

# “CRITICAL ANALYSIS ON WOMEN’S SAFETY AND IMPACT OF DEATH PENALTY IN INDIA”

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## Abstract

Position of the nation is defined based on the safety and standard of living of people. India is one of the most famous country all over the planet for its great tradition and culture, where women are given most respected place within the society from the ancient time. And also India is the second largest populated country with 1.3 billion people, out of which 48% includes female population. But according to GIWPS report on women, peace and safety India stands at 133<sup>rd</sup> rank out of 167 countries. This shows that being a enormous country doesn’t mean that flocks within the country are leading a prosperous life. Most of criminal offences against women are being un-reported due to the stigma attached to the Society. Gender based violence is one of the common issue in India. Though India has statutes which punishes these type of crimes but still there is lacuna in implementing the law. Now-a- days India became one of the dangerous country in terms of safety to women though India got independence 70 years ago. The crime rates against women within the country have only risen to an great height. India is one among the lads centric country where everyone promote and prefer men rather than women. Due to this the safety and security of the female is least concerned matter in India. On one hand until the incidents happen the Indian Judiciary is not concerning with the issues, on the anther hand the Indian Judiciary is amending the laws as and when it is required and transforming as per current needs and circumstances.

This paper is mainly concerned with the challenges face by country in terms of women’s safety, the types of crimes and the cases relating to the same, international view on women’s safety, death penalty and its impact, and also looks into various International Statutes and solutions as a legal tool in protecting women and their constitutional rights.

**Keywords:** Amending, Centric, Crimes, Dangerous, Gender, Safety.

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**I. Introduction:**

India is one among the developing country. Where the Legislations pertaining to the security of the people are upgrading on continuous basis. But still there number of cases being recorded. According to National Crime Record Bureau (NCRB), a total of 31,32,954 cognizable cases were registered under Indian Penal Code (IPC), and 19,41,680 cases were registered under Special & Local Laws(SLL)<sup>1</sup>. This suggest that there is a rise of 1.3 % registered cases compared with 2017<sup>2</sup>.

India got independence in 1947, so it was almost 72 years that Indian's are free people. Once Mahatma Gandhi said that „the day when women can freely walk at midnight on road, that is the day we really achieve the independence“<sup>3</sup>, but the 2013 Delhi Nirbhaya gang rape and 2019 Disha incident proved that still after 72 years of independence from British, Indian female were not free and safe to walk independently on streets. So in the point of Mahatma Gandhi's words, India remains expecting freedom.

<sup>1</sup>Crimes Against Women 2018, NATIONAL CRIME RECORD BUREAU, (June 14, 12.38 PM), [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%203A.2\\_0.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%203A.2_0.pdf)

<sup>2</sup>Ananya Bhardwaj, Domestic violence top crime against women, sedition cases double in 2018: NCRB data, THE PRINT, ( Jan 10, 2020 ), <https://www.google.com/amp/s/theprint.in/india/domestic-violence-top-crime-against-women-sedition-cases-doubled-in-2018-ncrb-data/347814/%3famp>

<sup>3</sup>Saumya Tiwari, Bajaj Avengers independence day campaign equals freedom with women's liberation, LIVE MINT, (Aug. 14, 2017), <https://www.google.com/amp/s/thesabarmati.wordpress.com/2013/01/05/gandhi-and-rape/amp/>

**II. Historical background:**

According to Manu, a women is not self-dependent. She depend upon her father during childhood, then on husband after marriage and later she depends on her son's in the old age<sup>4</sup>. In Sanskrit there is a saying that “Vinastreeya jananamnasti, vinastreeya Gamanamnasti, Vinastreeya srustiyevanasti”<sup>5</sup> Which means that without women there's no birth, no life and no universe. Vedas states that when a female marries then she enters “as a river enters the sea” and “to rule there along with her husband, as a queen, over the opposite members of the family”<sup>6</sup>. So the Vedic period gave a much more importance to women.

