

Death Penalty for Child Rape

What is the issue?

\n\n

\n

- Rajasthan and Madhya Pradesh have passed Bills introducing death penalty for rape of a girl below the age of 12 years.

\n

- A legal backing for death penalty demand in child rape cases needs a relook on both social attitude and government's responsibility.

\n

\n\n

What is the rationale behind the legislation?

\n\n

\n

- Firstly, there is the belief that harsher punishments will deter people from committing child rape.

\n

- Also, justice for child survivors demands that the law provide for the death penalty.

\n

- Lastly, the disgust for the crime makes the perpetrator 'deserving' of death penalty.

\n

\n\n

Why are the arguments flawed?

\n\n

\n

- **Deterrence** - The deterrence argument puts forth that fear of harshest punishment will prevent individuals from committing child rape.

\n

- But social, economic, cultural, psychological and other factors in one's life interact in far more complex ways.

\n

- Various studies have proved the uncertainty of death penalty in being an effective deterrent.
\n
- Moreover, in the context of child rape, many preventive measures and policies do have a definitive impact on preventing child rape.
\n
- These may include risk assessment and management, cognitive behavioural treatment and community protection measures.
\n
- Diverting resources to the death penalty, is more like taking away from developing these strategies that have greater preventive potential.
\n
- **Justice** - The argument of death penalty as justice to the child survivor seeks to cover-up the real reasons preventing justice.
\n
- Notably, the conviction rates are low under the Protection of Children from Sexual Offences Act, 2012.
\n
- There are some grave concerns over the manner of investigations and criminal prosecutions under the POCSO Act.
\n
- There is lack of specialised investigators, prosecutors, judges, mental health professionals, doctors, forensic experts and social workers.
\n
- Inadequate child protection and rehabilitation services, lack of compliance with child-friendly legal procedures are some other concerns.
\n
- Furthermore no real system of positive measures to reduce vulnerabilities of children in this context has been developed.
\n
- Working on these shortfalls is the need of the hour to ensure justice for child survivors.
\n
- **Under-reporting** - A large proportion of perpetrators are family members or those close to or known to the family.
\n
- This results in massive underreporting of such crimes.
\n
- This concern will only intensify with death penalty, as the child's family risks sending a family member or a known person to the gallows.
\n
- **Attitude** - The abhorrence or disgust associated with the crime and perpetrators of such crimes lies at the core of this legislation.
\n

- This social attitude drives the sentiment that such individuals 'deserve' death penalty.
\n
- Ideas like 'human rights are meant for humans and not devils who are involved in heinous crimes' need assessments.
\n
- **Legal** - Under the Constitution, a legislation has to always give a sentencing judge the option to choose between life imprisonment and death penalty.
\n
- Death penalty cannot be declared as the only punishment for any crime.
\n
- The sentencing judges will have to make this choice in the context of child rape too.
\n
- **Arbitrariness** - Arbitrariness in imposing death sentences has been explicitly discussed in judgments of the Supreme Court.
\n
- It has also led the Law Commission to recommend the gradual abolition of the death penalty in one of its reports .
\n
- The arbitrariness concern will only worsen in child rape cases, when judges decide on death sentence based on the 'rarest of rare' standard.
\n
- It must be ensured that it does not become a judge-centric exercise with individual predilections of a judge taking over any rule of law.
\n
- Arriving at measures and standards to decide certain instances of child rape as worse than others is a questionable exercise.
\n
- **Vulnerability** - The arbitrariness of the death penalty in India also arises from the discriminatory impact of the choice of what constitutes 'rarest of rare'.
\n
- The Death Penalty India Report of 2016 found that over 75% of death row prisoners were extremely poor.
\n
- They belong to marginalised groups with barely any meaningful access to legal representation.
\n
- Thus, in most cases, the weakest sections of the society bear the burden of the death penalty.
\n
- It is important to understand this implication, in the discussion on death penalty for child rape.

\n

\n\n

What is the way forward?

\n\n

\n

- Measures that the governments ought to take are different from steps meant to convey public abhorrence.

\n

- The social menace of child rape requires sustained planning, engagement, and investment of resources by the government.

\n

- Death penalty for child rape is a counterproductive diversion and an easy way out on the issue.

\n

\n\n

\n\n

Source: The Hindu

\n

