

Violence Against Children [UPSC Notes for GS II]

Violence Against Children

Context

- The Parliament recently passed the Criminal Law (Amendment) Bill 2018, which awards death penalty to convicts of child rapes in India.
- The Bill provides for death penalty as the maximum punishment in cases of rape of a child under 12.

What are the issues with Child Abuse in India?

- According to a report by child rights NGO CRY, sexual offence is committed against a child in India every 15 minutes and there has been an increase of more than 500 per cent over the past 10 years in crime against minors. The rising cases is a disturbing scenario.
- As per NCRB statistics on rape of women and children, 94% of the rapists are known to the victim, and almost half are a close relative, and neighbours.
- The **conviction rate of these crimes is very low**, only close to 3% of the total number of cases, according to the 2016 NCRB Report. One of the chief causes of low conviction rate is the lack of manpower and infrastructure in the criminal justice system.
- Previous Acts' failure: In spite of the POCSO Act being enacted in 2012, there has been no reduction in the number of crimes committed against children. The new law enacted did not act as a deterrent.
- Justice Delay: Court cases typically last for years or even stretch to decades in many cases. One reason for this is the shortage of judges. Over six million cases are pending for more than ten years. Because of the pendency of cases and the lack of required facilities, investigations are hardly completed on time, and recording of evidence, etc. do not happen on time.
- Attitude of the politicians - Senior political leader and Supremo of the Samajwadi Party commented on record in 2014 that rapes should not be punished with death since "boys are boys and they make mistakes".
- A 2017 report titled "Everyone Blames Me" cited that survivors, especially from marginalised communities, find it hard to register police complaints.
- The survivors are often humiliated by the police personnel and at the hospital where they are subjected to degrading medical tests in the name of medical examination. They feel scared and intimidated when the case does reach the court. There are major obstacles to obtaining vital support services such as counseling, health care and legal aid.

Some incidents:

- The brutal gang rape and murder of an eight-year old girl Asifa Bano, who belonged to a Muslim nomadic tribe on 17 January near Kathua, a town in Kashmir shook the collective conscience of the nation and sparked outrage and anger across India.
- In the Nagaon district of Assam, an 11-year-old girl was raped and then burnt alive, and then an entire village came together to help the police catch the accused.
- It gets more disgusting. A four-month-old baby was raped and murdered in the historic Rajwada area of Indore. Hardened policemen were nearly moved to tears as they conducted a preliminary examination of the ravaged body.
- Seventeen men have been charged in India with the gang-rape of an 11-year-old deaf girl in the city of Chennai in July 2018.

Salient features of the Criminal Law (Amendment) Bill 2018

- The Bill seeks to replace the Criminal Law (Amendment) Ordinance promulgated on April 21, 2018 following an outcry over the rape and murder of a minor girl in Kathua in Jammu and Kashmir and the rape of another woman at Unnao in Uttar Pradesh.
- The Criminal Law (Amendment) Bill 2018 will amend relevant Sections of the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC) and also the Protection of Children from Sexual Offences Act (POCSO Act) 2012.
- The Bill provides for a time-bound investigation in cases of rape of girl children. The investigation into the rape of a child must be completed within two months.
- The cases are to be tried in a fast track court. The Bill states that any appeal against a sentence by the trial court must be disposed of within six months.
- Under the new law, if the victim is under 12 years of age, the culprit faces a minimum sentence of 20 years. The maximum punishment is death. In the cases of gangrape of a child under 12, the minimum punishment is life sentence while the maximum is death penalty.
- In cases of children aged between 12 and 16, the offence of rape is punishable with the minimum sentence of 20 years. The maximum punishment in such cases is life imprisonment. If a girl aged between 12 and 16 is gangraped, the convicts face a minimum punishment of life sentence.
- If the victim is aged between 16 and 18, the offence of rape is punishable with a minimum punishment of 10-year jail term and the maximum is life imprisonment. Repeat offenders will be punished with life imprisonment or death.
- However, the punishment for rape of boys has remained unchanged. This has resulted in greater difference in the quantum of punishment for rape of minor boys and girls.

Demerits of the Capital Punishment/ Arguments against the provisions:

Capital punishment is a debatable subject and criminologists, sociologists and the legal fraternity are always divided on this issue.

- Justice P Bhagwati while delivering a dissenting opinion in the case of Bachan Singh vs State of Punjab (1982) case held capital punishment to be unconstitutional.
- The Law Commission of India in its report on death penalty said that after many years of research and debate a view has emerged that there is no evidence to suggest that the death penalty has a deterrent effect over and above its alternative – life imprisonment.
- The Justice JS Verma committee, which was formed after the December 2012 Delhi gang rape and murder case, in its report concluded that death penalty would be a regressive step in the field of sentencing and reformation.
- Human Rights Watch opposes the use of the death penalty in all cases. Capital punishment for rape is the easiest and most convenient demand to raise, yet the most harmful one for rape survivors. It is all about retribution, disregards the reformative aspect of the criminal justice system, and, most importantly, is said to have little deterrent effect.
- There are rapists who kill the victims, and there are rapists who don't. Now, if the maximum punishment in either case is the same, the rapist would reason that by killing victim he/she may never be exposed. There are numerous instances of the perpetrators killing their victims, so stringent anti-rape laws are perceived not to be deterrents but measures that further instigate rapists to kill the victims.
- Rape is already underreported in India largely because of social stigma, victim-blaming, poor response by the criminal justice system, and lack of any national victim and witness protection law making them highly vulnerable to pressure from the accused as well as the police. Children are even more vulnerable due to pressure from family and society. Increase in punishment, including the death penalty may lead to a decrease in reporting of such crimes.

Way Forward

- The Indian government has, off late, adopted major legal reforms for sexual violence cases but there are major lacunae in their execution.
- What acts as a deterrent for an offender from committing a crime is the certainty and uniformity of punishment rather than the nature of the punishment.
- Deterrence of the crime and the victim's access to justice need both better implementation of existing laws and systemic changes.

- India's increasing rape culture can be best stunted by increasing conviction rates by reforms in the judicial and police systems, and by bettering measures to rehabilitate and empower survivors of sexual crimes.
- Criminal justice system remains vulnerable to political pressures and allows many of the accused to go scot-free.
- The re-training of police officers dealing with various aspects of sexual crimes.
- Strict action should be taken against any police officer found guilty of obstructing the probe or colluding with perpetrators of such cases.
- The court infrastructure needs to be strengthened, and the police must be sensitized to handle and support victims of the crime. This will ensure better investigations which in turn will translate into a better conviction rate of the offenders.
- Greater allocation of state resources towards the setting up of fast-track courts; more one-stop crisis centres; proper witness protection; more expansive compensation for rape survivors, and an overhaul of existing child protection services is the need of the hour.