But during the Medieval period many Muslim rulers invaded the Indian territory and therefore there is the influence of the Muslim traditions. Due to which the circumstances of the women were drastically degraded. In India, the Muslims followed ancient Persians traditions which gave women an inferior position within the society. Strict veiling of women was the common practice among the Mohammedans in their native lands. The Muslim men captive their women, between the closed walls of their houses and even if they stepped out of their house they

<sup>4</sup>Arundhati, *crimes against women*, SHODHGANGA, 169, 169-170 (2017), <http://hdl.handle.net/10603/140422>

<sup>5</sup>IBIBEK DEBROY, MAHABHARATA, 138-139( penguin publications, 2015)

<sup>6</sup>Purushottam Kumar, Do Vedas Denigrate Women, ISKCON (Feb. 15, 2013), <https://iskconnews.org/do-vedas-denigrate-women.3722/>

had to come out with the 'burkha'. This 'purdah system' was imposed on them<sup>7</sup>.

Pre-independence the Women's condition was still a question. Till 1829 there was the practice of Sati, which is a practice among Hindu communities where a recently widowed woman, either voluntarily or by force, immolates herself on her deceased husband's pyre<sup>8</sup>. This was abolished in 1829 by Governor-general Lord William Bentinck through Bengal Sati Regulation<sup>9</sup>. Raja Ram Mohan Roy is key person who brought this change. Later in 1930 the Mahatma Gandhi's non-cooperation movement encouraged women to become mass participants in the freedom struggle, the revolutionaries made them equal participants. As Pritilata Waddadar said in her dying statement: "*Females are determined that they will no more lag behind and stand side by side with their brothers in any activities however dangerous or difficult. I earnestly hope that my sisters will no more think themselves weaker and will get themselves ready to face all dangers and difficulties and join the revolutionary movement in their thousands*"<sup>10</sup>. Post Independence the legislatures tried to bring

the legislations for the betterment of women in changing situation.

Some of the legislations were Dowry Prohibition Act, which basically prohibits the giving and taking of dowry and also prescribes the punishment for giving and taking of dowry<sup>11</sup>; Maternity Benefits Act, provides certain benefits to working pregnant women<sup>12</sup>; The Medical Pregnancy Termination Act, it allows the women to terminate the pregnancies by registered medical practitioners in certain cases<sup>13</sup>; Equal Remuneration Act, states that equal remuneration for equal work, for both men and women without any discrimination based on sex<sup>14</sup>; Indecent Representation of Women (prohibition) Act, prohibits the indecent representation of women through advertisements, paintings, writings, publications, figures or in any manner<sup>15</sup>; Pre-Conception and Pre-Natal Diagnostic Techniques Act, this Act prohibits the determination of sex of fetus. This is to abolish the female feticide<sup>16</sup>.

The Protection of Women from Domestic Violence Act, protects the women from domestic violence and this Act for the first time in India gave a wider definition to domestic violence, which also includes physical, mental,

<sup>7</sup>Rai, Neelam, *domestic violence women and law an Indian perspective*, SHODHGANGA,13, 30-31,2017, <http://hdl.handle.net/10603/149420>

<sup>8</sup>PTI, Theabolished'Sati Pratha: Lesser-knownfactsonthebanned practice, India Today, (Dec. 4, 2018, 11:23 IST), <https://www.indiatoday.in/education-today/gk-current-affairs/story/sati-pratha-facts-275586-2015-12-04>

<sup>9</sup>Ibid

<sup>10</sup>Chatterjee.Manini, 1930: Turning Point in the Participation of Women in the Freedom Struggle, 29, JSTOR, 39, 42(2001), <https://www.jstor.org/stable/3518124>

<sup>11</sup> The Dowry Prohibition Act, 1961

<sup>12</sup> The Maternity Benefits Act,1961

<sup>13</sup> The Medical Pregnancy Termination Act,1971

<sup>14</sup> The Equal Remuneration Act,1976

<sup>15</sup> The Indecent Representation of Women (prohibition) Act, 1986

<sup>16</sup> The Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994

economic and verbal abuse<sup>17</sup>; The Prohibition of Child Marriage Act, prohibits the child marriage below the prescribed age limit and provide penalty for conducting child marriage<sup>18</sup>; The protection of Children from Sexual Offence Act, protects the children from sexual assault, sexual harassment and prescribe the punishments for law violators<sup>19</sup>; The Sexual Harassment on Women at Workplace (Prevention, Prohibition and Redressal) Act, provides the safety to working women at Workplace<sup>20</sup>.

