Death Penalty for Rape

Why in news?

After the brutal rape and murder of a doctor on duty at a Medical College and Hospital, there has been increased voices seeking the death penalty for the accused.

What are the penal provisions against rape crime?

- **Definition of Rape** - Section 63 of Bhartiya Nyaya Sanhita (BNS) has extensively defined the act of rape under various circumstances including against will, with or without consent.
- In India, rape is the fourth leading crime against women.
    - NCRB – 7.1% of total crimes against women are rape and 18.7 % cases are assault with intent to outrage modesty.

According to 2022 report of National Crime Records Bureau (NCRB), crimes against women increased to 4,45,256 in 2022 from 4,28,278 in 2021 in India.

- **Punishment for rape – *Section 64*** of BNS provides for minimum 10 years of imprisonment.
- ***Section 69*** of BNS provides 10 years of imprisonment for having intercourse with a woman by deceitful means or by making a promise to marry a woman without any real intention.
- **Rigorous imprisonment** - Section 66 of BNS provides for rigorous imprisonment of *minimum 20 years* and Section 65 be invoked *for rape on a woman under 16 years of age.*
- **Life imprisonment** - Anyone found guilty of rape more than once punished with imprisonment for life.
- **Death penalty** – ***Section 66 of*** BNS for causing death or resulting in *persistent vegetative state of victim*.
- Section 65 of BNS provides Death sentence for rape on a woman *under 12 years of age*.
- ***Sections 64, 65 and 70(2)*** of BNS provides death penalty *for gang rape of a woman under the age of 18*.
- **Exception to marital rape** - Section 63 of BNS states that sexual intercourse or acts by a man with his wife, the wife not being under 18 years of age, is not rape.

Why rape convicts need capital punishments?

According to courts in India, death sentences contradicts Articles 19, 20, and 21

of the Indian Constitution. However, it is acceptable for offences such as waging or attempting to wage war against the government of India, murder, dacoity with murder, criminal conspiracy, etc.

- **Need of death penalty** –A death penalty is a legal process in which a person is executed as a punishment for a crime by the state.
- Sexual crimes *violates the victim's fundamental right of right to life* and personal liberty under ***Article 21*** of the Indian Constitution.
- It *violates the victim's body, mind, and privacy*, as it is the most ethically and physically repugnant crime in society.
- For the same reason, India has been labelled as the most hazardous country for women.
- **Previous instances** - In ***Laxman Naik v. State of Orissa (1994)***, a 7-year-old girl was sexually abused by her uncle, where the perpetrator was sentenced to death.
- The Nirbhaya Gang Rape case 2013, also known as the *Delhi Gang Rape case*, is a well-known example of capital punishment.

What are the issues with death sentence for rape?

- In situations of rape, capital punishment is a contentious subject in India and it involves deep rooted complexities and implications.
- **Ineffective deterrence** - Empirical evidence suggests that the threat of execution does not effectively deter criminals from committing rape
    - In Iran, where the regime imposes severe penalties for rape, has higher sex crime rates than India.
- **Complex nature of rape** - The motivations behind sexual violence are complex and often intertwined with deep-seated issues like power dynamics, misogyny, and societal norms that devalue women.
- **Fails to address core factors** - The simplistic notion that harsher punishments will scare potential offenders into compliance fails to address the underlying social causes.
- **False sense of security** - It risks creating a false sense of security, diverting attention from the need for comprehensive prevention strategies that tackle the root causes of sexual violence.
- **Reinforces patriarchal structure** - The use of capital punishment in rape cases can inadvertently reinforce the very patriarchal structures that contribute to gender-based violence.
- **Victim killing** - Introduction of capital punishment could lead to an increase in victim killings, as perpetrators might resort to murder to eliminate witnesses.

Justice Verma Committee was constituted to recommend amendments to the Criminal Law to provide for quicker trial and enhanced punishment in sexual assault against women which submitted its report in 2013.

Verma Committee on Death Penalty for Rape Cases

• **Recommendation** - It did ***not recommend death penalty*** for rape even for the rarest of rare cases as it would be a regressive step in the field of sentencing and reformation.
• It does *not necessarily act as a deterrent* against such crimes and does not address social foundation of rape.
• **Alternatives** – Increase the sentence from 7 years to 10 years, 20 years, and life, but "short of death".
• For crimes making a person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for rest of natural life.

> *According to the Working Group on Human Rights, the murder rate has declined consistently in India over the last 20 years despite the slowdown in the execution of death sentences since 1980.*

What lies ahead?

- Focus on rehabilitation and societal change to address the systematic challenges against rape.
- Make broader legal and cultural reforms that address gender inequality, challenge harmful norms, and promote respect for women's rights.

References

1. The Hindu | Verma panel on death penalty for rape
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3. FII | Addressing Rape Beyond the Death Penalty

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