. As seen in the Aparajita Bill and the proposal to make the death penalty mandatory for rape resulting in death, it shows the gap in the settled jurisprudence. No single category of offence, no matter how grave, can be assumed to have the same punishment. This is because the severity of the crime committed and the severity of the punishment it should attract are not fixed aspects. This is also the assumption that has consistently driven legislative escalation studied in this paper.

7.2 The Empirical Judgment in the Law Commission Report No. 262

It is worth considering the Law Commission report no. 262 as a jurisprudential report and not merely as a statistical one. The commission's task of reviewing the death penalty across all categories of offences continuously found that India's murder rate had declined steadily since 1992 even when the execution rates had also declined.³⁶ This was significant evidence against the deterrence question. The constitutional reasonings given in *Bachan Singh* and *Mithu* and the empirical evidence given in this report reach the conclusion that punishment cannot be assumed to be the same/severe for all cases; rather, it depends on independent evidence, and this evidence

³⁵ *Mithu v. State of Punjab*, *supra* note 33.

³⁶ Law Comm'n of India, *supra* note 16.

directly goes against what legislators have worked and claimed for so far. This is how the central argument of this paper and the jurisprudential reasoning come into full view. The Justice Verma Committee report had reached this same conclusion in relation to rape, and the Law Commission report no. 262 reported this again two years later, especially in relation to rape.³⁷ There is still no evidence that the death penalty produces a deterrent effect and is superior to life imprisonment, and both the reports stand on this very ground. The parliament introduced the death penalty for rape through the 2013 act, keeping aside not just the recommendation of a committee's report but also breaking from a tradition holding that the deterrent effect of harsh punishment must be proven and not simply assumed based on public demand. The Justice Verma Committee report was evidence-based and conclusively said that there was no evidence to prove that the death penalty deters sexual crimes against women, but the parliament's response was one that was more of a response to the public outrage and not one that was based on empirical proof. This makes the 2013 Act significant not just because it departed from the committee's advice but also as a rejection of a broader principle of reasoned and evidence-based lawmaking that has otherwise shaped Indian jurisprudence on punishment.

7.3 Jurisprudential Illustration: The R.G. Kar Case

The R.G. Kar case is the clearest example of the argument described in this paper. This is because it brings together a single set of facts, that is, the doctrinal and empirical standards.³⁸ The court, while applying the existing death penalty framework, applied the "rarest of rare" doctrine in *Bachan Singh*. The death penalty was not awarded on this very ground that the facts of the case did not meet the standards. Now this is a court functioning entirely on the discretionary power that exists. But the West Bengal Legislative Assembly's response, proposing the death penalty as mandatory in cases of rape, undermines the very judicial discretion that *Bachan Singh* was meant to preserve.³⁹ This is not merely a disagreement between the judiciary and the legislature, but it most clearly shows the tension between the constitutional logic that governed the reasoning since

³⁷ PRS Legislative Research, *supra* note 6; Law Comm'n of India, *supra* note 16.

³⁸ Asianet Newsable, *supra* note 29; *Bachan Singh v. State of Punjab*, *supra* note 30.

³⁹ *Mithu v. State of Punjab*, *supra* note 33.

Bachan Singh and also the punitive instinct with respect to the legislative response for crimes against women. The central jurisprudential finding of this paper is that the Indian criminal law reform has consistently favoured the latter, notwithstanding what the state's own committees have repeatedly recommended against the former.

8. CONCLUSION

The aim of this paper was to study the evolutionary aspects with respect to the punishments for crimes against women. Starting from the pre-2012 framework through to 2024. The research was aimed at determining whether a rise in punishments and reforms has produced a genuine overhaul of the criminal justice system for women or has it altered the system, forgetting the real purpose and leaving the system largely unchanged. The evidence seen in this paper supports the latter conclusion. And each of the legal moments mentioned followed a similar pattern. An event of brutality occurs; this generates widespread public outrage, demanding harsher and stricter punishments, and the legislature meets these demands, frequently in contrast to evidence-based recommendations. Indian courts, in multiple instances, have consistently cautioned against the logic, assuming that severity of punishment alone produces safety. Neither the 2013 Act nor the 2018 Act produced an improvement at which rape cases result in conviction; rather, it only shows a wider problem in areas of timely investigation and prosecution. The strongest gap with respect to legal jurisprudence was seen in the R.G. Kar case and the Aparajita Bill. In that same case, the judiciary found the death penalty inapplicable, while the legislature demanded the strongest possible punishment. This paper does not conclude that the reforms made did not achieve anything; several of them have expanded the definitions of sexual offences that the pre-2012 law had no language for. But the specific question that this paper set out to answer was whether the severity in punishments corresponds to a reduction in crimes against women. Without sustained improvements in forensics, investigation capacity, and the machinery of trial, perhaps a new legal movement would follow the next case that provokes national outrage and would likely produce an outcome no different from those examined in this paper.