### **III. International Instruments on Protection of Women:**

#### **1. Universal Declaration of Human Rights (UDHR),1948:**

India is a signatory of six core human rights covenants under UDHR. Basically UDHR states that all the "human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"<sup>21</sup>. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status<sup>22</sup>.

#### **2. International Convention for Suppression of Immoral Traffic in Person and Exploitation of Prostitution of others, 1951<sup>23</sup>:**

India ratified this convention in 1950 and in 1956 the Indian legislature passed an Act called Suppression of Immoral Traffic in Women and Girls Act(SITA), 1956, which prohibits the immoral traffic of women and girls and later one was amended as, Immoral Traffic Prevention Act,1986.

#### **3. Convention on the Political Rights of Women,1954:**

This convention was adopted by UN in 1954. This convention provides political rights to women such as voting rights<sup>24</sup>and right to hold public offices to perform public functions<sup>25</sup>.

#### **4. Convention of Elimination of All Form of Discrimination Against Women, 1979:**

This convention for the first time defines what is discrimination against women as, any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying women's enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any

<sup>17</sup> The Protection of Women from Domestic Violence Act,2005

<sup>18</sup> The Prohibition of Child Marriage Act, 2006

<sup>19</sup> The protection of Children from Sexual Offence Act,2013

<sup>20</sup> The Sexual Harassment on Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

<sup>21</sup>Article-1 , Universal Declaration of Human Rights,1948

<sup>22</sup> Article-2 , Ibid

<sup>23</sup>[https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/convention-suppression-traffic\\_en](https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/convention-suppression-traffic_en)

<sup>24</sup>Article—I, convention on the political rights of women, 1954

<sup>25</sup> Article-III, Ibid.

other field. This is irrespective of their marital status, on a basis of equality of men and women<sup>26</sup>.

#### **IV. Factors responsible for crimes against women:**

According to Routine Activity Theory, there should be three essentials to commit a crime. Those are, the first one is a likely offender, is a person who is likely to commit the crime; secondly the essential element is suitable target, it may be a person or property which the offender is going to damage. If the target is suitable, then there is a high change of committing crime. And thirdly, there must be absence of capable guardian. It may be security systems or security guard or general public. If the suitable target is found in less security area then there is high chance of committing a crime<sup>27</sup>.

##### **1. Social factors:**

This is based on the society, in which people are living. If a male is living in a male dominated society then women's are subject to discrimination. If male is living in ideal society, then there will be no discrimination. Since India

is a male dominating society, there is lot of discrimination against women.

##### **2. Economic factors:**

In traditional Indian families runs around the men. He is the bread-winner of home and women's should have to take care the welfare of family. If the men becomes unemployed and women is the bread-winner, then the ego of men will be not satisfied, due to which he tries to commit crime against women.

##### **3. Alcoholism:**

This became one of the reason for crimes against women. The men who are addicted to alcohol, are committing crimes. It may be for getting money from women or for getting ego satisfaction. And also when the person consumes alcohol, he is not acting as a prudent man and takes decision without a proper thinking.

#### **V. Crimes in India:**

Indian penal code has identified some of the crimes like Rape, Kidnapping and abduction, Dowry harassment, Honor killing, Acid attacks, Molestation, Cruelty.

#### **Some of the landmark judgments, which shaped the Women's Rights:**

1. In Vishakha vs. State of Rajasthan<sup>28</sup> case , Bhanwari Devi a social worker in Rajasthan was brutally gang raped by variety of upper caste Gujjar men, because she had tried to

<sup>26</sup> Article-1, Convention of Elimination of All Forms of Discrimination Against Women, 1979.

<sup>27</sup>K.JAISHANKAR & NATTI RONEL, SECOND INTERNATIONAL CONFERENCE OF THE SOUTH ASIAN SOCIETY OF CRIMINOLOGY AND VICTIOMOLGY (SASCV),252-253(k.jaishankar,2013), [https://books.google.co.in/books?id=Do1Kl2OyQdgC&pg=PA252&lpg=PA252&dq=routine+activity+theory+was+propounded+by&source=bl&ots=S2orceiffl&sig=ACfU3U0OQ1GFPIHhgAC\\_zNpFTdnwSnjwzw&hl=en&sa=X&ved=2ahUKEwjYr\\_bu\\_o\\_qAhUVH7cAHWudD7cQ6AEwE3oECAIQ#v=onepage&q=routine%20activity%20theory%20was%20propounded%20by&f=false](https://books.google.co.in/books?id=Do1Kl2OyQdgC&pg=PA252&lpg=PA252&dq=routine+activity+theory+was+propounded+by&source=bl&ots=S2orceiffl&sig=ACfU3U0OQ1GFPIHhgAC_zNpFTdnwSnjwzw&hl=en&sa=X&ved=2ahUKEwjYr_bu_o_qAhUVH7cAHWudD7cQ6AEwE3oECAIQ#v=onepage&q=routine%20activity%20theory%20was%20propounded%20by&f=false)

<sup>28</sup>Vishakha vs. State of Rajasthan(1997) 6 SCC 24(India)

prevent a toddler marriage. Bhanwari Devi decided to urge justice and lodged a case against the offenders. However, the accused was acquitted by an attempt court. But with the assistance of NGO the victim went on appeal and eventually the Supreme Court came up with certain guidelines which protects the ladies from sexual abuse at work place.

This led to enactment of The Sexual Harassment on Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. In the case of Tuka Ram vs. State of Maharashtra<sup>29</sup>, Mathura, who was a 16 year old tribal girl, who was allegedly raped by two policemen on the compound of Desai Ganj Police Station in Chandrapur, Maharashtra, while her relatives sat outside to file a police report against a theft. But the supreme court held that “no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false. It is further clear that the averments on the part of the girl that she had been shouting loudly for help are also a tissue of lies” and the appellants were acquitted.

This case led to Amendment to Indian Evidence Act, in the form of insertion of Section-114(A).

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<sup>29</sup>*Tuka Ram vs. State of Maharashtra*, MANU/SC/0190/1978(India)

3. In *Mukesh and ors. Vs. State for NCT of Delhi and Ors.*<sup>30</sup> case had brought whole country together against the rape. Nirbhaya is a pseudonym name used to address the rape victim of Delhi gang rape incident 2012. On a chilly night, that is, December 16<sup>th</sup> 2012, a 23 year Para-medical student Jyothi Singh (Nirbhaya) along with her friend Avanindra Pandey were returning to home from movie theatre, where they took a bus which consisting six men(including driver). The men started assaulting nirbhaya and cruelly raped her. Finally, on May 5<sup>th</sup> 2017 the Supreme Court gave the judgement, which upholds the Delhi high court's judgement and stated a three-year imprisonment to a juvenile and death sentence to four accused and remaining one accused hanged himself during the trial. This case led to Criminal Law (Amendment) Act 2013. And the government created Nirbhaya Fund, where all the states have allocate some of the budget to this fund, which is used for ensuring women safety and protection.

4. In *Mohd. Ahmed Khan v. Shah Bano Begum*, a 62 years old muslim lady was given divorce by pronouncing talaq under muslim law. She was thrown out of house and later stopped the payment of maintenance to her. She filed the case for maintenance under section-125 of criminal

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<sup>30</sup>*Mukesh and ors. Vs. State for NCT of Delhi and Ors.*, MANU/SC/0575/2017(India)

procedure code. Court granted the maintenance to her<sup>31</sup>.

This case led to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986.

5. In ShayaraBano and Ors.vs Union of India<sup>32</sup>, this case challenged that giving triple talaq to muslim women is unconstitutional. Court opinioned that "the very fact that Triple Talaq is instant and irrevocable, it had been obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which was essential to save lots of marital tie, could not ever take place. This form of Talaq must, therefore, be held to be violative of the fundamental right contained Under Article 14 of the Constitution".

So court held that instant talaq or triple talaq was unconstitutional.

6. Air India V. Nargesh Meerza, there was a rule that air hostess should not marry during the job, if they done so then it is considered as a ground for termination of job. In this case the supreme court struck down the Air India regulations relating to retirement and pregnancy bar on the service of air hostess and held that such type of conditions are

arbitrary in nature. And also court held that it would be an insult to Motherhood<sup>33</sup>.

7. In the case of Mohd. Ahmed Khan vs. Shah Bano Begum and Ors.<sup>34</sup> a divorced Muslim woman filed the application for maintenance under Section 125 of the Criminal Procedure Code, which raises a straightforward issue which is of common interest not only to Muslim women, not only to women generally but, to all or to those who are aspiring to create an equal society of men and women, lure themselves into the assumption that mankind has achieved a remarkable decree of progress in that direction. The main issue in this case was whether section-125 of Cr.P.C applicable to Muslim women? In this case the court held that language of statute provides for no escape from conclusion that divorced Muslim wife entitled to apply for maintenance under Section 125 and 'Mahr' not a sum which under Muslim Personal Law is payable on divorce.
8. In the case of the Indian Young Lawyers Association and Ors. vs. The State of Kerala<sup>35</sup>, the issue was with respect to entry of female devotees between age group of ten to fifteen years to Lord Ayyappa Temple at Sabarimala which had been denied to them on basis of certain custom and usage. In this

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<sup>31</sup>*Mohd. Ahmed Khan v. Shah Bano Begum*, AIR1985SC945(India)

<sup>32</sup>*ShayaraBano and Ors.vs Union of India* ,AIR 2017 SC 4609(India)

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<sup>33</sup>*Air India V. Nargesh Mirza*, AIR 1981 SC 1829(India)

<sup>34</sup>*Mohd. Ahmed Khan vs. Shah Bano Begum and Ors*, AIR 1985 SC 945

<sup>35</sup>*Young Lawyers Association and Ors. vs. The State of Kerala*, 2018 (4) KLT 373

case the court didn't look into the religious perspective but only considered the constitutional perspective and held that 'women's are allowed to offer the prayers in the temple as the exclusionary practice which was based upon biological factor exclusive to female gender amounts to discrimination and thereby violates Articles 14,15 and 17 of Constitution'.

9. In the case of the Vineeta Sharma vs. Rakesh Sharma and Ors.<sup>36</sup> the issue raised was whether the daughters has the coparcenary right in their father's property, who was not alive at the time of enforcement of Hindu Succession (Amendment)Act 2005? The court held that daughters have the coparcenary rights even if their father was not alive when the Hindu Succession (Amendment)Act, 2005 came into force. In this case Justice Arun Mishra stated that "Daughters must be given Equal rights as sons. Daughter remains a loving daughter throughout the life. The daughter shall remain a coparcener throughout the life, irrespective of whether her father is alive or not".
10. In the case of Laxmi vs. Union of India<sup>37</sup> ,is a Public Interest Litigation(PIL), the petitioner asked for the minimum compensation in the cases of acid attacks and also prayed before the court for the cost of

treatment for the acid attacks. 'As per the decision of the case, the Secretary in the Ministry of Home Affairs, Government of India and the Secretary in the Ministry of Health and Family Welfare, Government of India with all the Chief Secretaries/their counterparts in the States/Union Territories organized the meeting and decided to fix the compensation amount as Rs.3,00,000 and also court imposed a strict ban selling of acid without any proper identity proof'. For the purpose of the second and third prayer an section in the Code of Criminal Procedure,1973 was inserted, that is Section-357C, which states that 'All the hospitals both the public and private, whether those are run by central government or by the state government or by local bodies or by any person need to provide the first-aid to the victims"

11. In the case of Lillu and Ors. vs. State of Haryana<sup>38</sup>, the court held that 'the promiscuous character of the victim is irreverent in the cases or rape. Even if the victim had lost her virginity earlier, it can certainly not give a license to any person to rape her. It is the accused who was on trial and not the victim. Even a lady of easy virtue, features a right to refuse to submit herself to sexual activity to anyone and everybody, because she is not a vulnerable

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<sup>36</sup> Vineeta Sharma vs. Rakesh Sharma and Ors. MANU/SC/0582/2020

<sup>37</sup> Laxmi vs. Union of India ,(2014) 4 SCC 427

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<sup>38</sup>Lillu and Ors. vs. State of Haryana, AIR 2013 SC 1784

object or prey for being sexually assaulted by anyone and everyone'.

The Ratio Decidendi states that "Two finger test requires a serious consideration by court as there is a demand for sound standard of conducting and interpreting forensic examination of rape survivors".

12. In the case of Sunauvvar vs. State of U.P, the victim was kidnapped in the early morning at 4.00 am and she was raped by Sunauvvar. The Allahabad High Court gave the judgement with an order to acquit the accused that is Sunauvvar on the observation that the victim did not make any noise or shout from the time when she left the house with Sunauvvar and till she was recovered by the police. She was having sufficient opportunity for shouting or drawing the attention of others that she is being kidnapped by Sunauvvar. She did not say a single word when she boarded the truck<sup>39</sup>.

13. In the case of Polepaka Praveen vs. The State of Telangana<sup>40</sup>, a 9-month baby was kidnapped at around 1:30am by the Praveen, a 25 year coolie and he raped the baby and killed her and wrapped in a towel and thrown her in a dust-bin. The high court of Telangana gave the verdict that the accused was convicted under Sections-302,449,376-A, 376-AB, 363,379 of Indian Penal Code, 1860 and under section-5

<sup>39</sup> Sunauvvar vs. State of U.P, MANU/SC/0179/2017

<sup>40</sup> Polepaka Praveen vs. The State of Telangana, MANU/TL/0450/2019

(1), (m) read with Section-6 of the Protection of Children from Sexual Offence Act, 2012.

#### **VI. Position of death penalty in India:**

According to National Crime Record Bureau data, out of 2328 convicts awarded capital punishment between 2001 and 2018, but only four convicts are executed<sup>41</sup>. This clearly shows that the rate of capital punishments executed is not even one percentage of awarded.

In Bacchan Singh vs. State of Punjab, the constitutional validity of death sentence for murder and discretionary power of courts to award death sentence was challenged. Supreme court opined that section-302 of IPC is not to be tested with Article-19(1), death penalty is more deterrent than life imprisonment so it cannot be substituted. Death penalty is neither unreasonable nor against public interest and doesn't defile the dignity of individual under Article-21 so section-302 is constitutionally valid. And imposition of death sentence by courts by exercising the power defined under section-354(3) should be on exceptional and grave circumstances that is in 'Rarest of Rare' cases<sup>42</sup>.

<sup>41</sup>PrabhakarTamilarasu, *Of 2,328 convicts awarded death penalty, only 4 executed:NCRB data*, THE FEDERAL,(Feb. 7, 2020, 7.15 Am), <https://thefederal.com/news/4-out-2328-convicts-awarded-death-penalty-executed-ncrb-data/#:~:text=Of%20%2C328%20convicts%20awarded%20death%20penalty%2C%20only%20%20executed%3A%20NCRB%20data&text=The%20capital%20punishment%20awarded%20to,Courts%20and%20the%20Supreme%20Court.>

<sup>42</sup>Bacchan Singh vs. State of Punjab, AIR 1980 SC 898(India).

In the case of Mithu vs. State of Punjab, the court made the distinction between section -302 and section-303 of Indian Penal Code (IPC). Court stated that, section-302 IPC provides for sentence of death as alternative sentence and section-303 of IPC prescribes only sentence of death as punishment. So court struck down section-303 as unconstitutional and held that sentence of death is not mandatory punishment for the offence of Murder<sup>43</sup>.

In the case of Macchi singh vs. State of Punjab, the court assessed the application of doctrine of „Rarest of Rare'. In this case the court try to figure out two questions, firstly is there something uncommon about crime calling for death sentence and rendering sentence of imprisonment for life inadequate. Secondly, are circumstances weight age to mitigating circumstances which speaks in favor of offender. And considering the of crime such that there is no alternative but to impose death sentence even after according maximum circumstances court awarded the death sentence to Macchi singh<sup>44</sup>.

Later in the case of Santosh Kumar Satishbhushan Bariyar and Ors. Vs State of Maharashtra<sup>45</sup>, court held that, For awarding death sentence Court, while applying the rarest of rare case doctrine, is duty bound to equally consider both aggravating or mitigating circumstances and then arrive at conclusion. In this case we can

<sup>43</sup>Mithu vs. State of Punjab, MANU/SC/0065/1983. (India)

<sup>44</sup>Macchisingh vs. State of Punjab, MANU/SC/0211/1983 (India)

<sup>45</sup> Santosh Kumar Satishbhushan Bariyar and Ors. Vs. State of Maharashtra, MANU/SC/0801/2009 (India)

see that, life imprisonment acts as general rule and the sentencing to death is an exception to the general rule.

Finally court in the case of Prajeet Kumar Singh vs. State of Bihar, stated that “If the act of murder was diabolic of the superlative degree in conception and cruel in execution and does not fall within any comprehension of the basic humanness which indicates the mindset which cannot be said to be amenable for any reformation, then death sentence could be awarded”<sup>46</sup>.

## **VII. Whether Death Penalty will reduce Crimes against women?**

According to Rational Choice theory, if the punishments are severe then a crime committer will likely choose not to commit a crime, and similarly, if the law were not stringent, the is likely a high of committing crime. By using the same logic if there is death penalty for heinous crime then the crime rate will decrease.

According to the most dangerous countries for women travelers in the world list, India stood in 9<sup>th</sup> place. And in terms of safe place for traveling, Spain secured the first place<sup>47</sup>. So while imposing death penalty, court need not to look into fundamental rights of the accused,

<sup>46</sup>Prajeet Kumar Singh vs. State of Bihar, MANU/SC/1795/2008 (India).

<sup>47</sup>Laura Begley Bloom, 20 Most Dangerous Places for Women Travelers, THE FORBES, (July 26, 2019), <https://www.google.com/amp/s/www.forbes.com/sites/laurabegleybloom/2019/07/26/20-most-dangerous-places-for-women-travelers/amp/>

because the accused already infringed the some others fundamental rights.

### **VIII. Solutions:**

#### I. Speedy Redressal of case

Recently in Unnao Rape case, due to non-speedy redressal of case, the accused uses his political power and killed the victim and her family. And also Recently Andhra Pradesh came up with Disha Act, under which it states that, it envisages the completion of Investigation of the crime within seven days and also completion of trial within 14 working days, and also it reduces the verdict time to be of 21 days from existing 4 months of the crime. This should be an alternative way for resolving the rape issues, which should also be considered and implemented across the country.

#### II. Strict implementation of law

Section-228A, states that revealing the name or identify of victim in certain cases is prohibited. But in many of the cases the victim's name and identity was revealed. Example, Nirbhaya case, Disha case and visakha case.

III. Offence against women is always seen as stigma in the society, which needs to be changed.

IV. There must be improvement in the status of women, which can be achieved by education.

### **IX. Conclusion:**

In the opinion of the author, the execution of death penalty will have the positive impact within the society, it brings the fear in the minds of law offenders, due to which there will be reduction in the criminal offence rate. Moreover, it will provide security and safety to the women within the society. The author is in favor of theory of deterrence. In simple words it means that, setting an example by punishing one person, so that the society will afraid to do same act in future.